

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 1979/89  
T.A. No.

198

DATE OF DECISION 16.7.1990.

Smt. Kanta Malhotra Applicant (s)

Shri K.L. Bhatia Advocate for the Applicant (s)

Versus  
Union of India & Others Respondent (s)

Smt. Raj Kumari Chopra and  
Shri N.S. Mehta Advocate for the Respondent (s) 1 and 2  
Smt. C.M. Chopra, Advocate for Res.3-5.

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *ND*
3. Whether their Lordships wish to see the fair copy of the Judgement? *NO*
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Judgement of the Bench delivered by Hon'ble  
Mr. P.K. Kartha, Vice-Chairman)

The applicant, who is working as a Senior Scientific Assistant in the Food Research & Standardisation Laboratory under the Directorate General of Health Services, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying that respondent Nos.1 and 2 be directed to set aside the seniority list of Senior Scientific Assistants issued on 15.9.1989, and that the position of the applicant as No.1 in the seniority list of Senior Scientific Assistants as declared earlier, may not be disturbed. She has also prayed for all consequential benefits by virtue of her being the senior-most among the Senior Scientific Assistants.

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2. The facts of the case in brief are as follows. The applicant is a promotee officer while respondent Nos.3-6 are direct recruits. According to the relevant recruitment rules, the post of Senior Scientific Assistant is to be filled by promotion and direct recruitment, the quota for promotion being 25 per cent and for direct recruitment, 75 per cent. On the recommendation of the D.P.C., the applicant was appointed as Senior Scientific Assistant on 9.1.1986 while respondent Nos.3-5, who were direct recruits, were appointed as Senior Scientific Assistants on subsequent dates. In the seniority list issued by the respondents on 8.9.1988, the applicant was shown as senior to respondent Nos.3-6. The respondents issued a revised provisional seniority list on 22.6.1989 showing the applicant as junior to respondent Nos.3-6. The representation submitted by the applicant was rejected.

3. The contention of the applicant is that the date of appointment should be the basis for determining the seniority. Accordingly, the applicant is senior to respondents 3-6. In this context, the applicant has relied upon the O.M. dated 3.7.1986 issued by the Department of Personnel & Training, according to which, the relative seniority of the direct recruits and the promotees shall be determined according to the rotation of the vacancies between direct recruits and promotees. It has been further laid down in the said O.M. that a roster should be maintained based on reservation for direct recruitment and promotion, as per the recruitment rules. In the instant case, out of five vacancies, it has been contended that one was reserved for promotees and the other for direct recruits. As such, the four direct recruits should rank in seniority below the promotee, namely, the applicant.

4. Respondent Nos.1 and 2 have stated in their counter-affidavit that a seniority list was issued on 8.9.1988 by mistake without following the guidelines laid down by the Department of Personnel & Administrative Reforms. The subsequent seniority list was issued to rectify the mistake.

5. The respondents are relying upon the O.M. dated 24th June, 1978 issued by the Department of Personnel & Administrative Reforms which deals with the procedure regarding the starting point in the Recruitment Roster for the purpose of seniority. Para.2 of the said O.M. states that the starting point in the Roster should be "that mode of recruitment prescribed in the recruitment rules for which the selection process had been completed first." (Emphasis added). For this purpose, the date of the completion of the selection process will be determined as follows:-

<u>Direct recruitment</u>	<u>Date of completion of selection process</u>
(a) Through examination conducted by UPSC or any other authorities.	Date of publication/ announcement of results.
(b) Through interviews conducted by UPSC or any other authorities.	Date of commission's letter containing their recommendations.
<u>Promotion</u>	
(a) Where UPSC is associated.	Date of UPSC's letter containing their recommendations ratifying the promotion
(b) Where UPSC is not associated or its formal concurrence is not required.	Date of DPC meeting.
(c) Limited Departmental Examination.	Date of announcement of results.

6. The aforesaid O.M. has not been superseded by the O.M. dated 3.7.1986 relied upon by the applicant.

7. In the instant case, the selection process of respondent Nos.3-5 was completed earlier. Five posts of Senior Scientific Assistants were created in January, 1981. The proposal for

7

recruitment was sent to the Director General of Health Services by the Director, Food Research and Standardisation Laboratory, Ghaziabad on 13th July, 1981. The Director General of Health Services wrote to the U.P.S.C. on 17th February, 1983 regarding recruitment. The recruitment rules were finalised in February, 1984. Direct recruitment was done on the basis of interview held by the U.P.S.C. on 21st August, 1985. The applicant was one of the candidates to be interviewed by the U.P.S.C. for selection as a direct recruit. While respondent Nos.3-5 were selected by the U.P.S.C. on the basis of their merit, the applicant was not so selected. The U.P.S.C. intimated about the selection to the respondents and the selected candidates on 18th September, 1985.

8. The applicant was, however, promoted only on 28th November, 1985.

9. We have carefully gone through the records of the case and have heard the learned counsel for both the parties. In our opinion, the guidelines contained in the O.M. issued by the Department of Personnel on 24th June, 1978, are applicable to the instant case and the determination of the seniority on the said basis cannot be called in question. The mere fact that the actual date of joining of the applicant was earlier than the other respondents, would not entitle her to higher seniority, as the method for determining seniority is already governed by the instructions issued by the Deptt. of Personnel in 1978. The principle of determination of seniority on the basis of length of service will come into play only in cases where there are no rules or instructions to the contrary on the subject. The said principle will not

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apply to the facts and circumstances of the instant case.

10. In the light of the foregoing, we see no merit in the present application and the same is dismissed.

The parties will bear their own costs.

*D.K. Chakravorty*

(D.K. Chakravorty)  
Administrative Member

16/7/90

*P.K. Kartha*

(P.K. Kartha)  
Vice-Chairman (Judl.)

16/7/90