

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 2364/89
T.A. No.

199

DATE OF DECISION 19.12.1991

Shri V. Seshadri

~~Petitioner~~ Applicant

Shri K.L. Bhatia

Advocate for the ~~Petitioner(s)~~ Applicant

Versus

Union of India & Others

Respondent

S/Shri P.P. Khurana and S.S. Tiwari

Advocate for the Respondent(s)

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

The Hon'ble Mr. B.N. Dhoundiyal, 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? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

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

The applicant is working as Additional Industrial Adviser (Engg.) in the Directorate General of Technical Development under the Ministry of Industry. He has prayed that the impugned seniority list of Assistant Development Officers as on 1.4.1984 issued by the respondents on 21.7.1989, be set aside and quashed.

2. The impugned seniority list has been issued by the respondents in the light of the directions given by the

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Supreme Court in its judgement dated 9.12.1988 in Writ Petition (Civil) Nos.13692-98/84 in case of Shri B.S. Narula and Others Vs. Union of India & Others. In that case, the petitioners had challenged the validity of the seniority list of Assistant Development Officers which had been prepared by the respondents. Their main contention was that although they had been holding the posts earlier to direct recruits and also confirmed earlier to their appointment, they had been downgraded and put below the direct recruits without any rhyme and reason. The petitioners were promotee officers. The Supreme Court perused the dates of respective appointments and the dates of regularisation of the petitioners and noted that their services had been regularised in some cases after a long lapse of officiation. The respondents had sought to justify the impugned seniority list on the ground that it was prepared in accordance with the circulars of the Government, but nothing was mentioned in the counter-affidavit as to how a person who was appointed later, could be placed above a person whose services were regularised earlier. The Supreme Court observed that the question of inter se seniority as between direct recruits and promotees had been considered by a number of authorities of the Supreme Court (See the decision in 1985(1) (Suppl.) S.C.R. 818; D.K. Mitra & Others Vs. Union of India, 1987 (Suppl.) S.C.C. 763; A.N. Pathak & Others Vs. Secretary to the Govt., Ministry of

Defence and Another 1988 (2) SCALE 1390; Delhi Water Supply Vs. R.K. Kashyap). In the light of the principles laid down by it, the Supreme Court did not accept the submissions made on behalf of the respondents. The Supreme Court, therefore, allowed the Writ Petition and quashed the impugned seniority list with the direction to the respondents to redo the seniority list in accordance with law and in the light of the principles laid down by the Supreme Court in the aforesaid decisions. It was added that upon redoing the seniority list, if the petitioners or any of them was entitled to higher ranking, they should be given the consequential benefits flowing therefrom.

3. Some of the direct recruits who had been impleaded as respondents in B.S. Narula's case, filed applications for clarification of the aforesaid order passed by the Supreme Court. They had prayed to clarify the judgement and order dated 9.12.1988 and to grant the following directions:-

- (i) The seniority inter se between direct recruits and promotees shall be determined by taking into account the length of continuous service as Assistant Development Officers reckoned from the date of promotion for appointment to the post subject to the condition that such service shall not include any period served in a fortuitous, stop-gap or ad hoc appointment;

(ii) the inter se seniority of direct recruits and promotees be redone without application of any rule which is contrary to the above stated principle;

(iii) the seniority be redone only in respect of those years during which there has been failure of quota rule for a period of 3 years;

(iv) that officials promoted to higher levels on the basis of the seniority fixed earlier or in the impugned seniority list will not be affected by the change in the seniority which is redone; and

(v) grant of any other relief which this Hon'ble Court deems appropriate and necessary in the facts and circumstances of the case.

