

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

O.A. No. 223/89
T.A. No.

199

DATE OF DECISION 6.3.1991.

<u>Shri M.L. Malhotra & Ors.</u>	Petitioner
<u>Shri T.C. Aggarwal,</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India & Ors.</u>	Respondent
<u>None</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 ? ✓ 47
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 ? ✓


 (AMITAV BANERJI)
 CHAIRMAN
 6.3.91.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA No. 223/1989

DATE OF DECISION: 6.3.1989

SHRI M.L. MALHOTRA & ORS.

APPLICANTS

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 APPLICANTS

SH.T.C. AGGARWAL, COUNSEL

FOR THE RESPONDENTS

NONE

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE

MR. I.K. RASGOTRA, MEMBER (A)

The issue raised in this OA for adjudication is the criterion for determining seniority between the direct recruits and promotees in the grade of Assistants of the Central Secretariat Service working in the office of Director General, All India Radio.

Shri M.L. Malhotra and 14 others who are employed as Assistants in the office of Director, General, All India Radio, New Delhi have filed this application under Section 19 of the Administrative Tribunals Act, 1985 challenging the impugned seniority list circulated by Ministry of Information and Broadcasting vide No. 5/6/88-Admn II dated 30.6.1988. The grievance of the applicants is that direct recruit Assistants who joined later than the dates on which applicants were promoted as Assistants have been placed above them in the impugned seniority list. The applicants belong to the cadre of Assistants in the Central Secretariat Service and their conditions of service are governed by the Central Secretariat

Service Rules, 1962 (hereinafter referred to as 1962 Rules). The recruitment to the cadre of Assistant is regulated by rule 13 (6) of the Central Secretariat Services Rules, 1962. The said rules provide that 50% of the substantive vacancies shall be filled by direct recruitment and 50% by substantive appointment of persons included in the select list for the Assistant's grade. If, however, some substantive vacancies reserved for direct recruitment remain unfilled, they can be filled by substantive appointment of persons included in the select list for the Assistant's grade. The seniority of the "members" of the service is determined as per Rule 18 read with Regulation 3(3) of the Fourth Schedule of the 1962 Rules. The applicants have challenged the seniority list of Assistants issued by the Ministry of Information and Broadcasting as of 1.6.1988, prepared in accordance with the rule regulating seniority of the Assistants in the 1962 rules. By way of relief the applicants have prayed that the seniority list as issued by the Ministry of Information, & Broadcasting ID No. 5/6/88-Admn.II dated 30.7.1988 be quashed and that the applicants be declared to be entitled to seniority on the basis of length of service/date of appointment with all the consequential benefits like promotions to the higher posts from the date from which the juniors to the applicants were promoted. In effect they have challenged the validity of Rule 18 and Regulation 3 (3) of the Fourth Schedule of 1962 Rules, governing the seniority of the Assistants.

Shri T.C. Aggarwal, learned counsel for the applicant cited the following cases in support of the claim of the applicants for reckoning their seniority on the

basis of length of service principle:

1. Baleshwar Dass Vs. State of Uttar Pradesh 1980(4) SCC 226 (237-238)
2. O.P. Singla Vs. UOI - 1984 (L & S) SCC 658 (674)
3. Pran Krishna Goswamy Vs. State of West Bengal 1985 SCC Sup. 221(238)
4. G.K. Dudani Vs. S.D. Sharma AIR 1986 SC 1455
5. G.C. Gupta Vs. V.N.K. Pandey 1987(3)SLJ(SC)1 (para 17)
6. Direct Recruit Class II Engg. Officer Vs. State of Maharashtra 1990(2) SLJ (SC) 40 (paras 15-16)
7. N.K. Bharamkshtriya & Ors. Vs. State of Gujarat & Ors. III (199) CSJ (HC)59 (case dealt A.K. Subaraman Vs. UOI AIR 1975 SC 483)

He further submitted that it is well established in law that in case of failure of rota-quota system the seniority should be reckoned by following the principle of length of service. The Learned Counsel cited the following additional judicial pronouncements to fortify his case.

