

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
N E W D E L H I

O.A. No. 189/89  
T.A. No.

199

DATE OF DECISION 12.12.1990

<u>Shri R.K. Saxena</u>	Petitioner
<u>In Person</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India &amp; Others</u>	Respondent
<u>Shri N.S. Mehta</u>	Advocate for the Respondent(s)

**CORAM**

The Hon'ble Mr. Justice Amitav Banerji, 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?

*AB*  
(Amitav Banerji)  
Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

OA No. 189 of 1989

Date of decision: 12.12.1990

Shri R.K. Saxena

...Applicant

Versus

Union of India & Others

...Respondents

Coram

The Hon'ble Mr. Justice Amitav Banerji, Chairman

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

For the Applicant : Applicant in person.

For the Respondents : Shri N.S. Mehta,  
Senior Standing Counsel

(Judgement of the Bench delivered by Hon'ble  
Mr. I.K. Rasgotra, Member (A))

Shri R.K. Saxena, Research Officer,  
National Commission on Urbanisation, Ministry  
of Urban Development, in this application under  
Section 19 of the Administrative Tribunals Act,  
1985 has challenged the order No.A-32013/1/84-H.I  
dated 31.3.1986, reverting him to the post of  
Senior Investigator w.e.f. 14.3.1986.

2. The applicant claims to have been promoted  
as Assistant Field Officer in National Buildings  
Organisation (NBO) through a regularly constituted  
Departmental Promotion Committee (DPC) against  
a long term vacancy caused by the deputation  
of Shri P.S. Mathur in February, 1985. The post  
of Assistant Field Officer was encadred in the  
Indian Economic Service (IES) w.e.f. 19th September,  
1985 till then it is said to have been treated  
as ex-cadre post. After the encadrement of the

post in the IES, recruitment to the post came under the control of Department of Economic Affairs, Ministry of Finance who are the Cadre Controlling Authority for IES. The applicant submits that he was holding the cadre post as on 31.3.1986 and, therefore, he is entitled to the benefit of the Hon'ble Supreme Court's judgement in the case of Narender Chadha & Ors. Vs. UOI AI R 1986 SC 638. Accordingly, he has claimed regularisation from the date of officiation w.e.f. 14.2.1985, as he was holding the post on adhoc basis. He is aggrieved by the fact that instead of regularising him when he was holding the cadre post of IES as Assistant Field Officer (AFO) the respondents reverted the applicant w.e.f. 14.3.1986 to the post of Senior Investigator in contravention of the orders of the Supreme Court in the case of Narender Chadha (supra). He is also aggrieved by the fact that the department did not forward his service particulars to the Cadre Control Authority at the time of encadrement of the post. He submits that this was an illegal act as he cannot be reverted retrospectively from 14th March when actually he was working as AFO till 31.3.1986. The applicant has prayed for the following reliefs:-

- i) To direct the respondents to take the applicant back on one of the posts of AFO and ;
- ii) to provide seniority in the feeder post of IES grade IV from the date of his officiation as provided to all other Grade IV officers working on adhoc basis.

3, The respondents in their written statement have submitted that Shri Saxena's appointment

to the post of AFO was purely on adhoc basis against a deputation vacancy with the clear stipulation that it will not entitle him to any claim for regular appointment in the grade, seniority in that grade or eligibility for promotion to the next higher grade. It has further been averred that Shri P.S. Mathur was the regular holder of the post and, therefore, after the post was encadred in the IES service, he alone would be the beneficiary of the encadred post. There was, therefore, no question of filling up the post from the feeder list to which Shri Saxena belongs on a long term basis. Further, in accordance with the IES Rules, 1961, not less than 60 per cent of the vacancy of IES Grade IV are to be filled up by direct recruitment and not more than 40 per cent of the vacancies by selection from persons serving in the offices under the Government in economic posts recognised for that purpose by the Cadre Controlling Authority. The respondents have contested the contention of the applicant that judgement of the Hon'ble Supreme Court in CMP No.2604/85(WP-1595/79) Narender Chadha & ORs. Vs. UOI and ORs. dated 11.2.1986 confers any benefit on the applicant. In fact, the Hon'ble Supreme Court in the judgement (supra) had directed the Union Government to treat all persons who are stated to have been promoted in two services (IES & ISS) contrary to the Rule till then as have been regularly appointed to the said post in Grade IV under Rule 8 (1)(a)(ii) and assign them seniority in the cadre with effect from the date from which they continuously officiated in the said post. The Hon'ble Supreme Court also directed that the promotees who have been selected in 1970, 1982 and 1984 should also

