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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.2503/89

This 10th day of June, 1994

Hon'ble Mr. J.P. Sharma, Member (J)
Hon'ble Mr. B.K. Singh, Member (A)

1. Subhash Chandra,
C-37, Pushpanjali Enclave,
Delhi - 110034.

... Applicant

2. G.K. Asthana,
103/S, Baba Kharak Singh Marg,
New Delhi-1

... Applicant

By Advocate: None. Applicant No.1 present

VERSUS

1. Union of India, through
The Secretary,
Ministry of Textiles,
Government of India,
New Delhi.
2. The Development Commissioner (Handicrafts),
West Block 7,
R.K. Puram,
New Delhi.
3. Shri S.M.I. Afzal,
Asstt. Director (Handicrafts),
Office of the Development Commissioner (Handicrafts),
Marketing, Service Extn. Centre,
Dudhani, Goushala Road,

Dumka (Bihar).

4. Dr. P. Narayanan,
Dy. Director (Export Promotion),
S.I.S.I., Madras.
5. Shri A.R. Chaudhary,
Asstt. Director (Handicrafts),
Office of the Development Commissioner (Handicrafts),
Marketing & Service Extn. Centre,
Laxmi Narayan Hari Road,
Agartala.
6. Shri R.K. Meena,
Asstt. Director (Handicrafts),
Office of Development Commissioner (Handicrafts),
Marketing & Service Extn. Centre,
6618, Bharawas Gate,
Rewari (Haryana)
7. Km. Kusum Asdhir,
Asstt. Director (Handicrafts),
Office of Development Commissioner (Handicrafts),
West Block No.7, R.K. Puram,
New Delhi.

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8. Shri T.K. Vijay Krishnand,
Asstt. Director (Handicrafts),
Office of Dev. Commissioner (Handicrafts),
Marketing & Service Extn. Centre,
Bharat Commercial Complex,
Alake Bridge, Kodroli,
Mangalore-575003
9. Shri P.V. Ramanamurthy,
Asstt. Director (Handicrafts),
Office of Dev. Commissioner (Handicrafts),
West Block No.7, R.K. Puram,
New Delhi.
10. Shri Mohinder Singh,
Asstt. Director (Handicrafts),
Office of Dev. Commissioner (Handicrafts),
West Block No.7, R.K. Puram,
New Delhi.
1. Shri Brij Mohan,
Asstt. Director (Handicrafts),
Office of Dev. Commissioner (Handicrafts),
West Block No.7, R.K. Puram,
New Delhi.

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Respondents

By Advocate: None present

O R D E R(By Hon'ble Mr. B.K. Singh, M(A):

This O.A. NO.2503/89 is directed against Order No.6/4/85-Admn.I dated 18/24th April, 1988 passed by the Development Commissioner (Handicrafts) which is available at Annexure A-1 of the paper book.

2. The admitted facts are these. The applicant No.1 joined service as Statistical Assistant on 3.2.1966 in the office of All India Handicrafts/
Board,
New Delhi (Now known as office of Development Commissioner (Handicrafts), New Delhi. He was promoted as Junior Field Officer on 17.7.72. He was appointed as Assistant Director (Admn. & Coordination) on ad hoc basis vide order dated 25.7.1978 (annexure A-2). In pursuance of this order he assumed charge on 7.8.78 (annexure A-3). The applicant No.1 continued to hold the post



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till 12.10.1984 when he assumed charge of that post in regular capacity on the basis of recommendation of the DPC held in 23.12.1982 (Annexure A-4). He filed a representation dated 27.2.1989 requesting for counting his ad-hoc service for purpose of seniority. (Annexure A-5). Reminder of the same was sent on 24.4.1989.

3. In the meanwhile Respondent No.2 published a seniority list (annexure 1) of the Assistant Directors (Handicrafts) as on 21.4.1988. It is alleged that the applicant No.1 has not been assigned correct seniority and has been placed at Sl. No.18 of the impugned seniority list. He submitted a representation on 29.8.89 objecting to his placement in the seniority list and claiming his seniority w.e.f. 7.8.1978.

4. The applicant No.2 joined service as Investigator in All India Handicrafts Board, New Delhi on 10.9.1971 and was subsequently promoted as Handicrafts Promotion Officer w.e.f. 30.10.1978 and he continued on that post till 23.10.1980. On 24.12.80 the applicant No.2 was appointed as Assistant Director (Handicrafts) on ad hoc basis (annexure A-8). He continued on the said post till 31.5.1984 when he was promoted on regular basis on the same post. His claim is also that he has been working as Assistant Director (Handicrafts) from 24.12.80 uninterruptedly till the date of his regular appointment on that post. The appointment on regular basis as Assistant Director (Handicrafts) is annexure A-9 of the paper-book. The applicant No.2 also filed a representation for counting his ad-hoc service for seniority (annexure A-10). In the seniority list (annexure 1) published by the respondent, the applicant No.2 has been shown at Sl. No.20. The applicant No.2 filed another representation requesting for his seniority w.e.f. 24.12.1980. Thereafter he

filed two reminders to the same effect.