1. K.N. Mishra Vs. UOI ATR 1986(2) CAT 270
2. P.C. Sethi Vs. UOI 1975(1) SLR 783 S.C.
3. Direct Recruit Class II Association Vs. State of Maharashtra 1990(2) SLJ(SC) 40
4. Karam Singh Vs. Union of India JT 1988(1)SC

3. We have heard the learned counsel for the applicant and perused the counter affidavit filed by the respondents. We find that the issues of law and fact raised in this OA are no different from the issues decided by the Hon'ble Supreme Court in the case of **Karam Pal Etc. Vs. UOI & Ors. and Ram Sarup Kanwar Vs. UOI** reported in AIR 1985 SC 774, as will be obvious from the following:

"According to the petitioners the quota rule had broken down as direct recruitment had not been made in many years and on account of such failure, fixation of seniority with reference to the rotational method was not available to be followed. The petitioners also contended that select lists as contemplated by the Rules had not been framed for quite a long period and in the absence of such a select list framed in time, select lists of 1978, 1979 and 1980 prepared without following the criterion of length of service of officers in the grade of Assistants was not only unfair and arbitrary but worked out prejudicially to the petitioners. **The main grievance of the petitioner in short is that the scheme for fixation of seniority and consequently the provisions relating to promotion having not been worked out as contemplated, the manner of determination of seniority should be usual rule of total length of service and action taken otherwise should be struck down and seniority should be directed to be re-determined on the basis of length of service only.** (emphasis supplied)

Their Lordships after examining the 1962 rules in great detail held that:-

"The petitioners had, inter alia, prayed for the relief of striking down the select lists and for direction that the select lists be reframed on the basis of the length of continuous service in the grade of Assistants. In view of what we have said regarding the claim of seniority on the

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basis of length of continuous service, it is not at all necessary to examine the validity of that contention and give any direction regarding the select lists, particularly because the claim relating to reconsideration of select lists was grounded upon length of continuous service. Nothing was also shown in course of arguments as to why the select lists were bad. In fact, unless the Rules and Regulations are successfully assailed, the select lists are not at all disputable."

"The field which these Rules cover is indeed very wide one, Assistants in all the Ministries or offices specified in the First Schedule are covered by the Rules. With a view to maintaining the efficiency of the service and at the same time to meet the requirements and exigencies of the service, separate cadres have been formed in respect of Assistants and Section Officers in the different Ministries and offices attached to such Ministries. Notwithstanding the fact that these cadres are different, the scheme makes provision for promotional avenue taking all of them into consideration. Obviously working it out keeping in view the interests of so many employees in the different cadres is indeed a very onerous and difficult task. This has, therefore, been assigned to the Department of Personnel. Unless there is any serious failure in implementing the Rules and grave injustice is done to some individuals or a group

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of officers, we do not think it would be proper to interfere with the working of the scheme and dislocate the inter se seniority of the officers in these grades. No malafides have been pleaded nor has any grave injustice been established in the writ petitions. **At the most a case of improper working of the scheme with reference to some officers has been alleged.** Hairsplitting arguments, if accepted, might indicate that some of the petitioners have not been promoted to the grade of Section Officers as and when due. We are of the view that if there has been substantial compliance in implementing the scheme under the Rules, judicial interference is not called for....."(emphasis supplied)

In the case before us the applicant instead of assailing the select list have chosen to attack the seniority list prepared in accordance with the 1962 Rules. Hon'ble Supreme Court in the case of N.K. Chauhan Vs. State of Gujarat (1977) 1 SCR 1037 (AIR 1977 SC 251) has observed that:

"ordinarily seniority is measured by length of continuous officiating service. This however, does not preclude a different prescription, constitutionality test being satisfied."

Further in the judgement delivered by the Constitution Bench in **Direct Recruit Class-II Engg. Association Vs. State of Maharashtra - JT 1990(2) 264** it is held that:

(J) The decision dealing with important questions concerning a particular Service given after careful consideration should be respected rather than scrutinised for finding out any possible

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error. It is not in the interest of Service to unsettle the settled position."

The length of service principle for assigning seniority can be followed only where there are no specific rules for seniority or where there has been a collapse of the rules. We are not impressed by the case of rota-quota failure which the applicants have tried to make out.

The 1962 Rules have been in force for nearly three decades now and they have stood the test of time. Further, certain infirmities which could have been faulted have been removed by appropriate amendments and by addition of proviso(s) to the Rules as required. We are not persuaded to accept that there has been failure of rota-quota principle merely because a few vacancies for the direct recruit remained unfilled in a year which were consequently utilised for placement of Assistants from the select list in accordance with the rules. In fact, the applicants should have no grievance on this account. The argument that they have remained continuously as Assistants on long term basis also does not justify our interference, as they have to be first included in the select list prepared in accordance with the Regulation contained in the Fourth Schedule.

In the facts and circumstances of the case we are not persuaded to interfere in the matter. Accordingly the OA is dismissed with no orders as to costs.

Subhash
(I.K. Rasgotra)
(6/3/91)
Member (A)

Amitav
Amitav Banerji
Chairman