

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 642/87
T.A. No.

199

DATE OF DECISION 8.11.1991

Shri Vikram Aditya

~~Petitioner~~ Applicant

In person

Advocate for the Petitioner(s)

Versus

Miny. of Commerce & Supply
and Others

Respondents

Shri N.S. Mehta & Co

Advocate for the Respondent(s) 1-3

Shri R. Doraiswami for respondents 4 to 14, 19 and 23 to 28

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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)

After the pronouncement of the judgement in

Narendra Chadha Vs. Union of India, 1986 S.C.C. (L&S) 226,
the question of fixation of inter se seniority between the
direct recruits and the promotees, has been considered by
this Tribunal in a number of cases and the same have been
disposed of in the light of the ratio of the aforesaid
judgement. In Dilip Kumar Goswami Vs. Union of India and
Others, 1987 (2) A.T.C. 155, the Calcutta Bench of this
Tribunal, following the judgement in Narendra Chadha's
case, held that the entire period of officiation of the

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applicant who had worked as Assistant Director in the Directorate General of Supplies & Disposals (hereinafter referred to as the 'DGS&D'), has to be counted for seniority. The applicant before us was also one of the respondents in the said case. There are similar judgements concerning the same Department delivered by the Benches of this Tribunal (vide judgements dated 12.9.86 in OA-616/86, Mukul Chandra Banerjee and Others Vs. Union of India and Others, dated 14.11.1986 in TA-807/86, Khageshwar Das Vs. Union of India and Others, dated 26.2.1987 in TA-1663/86, Manish Chandra Bhattacharyya Vs. Union of India & Others and dated 19.4.1988 in OA-696/87, K.V. Rama Raju and Others Vs. Union of India & Others).

2. After the aforesaid judgements were delivered, the respondents revised the seniority list of Assistant Directors of Supplies (Grade I) as on 1.3.1989 which has resulted in depressing the seniority of the applicant. He had entered Government service as Assistant Director, Grade II as a direct recruit on 30.7.1975. He was granted six advance increments as a special case as he had topped the list of the selected candidates in the selection made by the U.P.S.C. According to the relevant recruitment rules, recruitment of Assistant Directors, Grade II to the extent of 50% is by direct recruitment and 50% by transfer on deputation, or promotion. He was promoted to the post of

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Assistant Director, Grade I in 1979 and to the post of Deputy Director w.e.f. 6.4.1984. He worked in the post of Deputy Director for nearly five years till he was ^{reverted} in January, 1991. ^{On 23.1.1989,} reverted as Assistant Director, Grade I. On 23.1.1989, the date from which he proceeded on deputation to the Ministry of Defence, he was reverted as Assistant Director, Grade I retrospectively w.e.f. 5.10.1985. This was due to the redrawing of the seniority list pursuant to the aforesaid decision of the Tribunal in Dalip Kumar Goswami's case and the position of the applicant in the seniority list having been depressed as a result thereof.

3. During the period of his deputation to the Ministry of Defence, the applicant was drawing the same salary as that of Deputy Director till he was repatriated to the D.G.S. & D. in January, 1991. He has not been given any increments after he was reverted to the D.G.S. & D.

4. The applicant filed the present application in the Tribunal, seeking review of the seniority list prepared by the respondents in implementation of the judgement delivered by the Calcutta Bench of this Tribunal in Dalip Kumar Goswami's case on 12.9.1986. The Tribunal dismissed his application by judgement dated 26.7.1989, observing that if the applicant was not satisfied with the manner in which the judgement delivered by the Calcutta Bench had

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been implemented, or if the implementation of that judgement had adversely affected his service prospects, the proper remedy for him would be to file review petition before the Calcutta Bench or a contempt petition before that Bench, or a Special Leave Petition in the Supreme Court. The applicant had stated that pursuant to the judgement of the Supreme Court in Narendra Chadha's case, those who were to be adversely affected by the redrawing of the seniority list, were to be accommodated by creating supernumerary posts. ² The Tribunal observed that ² it was for the respondents to consider whether or not supernumerary posts are to be created to accommodate the persons like the applicant who were stated to have been adversely affected by the judgement of the Calcutta Bench of the Tribunal.