4. The petitioners in B.S. Narula's case filed a counter-affidavit wherein they contended that the aforesaid miscellaneous petition to clarify the decision of the Supreme Court was not maintainable. They also submitted that the writ petition had been filed by the promotees wherein they had challenged the seniority list dated 16.4.1984. The petitioners had put in about 15 years of continuous uninterrupted and satisfactory service as Assistant Development Officers, but none of them had got promotion as Development Officer. In obedience to the directions of the

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Supreme Court dated 9.12.1988, the Department did not redo the seniority and grant consequential benefits to them. In view of this, they filed a contempt petition (CMP-14273/89) which was disposed of by the Supreme Court on 7.8.1989 by giving the following directions:-

"It appears from the affidavit of the respondents that in pursuance of the direction, they have prepared a seniority list. As regards consequential relief, learned Additional Solicitor General assures that they will be given the consequential benefits if they are entitled to within a reasonable time. In this view, nothing further survives. It is expected that the consequential benefits shall be given as early as possible within four months from now. The contempt petition is disposed of accordingly."

Reference was also made by them to the impugned seniority list published by the respondents on 21.7.1989.

5. On 16.1.1990, the Supreme Court passed an order to the effect that "upon perusing the application for clarification, we do not find any substance in the application. Both the applications are accordingly dismissed."

6. Thus, the promotees and direct recruits of the Directorate General of Technical Development had already one round of legal battle in the Supreme Court.

7. The applicant is a direct recruit. He figures at Sl.No.20 in the impugned seniority list of 1989. Immediately above him at Sl.No.19 is Sushil Kumar, who is also a direct

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recruit. The date of appointment of the applicant is 23.10.1969, whereas the date of appointment of Shri Sushil Kumar is 21.2.1970. The officers from Sl. Nos. 1 to 19, have been assigned seniority on the basis of their respective dates of appointment to the grade. If that logic is to be followed, the applicant should have ranked senior to Shri Sushil Kumar who joined later in point of time.

8. Both, Shri Sushil Kumar and the applicant were appointed as Assistant Development Officers after they passed the Combined Engineering Services Examination, 1968. They belong to the same batch.

9. The applicant was promoted to the next higher post of Development Officer on an ad hoc basis w.e.f. 1.12.1975 and he is presently working in a still higher post of Additional Industrial Adviser (Engg.) on an ad hoc basis. He has prayed for the following reliefs:-

- (i) To set aside and quash the impugned seniority list issued under Circular dated 21.7.1989;
- (ii) to restore his position in the seniority list at Sl.No.6, as was his position under seniority list issued under Circular dated 16.4.1984;
- (iii) to direct the respondents to fix his seniority from 1.12.1975, the date of his initial appointment to the post of Development Officer (Engg.) as he has been officiating on continuous basis

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against this post, the principle of length of service having been accepted by the Supreme Court for purposes of seniority in the Cadre; and (iv) to direct the respondents to remove the stipulation in the office order dated 17.2.1989, whereby it was stated that his appointment ^{as Addl. Industrial Adviser (Engg.)} was only officiating arrangement for the present and was subject to the implementation of the Supreme Court's judgement dated 9.12.1988 in the case of B.S. Narula and Others.

10. The applicant has alleged that the impugned seniority list dated 21.7.1989 ^{has been} prepared arbitrarily as it has not been prepared according to the date of appointment and/or date of confirmation of the persons concerned, and that it is not in tune with the ratio of the judgement of the Supreme Court in B.S. Narula's case.

11. According to the respondents, the impugned seniority list has been prepared strictly in accordance with the directions contained in the judgement of the Supreme Court in B.S. Narula's case and that being a direct appointee, the seniority of the applicant has to be determined with reference to his position in that batch and that too, according to the order of merit and not the date of joining the Department. They also have submitted that the appointment of the applicant as Development Officer (Engg.) and as Additional Industrial

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Adviser (Engg.) are purely on ad hoc basis and subject to the directions given by the Supreme Court in B.S. Narula's case. They have not yet prepared the seniority list of Development Officers or of Additional Industrial Advisers.

12. We have gone through the records of the case carefully and have heard the learned counsel for both the parties at length. We have already referred to the judgement of the Supreme Court in B.S. Narula's case and the outcome of the attempt made by the direct recruits to get clarification from the Supreme Court of its order dated 9.12.1988. It is seen that the impugned seniority list has been prepared in accordance with the dates of continuous appointment to the grade of the officers borne on the Cadre of Assistant Development Officers with the exception of Sushil Kumar, whose date of appointment is 21.2.1970 and the applicant's date of appointment is 23.10.1969. The question arises whether the seniority of these two officers has been fixed correctly.

