

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1550/89
T.A. No.

199

DATE OF DECISION 26.9.90.

Gulshan Rai and others	Petitioner
Mr B.S. Mainee,	Advocate for the Petitioner(s)
Versus	
Union of India and others	Respondent
Mr P.H. Ramchandani	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. G. Sreedharan Nair, Vice Chairman.

The Hon'ble Mr. I.K. Rasgotra, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? ☒
2. To be referred to the Reporter or not ? ☒
3. Whether their Lordships wish to see the fair copy of the Judgement ? ☒
4. Whether it needs to be circulated to other Benches of the Tribunal ? ☒

(G. Sreedharan Nair)
Vice Chairman.

S.P. Singh/
25.9.90.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH :
NEW DELHI.

O.A.1550/89.

Gulshan Rai and others ...
versus
Union of India and others ...

Applicants.

Respondents.

P R E S E N T :

The Hon'ble Shri G.Sreedharan Nair, Vice Chairman.

The Hon'ble Shri I.K.Rasgotra, Member(A).

For the applicants- Mr B.S.Mainee, Advocate

For the respondents- Mr P.H.Ramchandani, Advocate.

Date of hearing - 24.9.90

Date of Judgment & Order - 26.9.90.

JUDGMENT & ORDER :

G.Sreedharan Nair, Vice Chairman :

The three applicants who were Junior Investigators under the respondents were promoted on adhoc basis to the post of Senior Investigators in the year 1971 in the case of the applicants 1 and 2 and with effect from 9.7.1973 in the case of the third applicant. Recruitment to the post of Senior Investigator is partly by promotion from the cadre of Junior Investigator and partly by direct recruitment through the Union Public Service Commission (U.P.S.C.). The applicants applied for the posts of Senior Investigator through the UPSC in the year 1975, and having been selected, were appointed as Senior Investigator in June, 1975.

2. During the years 1973 and 1983, the Departmental Promotion Committee (D.P.C.) met for the recommendation of Junior Investigators for promotion to the post of Senior Investigator. A panel of 7(seven) persons was prepared in 1979 and another panel of 13(thirteen) in 1983.

3. It is stated that some of the Senior Investigators who were appointed on promotion had filed O.A.984/86 before this Tribunal wherein a direction was given that they should be regularised as Senior Investigator from the dates of their adhoc promotion. The

grievance of the applicants is that while those empanelled by the DPC have been given a seniority from the respective dates of their adhoc promotion to the post of Senior Investigator, the applicants have been assigned seniority only from the date of selection by the UPSC. The applicants place reliance on the judgment of the Supreme Court in *Amrit Lal Bery v. Union of India*, (1975 (1) SLR 153), and allege that being similarly situate the benefit of the decision of the Tribunal in O.A. 984/86 has to be extended to them as well and they have to be assigned seniority from the date they were holding the posts of Senior Investigator on adhoc basis. It is stated that pursuant to the judgment of the Supreme Court in the case of *Narendra Chadha*, on representation of Dr B.L.Mittal, the respondents have reckoned his seniority from the original date of adhoc promotion. It is also pointed out that some of the juniors of the applicants who had appeared alongwith them in the selection conducted by the UPSC but failed have now become senior to them.

4. The applicants pray for a direction to the second respondent to assign them seniority from the date of their adhoc promotion as was done in the case of the applicants in OA 984/86.

5. In the reply filed by the respondents, a preliminary objection is raised ~~is~~ that the application is barred by limitation on the ground that the representation submitted by the first applicant in the year 1984 against his being ~~shown~~ shown under the direct recruitment quota was rejected. On the merits, it is contended that in the year 1975, 20(twenty) persons were appointed to the post of Senior Investigator as direct recruits through the UPSC and their seniority has been fixed inter se in the order in which the UPSC made the recommendation. It is stated that the DPC that met in 1979 recommended 7(seven) persons against the departmental promotion quota for the year 1975, and accordingly, direct recruits were shown against direct recruitment quota and the promotees against the promotee quota in accordance with the ratio of 3:1. A review D.P.C. met on 7.5.1987 in the light of the decision of the Tribunal in OA 984/86, and on the basis of its recommendations, seven persons have been promoted to the posts

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of Senior Investigator.