be assigned seniority w.e.f. the date on which they commenced to officiate continuously in the post prior to their selection. The Hon'ble Court further clarified in the final judgement delivered on 11.2.1986 that "this direction shall be applicable only to officers who have been promoted till now." The benefit of the judgement was restricted to such promotee as had been promoted on adhoc basis till 1.2.1984. The Hon'ble Supreme Court in the direction given on 1.2.1984 stated that "We wish to make it clear that there is no question of any rotation system being applied under the Rules as they exist now."

The respondents contend that the applicant was appointed to the post of AFO on adhoc basis w.e.f. 14.2.1985 as such his case is not covered by the judgement of the Supreme Court (supra). The respondents have further brought out that the applicant was reverted from the post of AFO as Shri Mathur against whose vacancy the applicant was promoted on adhoc basis, reverted from deputation.

4. In his rejoinder the applicant has submitted that S/Shri M.M. Bansal and Basant Tiru at srl. No. 592 & 593 respectively of the seniority list of IES were promoted on 28.8.1984 i.e. a date well after the cut off date of 1.2.1984 quoted by the respondents. Similarly, in the ISS all promotees who are promoted from 18.5.1985 till 6.1.1986 were regularised in compliance with the directions of the Hon'ble Supreme Court as per final judgement delivered on 11.2.1986. According to him the date of 1.2.1984 has no relevance for the purpose of regularising those who are promoted on adhoc basis. The cut off

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date for regularising adhoc promotees promoted contrary to the Rules is 11.2.1986.

5. Shri N.S. Mehta, the learned Senior Standing Counsel drew our attention to the order (at page 7 of the p. book) No.A-32013/1/84-H.I dated 18.2.1985 and under scored the fact that Shri R.K. Saxena, Senior Investigator in N.B.O. was promoted as A.F.O. "on adhoc basis w.e.f. 14.2.1985 in the pay scale of Rs.700-1300 or on the date on which he takes over, whichever is earlier and until further orders." The said order further stipulates that the appointment is on purely adhoc basis and it shall not entitle him to any claim for regular appointment in the grade, seniority in that grade or for eligibility for promotion to the next higher grade. Referring to page 6 of the paper book annexed to the OA, the learned Senior Counsel also referred to the order dated 31.3.1986 ( Annexure R-2 of the counter) which reads as under:-

"Consequent upon his reversion from deputation from the Department of Administrative Reforms & Public Grievances, Shri P.S. Mathur is taken over / the strength of NBO as an AFO in the scale of Rs.700-1300 with effect from 14.3.1986 (F.N.).

2. Shri R.K. Saxena, presently holding the post of Asstt. Field Officer in the pay scale of Rs.700-1300/- is hereby reverted to his substantive post of Senior Investigator with effect from 14.3.1986 (F.N.)."

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Shri Mehta, the learned Senior Standing Counsel, therefore, stressed that the applicant was promoted in a vacancy caused by the deputation of Shri P.S. Mathur and that he was reverted on the reversion of Shri Mathur to his parent department. The promotion of Shri Saxena, therefore, was purely adhoc as stipulated in the order dated 18.2.1985.

