

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN.NO. OA 245/89

Date of decision: 14.8.92

Sh. P.K. Sharma & ors. Applicants

Vs.

Union of India through
Secretary, Ministry of Information
& Broadcasting & another Respondents

CORAM: THE HON'BLE MR.T.S.OBEROI, MEMBER(A)
THE HON'BLE MR.P.C.JAIN, MEMBER(A)

For the Applicants Shri T.C.Aggarwal,
Counsel.

For the Respondents Mrs.Raj Kumari Chopra,
Counsel.

JUDGEMENT

(DELIVERED BY HON'BLE MR.T.S.OBEROI, MEMBER)

This is an application under Section 19 of the
Administrative Tribunals Act, 1985 by the applicants,
who were either promoted from the feeder grade of
UDC on the basis of seniority or appointed through
the Limited Assistant Grade Examination, 1975 and
included in the select list of Assistants of the
Central Secretariat Service of 1975 claiming seniority
over direct recruit Assistants appointed and confirmed
later in the grade of Assistant. They have prayed for
the following reliefs:-

(a) That the application may be admitted with
costs.

(ii) That the seniority list issued on 27.1.1987
(Annexure A-2) be quashed.

(iii) To declare that the applicants are entitled
to the seniority on the basis of length of
service/date of joining as Assistants with

all consequential benefits like promotion to the higher posts from the date their juniors were promoted.

2. The brief facts of the case are as under:-

The applicants were employed as Assistant under the cadre authority of Ministry of Information and Broadcasting (Respondent No.1). They are the members of the decentralised cadre of Assistants of the Ministry of I&B of the C.S.S which is the lowest grade of that service. Prior to the Rules of 1962, this grade belonged to the centralised cadre of the Ministries and attached offices.

As per the rules of 1962 amended from time to time, the post of Assistant has been required to be filled up by way of direct recruitment on the results of the competitive examination held by the UPSC and by promotion from amongst the candidates included in the select list. Applicants after promotion have been allocated to the decentralised cadre. The applicants have been holding the posts of Assistant on long term/regular basis and as such they are the members of the Assistant Cadre and are entitled to seniority and promotion within that cadre. Placing the applicants junior to the direct recruits is against the principles of natural justice. They claim that the seniority should be counted from the date they became members of the service. According to the applicants, placing the direct recruits as their seniors is against the rota-quota and the spirit of the Department of Personnel and Training Office Memorandum dated 3.7.1986 (Annexure A-7) as also in violation of Articles 14 & 16 of the Constitution. It is stated that the impugned seniority

list of Assistants of decentralised cadre is wholly illegal, void, ultra vires, unconstitutional, arbitrary, mala fide, discriminatory and liable to be set aside and that the applicants' seniority should be fixed from the date of their appointment as Assistant.

3. The respondents have opposed the application and filed a counter. According to them, the Central Secretariat Service (Reorganisation and Reinforcement) Scheme was introduced for four grades in the service, which provided that 75% of the permanent vacancies in the Assistant Grade will be filled by direct recruitment and 25% by promotion from the lower grade on the basis of seniority subject to rejection of the unfit. The Central Secretariat Service upto the level of Section Officer was decentralised from 1.10.62 and the statutory rules called the Central Secretariat Service Rules, 1962 were framed to govern recruitment, seniority, promotion, confirmation etc. Assistants are classified as Central Civil Service Group 'B'-Ministerial. The management of Section Officers and Assistants is decentralised and individual cadre authorities have been vested with powers to make appointments, promotions, confirmation etc. in these grades. Recruitment to these grades is made under the provisions of Rule 13 of the CSS Rules, 1962. Sub-rule (6) of Rule 13 provides that 50% of the substantive vacancies in the Assistants' Grade in any cadre shall be filled by direct recruitment and the remaining vacancies shall be filled by the substantive appointment of persons included in the select list for Assistants' Grade in that cadre. Such appointment shall be made in the order of seniority

