

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

O.A. No. 711/89
T.A. No.

199

DATE OF DECISION 31.1.1991.

<u>Shri H.L. Sahni</u>	Petitioner
<u>Shri S.C. Luthra</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India & Others.</u>	Respondent
<u>Shri P.P. Khurana</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 ?
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 ?

AB

(AMITAV BANERJI)
 CHAIRMAN
 31.1.1991.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA No. 711/89

DATE OF DECISION: 31.1.1991.

SHRI H.L. SAHNI

APPLICANT

VERSUS

UNION OF INDIA & ORS.

RESPONDENTS

CORAM:

THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT SHRI S.C. LUTHRA, COUNSEL

FOR THE RESPONDENTS SHRI P.P. KHURANA, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED

BY HON'BLE MR. I.K. RASGOTRA, MEMBER(A)

The short question agitated for adjudication in this application filed by Shri H.S. Sahni under Section 19 of the Administrative Tribunals Act, 1985 relates to the date of determination of seniority in an organisation where he was initially on deputation but was later absorbed.

2. The applicant has challenged the order No.2/Seniority (CC)/88(17)3422.-3592 in terms of which he has been denied the benefit of seniority from the date of absorption in the Intelligence Bureau and instead have been assigned seniority from the date he was regularised viz.1.8.1978 which was antedated as 29.6.1973.

3. The relevant facts of the case are that the applicant retired as Deputy Central Intelligence Officer (DCIO) on 31.10.1984. The applicant joined Intelligence Bureau on deputation from Rajasthan Police as Assistant Central Intelligence Officer Gr. I (ACIO I) on 17.6.1971. He was promoted as DCIO on the recommendation of the DPC w.e.f. 1.1.1969. He was permanently absorbed in the IB in the rank of ACIO I w.e.f. 1.8.1971 i.e. one rank below the

rank held by him at that time. He was regularised as DCIO w.e.f. 1.8.1978 and assigned seniority in the grade from that date. His seniority was ante-dated vide memorandum No.2/Seniority(CC)/81(3)347 dated 25.3.1983, (page 15 of the paper book) from 1.8.1978 to 29.6.1973. The applicant claims that his seniority should be reckoned w.e.f. 1.8.1971 the date on which he was absorbed in the I.B. Had his seniority been reckoned w.e.f. 1.8.1971, he would have been assigned seniority between S.No. 95, Shri Shiv Nandan Prasad (date of promotion 20.5.1971) and Sl. No.96 Shri J.J. Oza (date of promotion 21.4.1972). The relevant seniority list however is not filed by him with the OA. He further submits that some of his juniors as mentioned below were promoted as Senior Intelligence Officers from the dates as shown below:-

S.No.	Name of the Officers	S.No. in the seniority list	Date of promotion regularised as DCIO	Date of promotion as SIC
1.	S. Gopalan	98	5.5.72	25.11.1983
2.	Ajeet Kr.Roy	103	26.4.72	25.1.84
3.	C.Venkata-subba Rao	105	15.6.72	6.12.83
4.	T.C. Siva Sankara Pillai	108	15.5.72	11.11.83

All the officers listed above were promoted as a result of 1983 DPC while the applicant's case was ignored on the assumption that his seniority is to be reckoned from 1.8.1978, although his seniority was subsequently antedated to 29.6.1973. He, however concedes that none of the DCIO assigned seniority from 1973 was promoted as a result of 1983 DPC. Notwithstanding, antedating of his seniority, his claim is that seniority should be considered from 1.8.1971, the date on which he was absorbed in I.B. To support his claim he has relied on:

- i. Laxman Narain Naik v. IB, MHA, Govt. of India ATR 1987 (1) CAT Bombay 323
- ii. Shri Baldev Singh & Ors. v. UOI T-870/85 decided by the Principal Bench on 13.1.1988;
- iii. Shri Balbir Singh & Another v. UOI OA 1537/88 decided by the Principal Bench on 2.2.1989 and;
- iv. RA 28/89 in OA 1323/88 decided on 18.7.1990.

4. The main arguments in the written statement against extending the benefit of Laxman Narain Naik v. IB, MHA, Govt. of India (supra) is that the applicant belongs to Group 'D' gazetted cadre and that he cannot, therefore, be governed by the same set of rules as claimed by him. Further, while Shri Naik was absorbed in a lower rank, Shri Sahni was absorbed in an officiating rank and, therefore, his case is not on par with that of Shri Naik. Regarding the promotion of the juniors as listed in the table in paragraph 3 above regularised as DCIO in 1972, the respondents plea is that Shri Sahni was regularised only in 1973 (after considering antedating of his seniority). They, therefore, submit that Shri Sahni's case has no merit.

5. We have heard the learned counsel of both the parties and gone through the material placed before us carefully. The applicant had joined the IB on deputation as ACIO I on 17.6.1961. He was promoted to the rank of DCIO w.e.f. 1.1.1969 and permanently absorbed in IB w.e.f. 1.8.1971 in the rank of ACIO I, when he was already officiating on the basis of the recommendation of DPC as DCIO. His case, therefore, is on all fours with that of Laxman Narain Naik v. I.B., MHA (supra) and Balbir Singh & Another v. UOI (supra). His being in Group 'B' cannot be used to deny him the extension of a principle which is based on the equity and fairness. He was absorbed as ACIO

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I w.e.f. 1.8.1971 although he was officiating as DCIO w.e.f. 1.1.1969 in accordance with the recommendation of the DPC. He is not claiming the seniority from 1.1.1969 but from 1.8.1971 as DCIO. The Supreme Court in the case of Direct Recruit Class II Eng. Officers' Ass. v. State of Maharashtra & Ors. JT 1990 (2) SC 264 has held that:-

"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 applicant was appointed on officiating basis as DCIO from 1.1.1969 but during that period he was on deputation. For obvious reasons, as long as the officer remained on deputation, he has no claim for seniority in the rank he held in the borrowing organisation, as he held lien on his substantive post in the parent department. The matrix of the facts is however transformed by his absorption on 1.8.1971 in the rank of ACIO. At that time the applicant was officiating as DCIO as per DPC's recommendation and continued in that rank thereafter till he retired on 31.10.1984. His case is, therefore, fully covered by the law laid down by the Hon'ble Supreme Court, as extracted above in the case of Direct Recruit Class II Eng. Officers' Ass. v. State of Maharashtra (Supra).

The law laid down above does not make any distinction between Group 'C' and Group 'B' employees as long as they are placed in similar circumstances.

In the facts and circumstances of the case, we order and direct that the respondents shall assign seniority to the applicant w.e.f. 1.8.1971 i.e. the date he

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was absorbed in the IB as DCIO. We further direct that the applicant shall also be entitled to consequential benefits such as promotion etc., if he comes within the eligibility zone and is found suitable in accordance with the rules.

There will be no order as to costs.

Delphy

(I.K. RASGOTRA)
MEMBER(A)

3/1/91

Ab

(AMITAV BANERJI)
CHAIRMAN

'SKK'

Pronounced by me on 3/1/91, in open Court

Delphy
3/1/91