5. Since the applicants did not receive any reply from the respondents regarding assigning of correct seniority to them in the seniority list, they approached this Tribunal for redressal of their grievance. This application was filed on 3.11.1989 against the impugned seniority list (annexure 1).

6. In the prayer for relief, it has been requested that:-

- i) the respondents No.1 and 2 may be directed to assign seniority to the applicants as Assistant Directors with effect from 7.8.78 and 24.12.80 respectively i.e. the dates from which they were appointed as Asstt. Directors on ad hoc basis and continued officiating without any break till their regularisation;
- ii) The respondents No.1 and 2 be directed to revise the seniority list placing the applicants at the appropriate stages in it as per their revised seniority;
- iii) The respondents No.1 and 2 be directed to grant consequential benefits, if any, resulting from the revision of seniority of the applicants promoting them to the next higher grade in their turn.

7. A notice was issued to the respondents who filed their reply and contested the application and grant of reliefs prayed for by the two applicants.

8. Heard the applicant No.1 who was present in person. None appeared on behalf of the respondents. We have also perused the record of the case and other written statements submitted by the applicants.



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9. The material averments in the counter affidavit are these. The applicants have claimed their seniority in the grade of Assistant Director (Handicrafts) in the pay-scale of Rs.2000-3500 w.e.f. 7.8.1978 and 24.12.80 respectively and as such the application is not within limitation period prescribed under Section 21 of the AT Act, 1985. Hence it is time barred and not maintainable. It has been stated that the applicant No.1, Subhash Chandra, was holding the post of Jr. Field Officer (JFO), now called Handicrafts Promotion Officer (HFO) on regular basis w.e.f. 16.8.78. The post of HFO is in the feeder cadre for promotion to the post of Assistant Director (Marketing & Service Extension Centre) (M&SEC), now called Asstt. Director (Handicrafts) in the pay-scale of Rs.2000-3500 (revised). It is admitted that the applicant No.1 ^{who} was holding the post of JFO on a regular basis w.e.f. 16.8.78 was duly considered by the DPC held on 23.12.82 and he was appointed to the post of Assistant Director (Handicrafts) w.e.f. 12.10.84. The contention of the applicant No.1 that since he was holding the post of Asstt. Director (A & C) w.e.f. 7.8.78 ~~itself~~ he should be given seniority in the grade of Assistant Director (Handicrafts) w.e.f. 7.8.78 itself is not tenable because the post of Assistant Director (A & C) is an ex-cadre post and was also under the Carpet Scheme, and as per the recruitment rules for the post of Asstt. Director (A&C) the applicant No.1 was not eligible for being considered for appointment to the same on promotion basis. His promotion on ad hoc basis as Asstt. Director



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(A&C) was against the ex-cadre post and as such it cannot be treated as a promotion from the post of JFO (now called HFO) which, as per the recruitment rules, is in the feeder cadre for promotion to the post of Assistant Director (Handicrafts). His contention, therefore, that his officiation against the ex-cadre post of Asstt. Director (A&C) should be counted for seniority, has no relevance in the grade of Asstt. Director (Handicrafts) and the DPC which ^{met} on 23.12.82 had considered all the facts and circumstances and then drew the merit list. He was brought to the cadre post of Assistant Director (Handicrafts) only on the basis of recommendation of the DPC and in pursuance thereof he was appointed to the said post after due consultation with the UPSC w.e.f. 12.10.84 and as such his seniority in the cadre of Assistant Director (Handicrafts) has been assigned w.e.f. 12.10.84 .

10. The applicant No.2 is a regular Handicrafts Promotion Officer w.e.f. 30.10.78. The Group 'B' DPC met on 23.12.82 to consider cases of promotion of Handicrafts Promotion Officers (HPOs) to the post of Assistant Director (Handicrafts) when it recommended 12 HPOs including the applicant No.2 for regular promotion to the post of Asstt. Director (Handicrafts). However, minutes of the meeting of the DPC clearly indicated that the promotions to the post of Asstt. Director (Handicrafts) were subject to the finalisation of the seniority list in the cadre of Handicrafts Promotion Officer. The



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seniority list in the cadre of Handicrafts Promotion Officer was finalised on 31.5.1984 and as such the applicant No.2 who was recommended by the above DPC was appointed to the post of Asst. Director Handicrafts) on regular basis w.e.f. 31.5.84 and was accordingly assigned seniority in the cadre of Asstt. Director Handicrafts) on the basis of the merit list drawn by the DPC. He was ^{in the panel} the last person ~~recommended~~ by DPC held on 23.12.82 for regular promotion to 12 posts of Assistant Director (Handicrafts). He was placed ~~at the seniority list and was placed~~ at Sl. No.12 of the promotion list. The applicant No.2 has also impugned the said seniority list (annexure 1).