5.1 We have heard the applicant in person and the learned Senior Standing Counsel for the respondents, Shri N.S. Mehta. In the case of Narender Chadha Vs. UOI (supra) the facts of the case are distinguishable as the applicants therein had been promoted on adhoc basis for a period of 15 to 20 years. The order dated 1.2.1984 of the Hon'ble Supreme Court became of interim nature as the Hon'ble Court at the intervention of the direct recruits heard the case all over again. Their Lordships of the Supreme Court in the Narender Chadha's judgment (supra) delivered on 11.2.1986 observed:-

"But we however, make it clear that it is not our view that whenever a person is appointed in a post without following the rules prescribed for appointment to that post, he should be treated as a person regularly appointed to that post. Such a person may be reverted from that post. But in a case of the kind before us where persons have been allowed to function in higher posts for 15 to 20 years with due deliberation it would be certainly unjust to hold that they have no sort of claim to such posts and could be reverted unceremoniously or treated

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as persons not belonging to the Service at all, particularly where the Government is endowed with the power to relax the rules to avoid unjust results."

Their Lordships finally held that:- "Having given our anxious consideration to the submissions made on behalf of the parties and the peculiar facts present in this case we feel that the appropriate order that should be passed in this case is to direct the Union Government to treat all persons who are stated to have been promoted in this case to several posts in Grade IV in each of the two Services contrary to the Rules till now as having been regularly appointed to the said posts in Grade IV under rule 8 (1)(a)(ii) and assign them seniority in the cadre with effect from the dates from which they are continuously officiating in the said posts.

Even those promotees who have been selected in 1970, 1982 and 1984 shall be assigned seniority with effect from the date on which they commenced to officiate continuously in the posts prior to their selection. For purposes of seniority the dates of their selection shall be ignored. The direct recruits shall be given seniority with effect from the date on which their names were recommended by the Commission for appointment to such grade or post as provided in clause (a) Rule 9C of the Rules. A seniority list of all the promotees and the direct recruits

shall be prepared on the above basis treating the promotees as full members of the Service with effect from the dates from which they are continuously officiating in the posts. This direction shall be applicable only to officers who have been promoted till now. This is the meaning of the direction given by the Court on February 1, 1984 which stated, 'we wish to make it clear that there is no question of any rotation system being applied under the Rules, as they exist now.' All appointments shall be made hereafter in accordance with the Rules and the seniority of all officers to be appointed hereafter shall be governed by rule 9-C of the Rule."

5.2 As observed earlier, the applicant in this case was promoted in a deputation vacancy which lasted from February, 1985 to 14.3.1986. The orders dated 18.2.1985 (Annexure R-1) beyond any doubt made it clear that the promotion was against a short term vacancy and purely on adhoc basis without entitling the applicant for regular appointment in the grade seniority in that grade or eligibility for promotion to the next higher grade. He was also not promoted on regular basis as claimed by him and the promotion was not made on the basis of the recommendations of a DPC as claimed. The benefit of the judgement of Narender Chadha & Ors. (supra) is also not available

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to him as it is clearly distinguishable from the facts of the present case. The Hon'ble Supreme Court in its judement delivered on the Direct Recruits Class II Eng. Officers' Ass. V. State of Maharashtra & Ors. JT 1990 (2) SC 264 has held that:-

"Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority."

The above view has been further reiterated by the Constitution Bench in the Hon'ble Supreme Court in the case of Masood Akhtar Khan & Ors. Vs. State of Madhya Pradesh & Ors. JT 1990 (3) SC 295. There is no shadow of doubt that the appointment of the applicant was on purely adhoc basis in a temporary vacancy caused by the deputation of another officer. He was not appointed against a long term vacancy and his officiation period as AFO was barely a little over one year. The facts of the case of the applicant do not have any distinct relationship with those who were given relief by the Hon'ble Supreme Court in the case of Narender Chadha (supra).

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In view of the above facts and circumstances of the case we do not find any merit in the application which accordingly is dismissed.

There will be no order as to costs.

*Sk*  
(I.K. RASGOTRA)

MEMBER (A) 12/12/1990

*AB*  
(AMITAV BANERJI)  
CHAIRMAN

12.12.90