in the select list except, when for reasons to be recorded in writing a person is not considered fit for such appointment in his turn. According to sub-rule (6)(a) of Rule 13, the substantive vacancies reserved for direct recruitment as on 30th June, 1979 in each cadre against which no direct recruits have been appointed till that date, plus 50% of the number of such substantive vacancies may be filled by substantive appointments made after the date of commencement of the CCS(Third Amendment) Rules, 1979 of persons included in the select list. As per sub-rule(7) of Rule 13, temporary vacancies in the Assistants Grade in any cadre shall be filled by the temporary promotions on the basis of seniority from amongst Upper Division Grade of the corresponding cadre of the Central Secretariat Clerical Service who have rendered not less than five years approved service in that grade and are within the range of seniority provided that where an officer of the Upper Division Clerk Grade is rejected as unfit, the reasons for which shall be recorded in writing and communicated to the officer concerned. As regards fixation of seniority in the decentralised grades of Section Officer and Assistant in different cadres, the same shall be governed by the provisions of Rule 18(3)(ii) of the CSS Rules, 1962 read with the provisions contained in regulation(3) of the Regulations contained in the Fourth Schedule to the Rules. It is further stated in the counter that the relative seniority of direct recruits and promotee Assistants appointed substantively to the grade in a cadre will be fixed according to the quotas of substantive vacancies reserved for direct recruitment and substantive appointment of

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promotee Assistants included in the select list in that cadre. Seniority of promotee Assistants appointed substantively against substantive vacancies which were reserved for direct recruitment as on the appointed day (1st day of October, 1962) against which no direct recruits were appointed till 12.6.70 in a cadre shall be assigned seniority, with effect from 13.6.70, inter se in the order in which they were included in the select list for the Assistants' Grade in that cadre and such persons shall be placed en bloc/all the Assistants already appointed substantively in the same cadre. The seniority of direct recruits and promotee Assistants appointed substantively to the grade has to be fixed under the provisions of the relevant rules of seniority and not on the basis of the length of service. There is no provision in the CSS Rules, 1962 for fixation of seniority of Assistants on the basis of length of service in the grade.

4. The applicants have filed rejoinder, in which they have reiterated their claim as put forth in the OA.

5. We have also heard the learned counsel for the parties and have perused the material on record, including some of the rulings, on the subject.

6. In the case of Direct Recruits Class II Engineering Officers' Association Vs. State of Maharashtra & Ors (1990) 13 ATC 348) in para 47 thereof it was inter alia, held:-

"(A) 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.

- (B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.
- (C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly.
- (D) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down.
- (E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date.
- (F) Where the rules permit the authorities to relax the provisions relating to the quota, ordinarily a presumption should be raised that there was such relaxation when there is a deviation from the quota rule.
- (G) The quota for recruitment from the different sources may be prescribed by executive instructions, if the rules are silent on the subject.
- (H) If the quota rule is prescribed by an executive instruction, and is not followed continuously for a number of years, the inference is that the executive instruction has ceased to remain operative."

From item (C) above, it will be seen that when appointments are made from one source as in this case, it is permissible to fix the ratio for recruitment from different sources, and if

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rules are framed in this regard, they are to be followed strictly. In the instant case, there are rules titled as 'The Central Secretariat Service Rules, 1962' which have come into force with effect from 1.10.1962 as per Government of India, Ministry of Home Affairs Notification No.60/61 CS(A) dated 23.9.1962 as amended from time to time. In the case of A.K.Bhatnagar and ors. Vs. Union of India (1951(1) SCC 544), it was held in para 7:

"7. The law is clear that seniority is an incidence of service and where the service rules prescribe the method of its computation, it is squarely governed by such rules. In the absence of a provision ordinarily the length of service is taken into account."

In para 13 of the said judgement, it was further held:-

"13. On more than one occasion this Court has indicated to the Union and the State Governments that once they frame rules, their action in respect of matters covered by rules should be regulated by the rules. The rules framed in exercise of powers conferred under the proviso to Article 309 of the Constitution are solemn rules having binding effect. Acting in a manner contrary to the rules does create problem and dislocation. Very often government themselves get trapped on account of their own mistakes or actions in excess of what is provided in the rules. We take serious view of these lapses and hope and trust that the government both at the Centre and in the States would take note of this position and refrain from acting in a manner not contemplated by their own rules....."

7. In the present case, as extracted in detail in the counter filed on behalf of the respondents, as also dilated upon in para 3 above, the seniority of the applicants has to be determined in accordance with Rule 18, Regulation 3(3) of the Fourth Schedule

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of the Rules of 1962, a copy of which has also been placed on record as Annexure A-5. We find force in the respondents' contention that the applicants' case has been strictly dealt with in accordance with the Rules of 1962 ibid and that even the applicants had accepted their promotion under the said Rules, and so, they cannot now wriggle out or challenge the said Rules. In result, we do not find any merit in applicants' case for grant of seniority on the basis of length of service as Assistant, or consequent change in the seniority list (Annexure A-2). The OA is accordingly dismissed with no order as to costs.

(P.C.JAIN)
MEMBER (A)

(T.S.OBEROI)
MEMBER (J)

14.8.92