11. Admittedly, the applicant No.1 is at Sl. No.18 whereas the applicant No.2 is at Sl. No.20 of the impugned seniority list. This seniority list was finalised by the respondents after considering the recruitment rules determining the seniority of direct recruits vis-a-vis the promotees in the same cadre. The persons figuring at Sl. 1 to 6 were promotees from the cadre of Asstt. Directors (Handicrafts) and were assigned ^{seniority} in the cadre on the basis of merit list drawn by the earlier DPC held on 17.6.78. Thus they will rank senior to both the applicants who were appointed as Assistant Director as a result of DPC w.e.f. 12.10.84 and 31.5.1984 as a result of DPC recommendations.

12. The persons appearing at Sl. No.4 and 6 of the seniority list have since retired from Government service. The persons appearing at Sl. No.7 to 11 of the seniority list were direct recruits in the



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cadre of Assistant Director (Handicrafts) and were appointed as such on the basis of recommendations of the UPSC against the vacancies of the year 1980 whereas the applicants 1 and 2 were promotees to the grade of Assistant Director (Handicrafts) ~~who were appointed on regular basis as a result of recommendations of the DPC which met on 23.12.82 against 12 vacancies under the promotion quota for the year 1981.~~ Thus it has been stated by the respondents that persons appearing at Sl. No. 7 to 11 of the seniority list, being direct recruits against the vacancies relating to 1980, will rank senior to the applicants who were promoted against the vacancies of 1981. It is further stated that Shri P.R. Gajbhiya at Sl. No.9 of the seniority list has since demitted the office of the respondents. The persons figuring at Sl. No.12 to 20 of the seniority list were promoted as Assistant Director (Handicrafts) on regular basis on the recommendations of the DPC held on 23.12.82 and their order of seniority list has been correctly shown on the basis of panel drawn by the DPC. The persons appearing at Sl. No.12, 13, and 15 of the seniority list have since retired from the service.

13. It has been further stated that on the basis of seniority list the DPC has already recommended 4 persons for promotion to the post of Deputy Director (Handicrafts) in the pay-scale of Rs.3000-4500 (revised) and they are:

1. Shri S.M.I. Afzal (Sl. No.7 of Seniority List)
2. Dr. P. Narayanan (sl. No. 8)
3. Shri A.R. Chaudhary (Sl. No.10)
4. Shri R.K. Meena (Sl. No.11).

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They have been appointed as Regular Deputy Directors (Handicrafts) and they have joined in pursuance of the notification issued to that effect.

14. As already mentioned, the applicants No.1 and 2 figure at Sl. No.18 and 20 of the seniority list (annexure 1). It has been averred that they have been correctly assigned their place in the seniority list. They cannot steal a march over the persons at Sl. No. 1 to 6 since they were promoted on the basis of merit list drawn by the earlier DPC held on 17.6.78 when the applicants were not even eligible and thus the persons at Sl.No.1 to 6 are decidedly senior to the applicants. The persons figuring at Sl. 7 to 11 who were direct recruits against the vacancies meant for 1980 would rank senior to the applicants because the applicants were promoted against the vacancies of 1981 on the basis of recommendation of DPC held on 23.12.82. Thus it is clear that they cannot rank senior to those direct recruits who were appointed ^{against} ~~the~~ vacancies ~~meant~~ ^(promotees) for the year 1980. As already stated, the persons ^(promotees) shown at Sl. No.4 and 6 have retired and a direct recruit against the vacancies of 1980 (Shri P.R. Gajbhiya) appearing at Sl. No.1 has since demitted the office of the respondents. The persons figuring at sl. No.12 to 20 were promoted as Asstt. Director (Handicrafts) on a regular basis on the recommendations of the DPC held on 23.12.82 including the two applicants who were assigned seniority at Sl. No.18 and 20 respectively. Persons appearing at Sl. No.12, 13 and 15 have since retired.

