

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

O.A. No.1323/88. Date of decision: February 2, 1989.

Shri Din Dayal Applicant.

Vs.

Union of India & Others Respondents.

Coram:

Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. B.C. Mathur, Vice-Chairman.

For the applicant ... Shri S.C. Luthra, counsel

For the respondents ... Shri P.P. Khurana, counsel

(Judgment of the Bench delivered by Hon'ble
Mr. Justice Amitav Banerji, Chairman).

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant Shri Din Dayal has prayed that his seniority in the cadre of ACIO-I in the Intelligence Bureau (IB) should be fixed after counting his service from 14.11.1977 in that grade and consequently that the applicant shall be eligible for being considered for future promotion on the said basis. Briefly stated the facts in the Original Application are as follows:

That the applicant originally belonged to Delhi Police and came on deputation to the Intelligence Bureau, Ministry of Home Affairs, Government of India on 1.7.1956 as Head Constable. The applicant continued as such until he was promoted to the next higher ranks of Junior Intelligence Officer Gr.I (JIO-I in short) and Assistant Central Intelligence Officer Gr.II (ACIO-II) on 16.5.1960 and 30.11.1968 respectively. The applicant

was absorbed permanently in the I.B.w.e.f. 1.8.1971 as JIO-I. vide order dated 15.1.1972. Consequently, his lien in Delhi Police stood terminated w.e.f. 1.8.1971. The applicant was promoted to the rank of ACIO-I on 14.11.1977.

The applicant's grievance is that till the date of making this original application i.e. 18.7.1988, he had not been assigned seniority in the grade of ACIO-I w.e.f. 14.11.1977, the date on which he was promoted to that post. He pointed out that he was promoted as ACIO-II on 30.11.1968 and as ACIO-I on 14.11.1977 respectively.

He further referred to a decision of the New Bombay Bench of the Central Administrative Tribunal in OA 31/86 decided on 16.12.1986 in the case of LAXMAN NARAYAN NAIK, ACIO-II Vs. DEPUTY DIRECTOR (E), IB who was similarly placed. The applicant further stated that he had been making representations to respondents to fix his seniority in the grade of ACIO-I after the judgment in NAIK's case (supra). He had made a detailed representation on 8.2.1988 praying for being assigned seniority in the grade of ACIO-I w.e.f. 14.11.1977.

He also referred to another decision of the Principal Bench in the case of BALDEV SINGH & OTHERS Vs. U.O.I. & Ors- T-870/85 decided on 13.1.1988 where the Bench chose to follow the ratio in the case of LAXMAN NARAYAN NAIK (Supra) and came to the same conclusion.

Respondents No.1 and 2 have filed a counter affidavit and have not disputed about the dates of initial appointment, absorption, promotion and regularisation in the I.B. of the applicant. It has, however, been stated that the applicant was appointed to the post of ACIO-I w.e.f. 14.11.1977 against the deputation quota. It was alleged that according to the general principles of seniority issued by the Ministry of Home Affairs, the seniority of transferees was determined from the date they were appointed on transfer basis in the department. The applicant was, therefore, placed below ~~to~~ all departmental officers promoted earlier than the date of his permanent absorption in the grade of JIO-I but as he was also confirmed from the date of absorption, his seniority was determined in the order of date of confirmation. The applicant acquired departmental status on his permanent absorption w.e.f. 1.8.1971. The service of the applicant as ACIO-II was, therefore, ~~correctly~~ regularised w.e.f. 14.5.79 as he became eligible for promotion only from that date. His turn came for promotion as ACIO-II only in 1979 as his junior departmental JIOs-I were promoted on the basis of 1979 DPC. His ad hoc appointment as ACIO-II (G) against deputation quota was thus regularised w.e.f. 14.5.1979. In the seniority list of ACIOs-II (Departmental) circulated on 23/24-5-88, his name was at S.No.1193. In the background of these facts, the claim of the applicant as mentioned

in the Original Application was refuted and it was further stated that the judgment in the case of LAXMAN NARAYAN NAIK (supra) and judgment in the case of BALDEV SINGH & ORS and SHEODAN SINGH were on different footings and have no application to the facts of the present case. In other words, it was urged that the applicant was not entitled to seniority as ACIO-I w.e.f. 14.11.1977 and his application merited to be dismissed.

