

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1298
T.A. No.

198 8

DATE OF DECISION 25.9.89.

Shri J.S. Passi Applicant (s)

Shri B.B. Srinivasava Advocate for the Applicant (s)

Versus

Union of India & Ors Respondent (s)

Shri P.P. Kurana Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P. Srinivasan, Member (A)

The Hon'ble Mr. T.S. Oberoi, Member (J)

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. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985. The applicant is currently working as Deputy Director in the Directorate of Supply and Disposal, New Delhi. He is due to retire on 30th Sept. 1989. He was promoted to the post of Assistant Director (Inspection) on 24.9.71 from the lower post of Assistant Inspecting Officer. Persons like him who were also promoted to the post of Assistant Director (Inspection) challenged their seniority in that grade in Civil Writ Petition No. 1277/78 (Om Datt Sanger & Others Vs. Union of India & Others), filed before the High Court of Delhi, New Delhi. The said Civil Writ Petition was transferred to this Tribunal and was registered as Application No. T 428/85 and was decided by this Tribunal by order dated 27.2.1987. In effect, this Tribunal directed that O.D. Sanger and others who were petitioners in that application be given seniority in the grade of Assistant Directors (Inspection) from the date

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from which they were continuously officiating in that grade. The department filed a S.L.P. against the said order which was dismissed by the Hon'ble Supreme Court, but while doing so, the Supreme Court clarified that the decision of the Tribunal therein should not be treated as a precedent.

2. Shri B.B. Srivastava, learned counsel for the applicant submitted that the Petitioners in O.D Sanger's case had not only been given the benefit of continuous officiation in the grade of Assistant Director (Inspection) in the matter of their seniority in that grade, but also consequential promotion to higher posts. Some of them have since retired as Directors. The applicant who was appointed as Assistant Director (Inspection) earlier than one of the petitioners in that case, namely Shri Roshan Lal, is even now working as Deputy Director. This amounts to discrimination under Articles 14 and 16 of the Constitution.

3. Shri Khurana, learned counsel for the respondents strongly opposed the contentions of Shri Srivastava and submitted that this application is badly delayed. The applicant was promoted as Assistant Director on an ad hoc basis as early as in 1971 and he is claiming the benefit of that promotion for the purpose of seniority. He should have moved in the matter in 1971 or soon thereafter. Since the cause of action in this case arose before 1.11.1982, this Tribunal has no jurisdiction to deal with the matter as held by several Benches of this Tribunal.

4. We have given careful thought to the matter. It is true that applicant was promoted as Assistant Director (Inspection) in 1971, on an ad hoc basis and is claiming seniority from that date. He is not challenging the order of promotion as such nor even the nature of his promotion. He does not say that he should not have been promoted on ad hoc basis and that his promotion should be treated as regular. Relying on some decisions of the Supreme Court and the decision of this Tribunal in O.D. Sanger's case, he contends that the period of ad hoc appointment which was followed by regular appointment in the same cadre should be counted for the purpose of

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determining his seniority in that cadre. Therefore, it would not be right to say that the cause of action in this case arose on the date of his ad hoc promotion in 1971. But he is also ^{claiming} ~~coining~~ consequential promotion to the next higher post from a date prior to 1.11.82. We will deal with that claim appropriately below. The applicant is due to retire by the end of this month. He is entitled to agitate that in the matter of pension, he cannot be discriminated vis-a-vis persons similarly circumstanced like him, particularly the petitioners in D.D.Sanger's case. Their Lordships of the Supreme Court, while disposing of the S.L.P. filed in Sanger's case have observed that the decision of the Tribunal therein need not be taken as a precedent, but that does not mean that we should necessarily take a different view. Considering the facts and circumstances of this case, we are inclined to follow the decision in Sanger's case for the limited purpose of determining the applicant's pension. We must bear in mind that like in Sanger's case, acceptance of the applicant's claim in regard to pension is not likely to affect others because he is to retire at the end of this month. Though, we are of the view that, since he has come to court late, he cannot be given the actual benefit of seniority applying the decision in Sanger's case and of consequential promotion to higher posts, we feel that for determining his pension on retirement, he should get the same benefits as the petitioners in Sanger's case. We therefore, direct the respondents to accord the applicant seniority in the grade of Assistant Director from the date from which he was continuously officiating in that grade and on that basis consider his case for promotion to higher posts and, if found fit, ^{to} promote him to such posts accordingly. His pay on the date of his retirement should be worked ^{out} on this basis for the purpose of determining his pension and other retirement benefits. However, the applicant will not be entitled to any financial benefits arising out of his revised seniority in the grade of Assistant Director and consequential promotions to higher posts for which he may be found fit till the date of his retirement as we are directing revision


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of seniority and promotions only on a notional basis in order to give actual benefit ~~only~~ in the matter of pension.

5. The applicant is disposed of on the above terms.

Parties will bear their own costs.



(T. S. OBEROI)
MEMBER (J)



(P. SRINIVASAN)
MEMBER (A)