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15. The basic question is whether the ad hoc appointment of the applicants can count towards their seniority vis-a-vis earlier promotees, direct recruits and subsequent promotees. In this connection the applicants have cited ruling of the Constitution Bench in the case of Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra, (1990 2 UPLBEC, 833) in Civil Appeal No.194-202/86 decided on 2nd May 1990. This decided the question of ^{seniority} interse/of the promotees vis-a-vis direct recruits. In the operative portion of this judgment the Constitution Bench of the Hon'ble Supreme Court held that seniority cannot be determined on/sole test of confirmation. In case of appointment made in accordance with the rules, seniority ^{has to be} be counted from the date of appointment and not from the date of confirmation. When appointment is made according to ^{the} rules and appointee continues uninterruptedly till regularisation of his post, the period of officiating service has to be taken into consideration for determining his seniority. In cases of ad hoc appointment or stop gap arrangements made against rules, period of officiation cannot be taken into consideration for determining seniority." The operative part of the judgment of the Hon'ble SC goes against the applicants because their appointment was dehors the rules and it was only an ad hoc appointment as would be evident from the notification issued promoting them. Their regular promotion was made on the basis of the recommendations of the DPC ^{which} met on 23.12.82 and the applicant No.1 assumed charge as a regular Assistant Director (Handicrafts) on 12.10.1984. The period of ad-hoc



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promotion cannot be counted for seniority because it was just to meet the functional requirement of the respondent department. If on account of procedural delays in advertising the post for direct recruitment the direct recruits are appointed later but against their own quota of earlier years and the delay is hardly of a year or so, they cannot be placed below those who have been promoted against their vacancies to meet the functional requirements. This is also the ratio established by the Constitution Bench of Hon'ble SC in civil appeal No.194-202/86 (supra). It is clear that these two applicants were promoted on ad-hoc basis and they were recommended for regular promotion by DPC held on 23.12.82 as a result of which they assumed charge of regular post w.e.f. 12.10.84 and 31.5.84 respectively. The first group of promotes who came in as a result of DPC held in 1978 will certainly rank senior to them and the direct recruits who were appointed against the vacancies of 1980, in spite of procedural delay in their appointment, will also rank senior to them (applicants). ~~Since~~ The applicants came against the vacancies of 1981 and they were recommended for promotion on a regular basis by the DPC which met on 23.12.82 and after consultation with the UPSC they joined as regular incumbents w.e.f. 12.10.84 and 31.5.84 respectively. Thus they will rank junior to the promotees of first group and the direct recruits who were appointed against the vacancies meant for them.

16. It is an established rule that seniority of a person is fixed with reference to his regular appointment in the cadre post and not with reference to his appointment in any ex-cadre post or in cadre post on ad hoc basis.



17. This has been held in Ashok Gulati v. B.S. Jain (AIR 1987 SC 424). The Hon'ble Supreme Court has laid down that seniority of a person must be reckoned from the date he becomes a member of the Service and ~~thereafter~~ his seniority is to be reckoned as laid down by rules or instructions (a) on the basis of date of his appointment; (b) on the basis of confirmation (c) on the basis of regularisation of service; (d) on the basis of length of service; and (e) on any other reasonable basis. It has been further held that ad-hoc and fortuitous appointment on a temporary/stop gap basis cannot be taken into account for the purpose of seniority even if the appointee was qualified to hold the post on a regular basis. The temporary tenure cannot count for seniority in any system of service jurisprudence. Similar was the observation of the Hon'ble Supreme Court in JT 1992(2) SC 491, Union of India v. S.K. Sharma. It was held that seniority is to be counted from the date of regular selection/promotion and that ad hoc service will not count for seniority. The same view was propounded in JT 1992 (2) SC 264 , Direct Recruits Clas II Engineers Association Vs. State of Maharashtra was reiterated in the aforesaid judgment. The ratio established in all the judgments is that where the appointment is only on ad hoc basis and not according to rules and made as a stop gap arrangement, period of officiation cannot be taken into consideration for seniority.



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18. The quintessence of the various propositions including that of Keshav Chandra Joshi & ors. v. Union of India & Anr. (1991) SC 284 is that appointment to a post must be according to rules and not by way of ad hoc/stop gap arrangement for meeting the administrative exigencies. If the initial appointment is dehors the rules the entire length of such service cannot be counted for seniority.

19. In view of the various judgments of the Hon'ble Supreme Court, we are unable to agree ^{with} / the contentions of the applicants. The ratio of some of the judgments cited by the applicant goes against


them. If we accept the contentions of the applicants to fix up the seniority in the manner claimed by them and quash the ^{seniority} impugned / list, it would be a negation of justice and would be violative of Article 14 and 16 of the Constitution in respect of the persons appearing at Sl. No.1 to 17 of the seniority list vis-a-vis the applicant No.1 and Sl. No. 1 to 19 of the seniority list in case of applicant No.2. The seniority list has become final and there is no justification for unsettling the settled matters on the basis of rules.


19. In view of the judgments of the Hon'ble Supreme Court quoted in the body of this order and also in view of the facts that the seniority list has been correctly drawn, we are not inclined to interfere with the seniority list and accordingly the applicants must wait for their promotion in their own turn as per their seniority in



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the seniority list. The OA is accordingly dismissed as devoid of any merit and substance, leaving the parties to bear their own costs.


(B.K. Singh)
Member (A)


(J.P. Sharma)
Member (J)

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