6. According to the respondents, the applicants have been assigned seniority as per the Rules governing the direct recruits and if the same is disturbed, there will be a complete dislocation of the inter se seniority among the direct recruits. It is contended that the applicants are not similarly situate as the applicants in OA 984/86 as the latter were promotees who were regularly appointed on the basis of the recommendation of the DFC.

7. Recruitment to the post of Senior Investigator is governed by the General Central Services (Class-II and Class-III) posts under the Central Statistical Organisation (Recruitment) Rules, 1960, for short, the Rules. According to the Rules, recruitment to the post of Senior Investigator is made by direct recruitment to the extent of and 75% by departmental promotion regarding 25%. In the year 1975, 20 (twenty) persons were appointed as Senior Investigators against the direct recruitment quota through the UPSC, and their inter se seniority was fixed as per the order of merit accorded by the UPSC. The three applicants are included among those 20 persons, the rank of the first applicant being at serial No.6, of the second applicant at serial No.8, and of the 3rd at serial No.10. These applicants were working on ad hoc basis against the post of Senior Investigator at the time of their selection through the UPSC. On these premise, it was submitted by the counsel of the applicants that in the matter of reckoning of the seniority of the applicants in the cadre of Senior Investigator, it has to be with effect from the date of their continuous officiation in the post on adhoc basis. This plea cannot be accepted for more reasons than one. No doubt, as per the Rules promotion to the post of Senior Investigator can be had from the lower post of Junior Investigator, but it has to be done on the basis of selection by a duly constituted DFC. So long as the applicants were not appointed to the post of Senior Investigator in accordance with the Rules, it is not open to them to claim the benefit of the adhoc service. More so,

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because they chose to get themselves appointed to the cadre of Senior Investigator through the channel of direct recruitment competing with others, and their appointment as Senior Investigator has been made on the basis of the Select List prepared by the UPSC in the order of merit wherein there are several others holding higher ranks than the applicants. It is needless to underline that the reckoning of seniority of these applicants from an earlier date shall have the effect of placing those who have been ranked higher to the applicants in the said Select List below them, which is impermissible.

8. Considerable reliance was placed by counsel of the applicants on the decision of this Tribunal in O.A.984/86 wherein the applicants were directed to be regularised as Senior Investigators from the dates of their initial adhoc promotion and reckon their seniority accordingly. It was pointed out that the applicants therein are persons similarly situated since they were also promoted on adhoc basis to the cadre of Senior Investigator while they were working as Junior Investigators like the applicants. The submission has to be rejected, as it cannot be said that the applicants in OA 984/86 are similarly situated. 9 persons were appointed as Senior Investigators through the channel of promotion while the applicants have been appointed as direct recruits. When once the applicants opted to choose the channel of direct recruitment for the purpose of appointment to the post of Senior Investigator, the mere fact that for some time they had also worked as Senior Investigators on adhoc basis like the applicants in OA 984/86, cannot make them equals with the latter so as to claim the extension of the benefit allowed to them by the final order in OA 984/86.

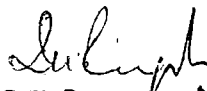
9. There is also force in the plea of the respondents that since the first applicant had put in a request in the year 1984 to treat him as the departmental promotee and for fixation of his seniority accordingly,



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which representation was rejected in the year 1984 itself, ^{the} it present application cannot be entertained. Indeed, what is sought for in the present application is to treat the applicants at par with the departmental promotees. Since ~~the rejection of~~ ^{the} the request in ~~their~~ ^{their} behalf was turned down as early as in the year 1984, and the matter was not pursued further, the present application filed in the year 1989 cannot be maintained.

10. The application is dismissed.


(I.K. Rasgotra)
Member (Admin) 28/9/90


(G. Sreedharan Nair)
Vice Chairman.

S.P. Singh/
25.9.90.

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