13. The learned counsel for the applicant has relied upon the judgement of this Tribunal dated 30.8.1988 in K.N. Mishra and Others Vs. Union of India & Others, delivered by xxxxxxxx ^a on a reference made ^a ~~was made to~~ Justice J.D. Jain, Vice-Chairman, under

Section 26 of the Administrative Tribunals Act, 1985 on account of the divergence of opinion between the Judicial Member and ^a

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the Administrative Member as regards the relevant seniority to be assigned to the members of the Armed Forces Headquarters, Civil Service Assistant Grade. The controversy centred round the seniority assigned to the applicants who were all direct recruits to the AFHQ Civil Service, Assistant's Grade vis-a-vis, the officers promoted to the said Service from the posts of Upper Division Clerks vide seniority list dated 8th May, 1987 purported to have been revised by the respondents in compliance of the judgement of the Supreme Court dated 17th February, 1987. Rule 16 of the relevant rules laid down the method for determination of inter se seniority amongst the direct recruits as well as between direct recruits and persons appointed to the grade by departmental promotion. As regards direct recruits, it was stipulated as under:-

"(6) Direct recruits shall be ranked inter se in order of merit in which they are placed at a competitive examination on the results of which they are recruited, the recruits of an earlier examination being ranked senior to those of a later examination. On confirmation, their inter se seniority shall be regulated in the order in which they are so confirmed.

Provided that the seniority of persons recruited through the competitive examinations held by the Commission -

- (i) in whose case offers of appointment are revived after being cancelled, or
- (ii) who are not initially appointed for valid reasons but are appointed after the appointments of candidates recruited on the basis of the results of the subsequent examinations.

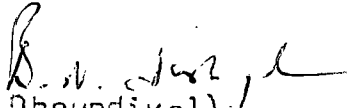
shall be such as may be determined by the Government in consultation with the Commission."

14. The Administrative Member of the Division Bench which had heard the case, took the view that the inter se seniority amongst the direct recruits who are selected on the basis of a competitive examination and assigned ranks according to merit, cannot be made dependant on the fortuitous circumstance of a direct recruit joining earlier or later than another direct recruit. The Judicial Member took the opposite view. Shri Justice J.D. Jain, to whom the reference was made for decision as a third Member, has agreed with the view expressed by the Administrative Member. In that case, the petitioners belonged to 1978 batch of direct recruits. They actually joined in 1980. The recruitment related to the vacancies which had occurred in 1978. There was an inordinate delay on the part of the Government to issue their orders of appointment. Shri Justice Jain endorsed the view taken by the Administrative Member that the date on which the first of the direct recruits joined service, should be taken as relevant for determining the inter se seniority of the promotees and the direct recruits of the 1978 batch. It was further observed that likewise, inter se seniority between the direct recruits of the same batch, should be determined having regard to the date on which a direct recruit of their batch joined first.

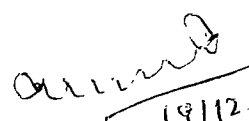
15. In our opinion, Shri K.N. Mishra's case is of no assistance to the present applicant. The records before us

do not indicate as to why there was a delay of about four months for Shri Sushil Kumar, who had ranked higher than the applicant in the order of merit, to join the post of Assistant Development Officer. In any event, such a delay of four months cannot be said to be inordinate delay and the fortuitous circumstances of the applicant having joined four months earlier, would not render him senior to Shri Sushil Kumar, who belonged to the same batch.

16. In the conspectus of the facts and circumstances of the case, we are of the view that the applicant is not entitled to the reliefs sought in the present application. The application is, therefore, dismissed, leaving the parties to bear their own costs.


(B.N. Dhoundiyal)
Administrative Member

19/12/81


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