5. The applicant filed S.L.P. in the Supreme Court against the aforesaid judgement which was granted and the following order dated 20.8.1990 was passed thereon:-

"We have heard learned counsel for the applicant. None appears for the respondents. Since the appellant is not challenging the correctness of the order of the Central Administrative Tribunal, Calcutta Bench in T.A No. 808 of 1986, Dilip Kr Goswami V. Union of India & Ors. decided on 12.9.86, we are of the opinion that the Delhi Bench was in error in directing the appellant to file review petition before Calcutta Bench or to challenge that order before this Court. In the circumstances, we allow the appeal setting aside the order of the Central Administrative Tribunal, Delhi Bench and remand the matter to it for hearing it afresh, in accordance with law. The appellant will be bound by the statement made before us regarding the finality of the decision of the Calcutta Bench in Dilip Kr Goswami V. Union of India & Ors.

The Tribunal will dispose of the matter expeditiously. There will be no order as to costs."

6. That is how the case came up for hearing again. We have gone through the records of the case carefully and have heard the applicant in person and the learned counsel for the respondents. The decision of the Calcutta Bench of the Tribunal in Dilip Kumar Goswami's case having become final and in view of the statement made by the applicant before the Supreme Court regarding the finality of the decision of the Calcutta Bench, the ² applicant cannot challenge the validity of the seniority list prepared by the respondents in implementation of the said decision.

7. The decision of the Calcutta Bench is based on the judgement of the Supreme Court in Narendra Chadha's case in which the Supreme Court had ^{also} observed as follows:-

"We are informed that some of the promotees and direct recruits who are governed by this decision have been promoted to higher grades. If as a result of the preparation of the seniority list in accordance with the decision and the review of the promotions made to higher grades any of them is likely to be reverted such officer shall not be reverted. He shall be continued in the higher post which he is now holding by creating a supernumerary post, if necessary to accommodate him. His further promotion shall however be given to him when it becomes due as per the new seniority list to be prepared pursuant to this decision. There shall, however, be a review of all promotions made so far from Grade IV to higher posts in the light of the new seniority list. If any officer is found entitled to be so promoted to a higher grade, he shall be given such promotion when he would have been promoted in accordance with the new seniority list and he shall be given all consequential financial benefits flowing therefrom...."

8. Respondents Nos. 1 to 3 have stated in their counter-affidavit that no other officer except the applicant has

been reverted from the post of Deputy Director in implementation of the judgement in Dilip Kumar Goswami's case and that in case he is allowed to continue as Deputy Director with effect from 6.4.1984, 24 other officers would require to be promoted as Deputy Director with effect from that date and another two officers would require to be promoted as Deputy Director w.e.f. 1.9.1987/30.11.1987. Apart from these 26 officers who would require to be promoted to the post of Deputy Director with retrospective effect, ^{or} ~~and~~ the promotion of ten other officers would require to be antedated. The other respondents have stated in their counter-affidavit that they have no objection if we allow the relief asked for by the applicant to restore his promotion as Deputy Director w.e.f. 6.4.1984 on the ground that he held the post on regular basis for about 5 years and that it was not his fault that he was wrongly reverted to the post of Assistant Director by order dated 15.2.1989. They have, however, stated that respondents 4 to 12 and 17 who were recruited as Assistant Director, Grade I before the applicant, have a better claim for promotion and any relief given to the applicant should not place him senior to these respondents.

9. Keeping in view the ratio in Narendra Chadha's case and the facts and circumstances of the case, we partly allow the application and order and direct as

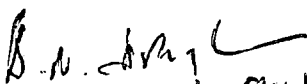
follows:-


- (i) The impugned order of reversion of the applicant from the post of Deputy Director to that of Assistant Director, Grade I, is hereby set aside and quashed. The respondents shall create a supernumerary post of Officer on Special Duty (O.S.D.) in the scale of pay of Deputy Director and accommodate the applicant in the said post w.e.f. 6.4.1984. He would be entitled to the annual increments admissible on the post of Deputy Director from 6.4.1984 to-date as also difference in the pay and allowances of the post of Assistant Director, Grade I and Deputy Director from 6.4.1984 to date. The respondents shall pass the necessary orders accordingly within a period of two months from the date of communication of this order.
- (ii) The respondents shall, within the aforesaid period of two months, also review all promotions made from the post of Assistant Director to that of Deputy Director in the light of the new seniority list prepared in accordance with the judgement of the Calcutta Bench of the Tribunal in Dilip Kumar Goswami's case, 1987 (2) A.T.C. 155, if this has not already been done. If any officer is found

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to be entitled to be so promoted, he shall be given such promotion when he would have been promoted in accordance with the new seniority list.

(iii) There will be no order as to costs.


(B.N. Dhoundiyal) 8/11/91
Administrative Member


8/11/91
(P.K. Kartha)
Vice-Chairman(Judl.)