A rejoinder had also been filed in the present case where the pleas taken in the counter were squarely denied and the pleas raised in the original application were reiterated. It was also stated that the principles laid down by the various judgments of the Hon'ble Supreme Court and the High Courts that once an officiating appointment is followed by a regular appointment, the whole service is to be counted for seniority. It was reiterated that the cases of LAXMAN NARAYAN NAIK AND BALDEV SINGH (supra) were apt and applied to the facts and circumstances of the present case as well.

We have heard Shri S.C. Luthra, counsel for the applicant and Shri P.P.Khurana, counsel for the respondents. There is no serious dispute in regard to the facts of the case. The only question involved in this case is a question of law. The question is what is the date for the purpose of determining seniority in the I.B. On the basis of the facts which are

not in dispute in this case, the relevant dates may be restated. The applicant comes on deputation to the I.B. on 1.7.1956 as Head Constable and is promoted to the next higher ranks of JIO-I and ACIO-II on 16.5.1960 and 30.11.1968 respectively. The applicant is permanently absorbed in the I.B. w.e.f. 1.8.1971 as JIO-I. The applicant is ^{further} promoted as ACIO-I on 14.11.1977. He is claiming seniority from 14.11.1977 for further promotion. He is holding that post even today. The relevant case law by the Hon'ble Supreme Court the subject has been laid down in the case of NARENDER CHADHA AND OTHERS Vs. UNION OF INDIA AND OTHERS (1). Their Lordships while considering the question as to whether a person holding a post on adhoc basis can claim that service while determining his seniority in that cadre held that when a person has been allowed to function in a higher post for many years on ad-hoc basis, it would be unjust to hold that he has no sort of claim to such post or treated as person not belonging to the service at all.

Their Lordships held:

"The question is whether after such a long period it is open to the Government to place them in seniority at a place lower than the place held by persons who were directly recruited after they had been promoted, and whether it would not violate Articles 14 and 16 of the Constitution if the Government is allowed to do so".

Their Lordships observed:

"Even those promotees who have been selected in 1970, 1982 and 1984 shall be assigned seniority with effect from the date on which they commenced to officiate continuously in the posts prior to their selection. For purposes of seniority the dates of their

selection shall be ignored".

The above view has been followed in the case of LAXMAN NARAYAN NAIK (supra) by the New Bombay Bench of the Central Administrative Tribunal and in BALDEV SINGH's case (supra) by the Principal Bench and we find that the principles laid down in Naik's case are fully applicable to the present case as well.

The relevant date is not the date when the applicant was regularised in the I.B. but the date on which he was absorbed in the I.B. (i.e. 1.8.1971) and was also in the cadre of ACIO-II. Although, he was promoted to the rank of ACIO-II on 30.11.1968, yet as he had not been absorbed in the I.B. that would not be the material date. He would be in the same cadre as of the direct recruits only when he was absorbed in the I.B. The date when his services were regularised i.e. on 14.5.1979 is not the relevant or material date. We are, therefore, firmly of the view that in the case of the applicant, the relevant date for the purpose of calculating his seniority would be 1.8.1971 in the cadre of ACIO-II. We would, therefore, direct the respondents to calculate his seniority from the above date. The first prayer is answered accordingly.

In regard to the second relief claimed by the applicant, an objection was taken by Shri P.P.Khurana, ld. counsel for the respondents. We find the prayer to be innocuous. It only says that the applicant be considered as eligible for promotion as and when due. We are not inclined to give direction to the respondents to promote

the applicant in the next cadre from any particular date. If he is eligible for promotion in accordance with the Rules applicable, his case will be considered and appropriate orders passed. With these observations, the second prayer is accordingly answered.

In the result, therefore, the Original Application is allowed as indicated above. There will be no order as to costs.



(B.C. MATHUR)
VICE-CHAIRMAN
2.2.1989..



(AMITAV BANERJI)
CHAIRMAN
2.2.1989.