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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

DATE OF DECISION: October 31, 1990.

CA 818/87

Shri R.M. Balani & 12 Ors. ... Applicants.

Versus

The Secretary (TD) & DG (TD) and another. ... Respondents.

CA 1047/87

N.G. Basak & 2 Ors. ... Applicants.

Versus

The Secretary (TD) & DG (TD) and another. ... Respondents.

CA 1070/87

I.K. Kapur & 11 Ors. ... Applicants.

Versus

The Secretary (TD) and DG (TD) and another. ... Respondents.

CA 1390/88

S.V. Bhopardikar ... Applicant.

Versus

The Secretary (TD) and DG (TD) and another. ... Respondents.

CORAM: The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. B.C. Mathur, Vice-Chairman (A).

For the Applicants.

Shri B.S. Charye
& Shri S.S. Jiwari,
and
Shri B.N. Singhvi,
Counsel.

For the Respondents.

... Shri S.C. Gupta,
Sr. Counsel with
Sh.M.K. Gupta
Shri P.P. Khurana,
Counsel.

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

These four Original Applications (O.As) have been
filed by persons who claim that the continuous ad hoc



period of service as Development Officer in the Directorate

General of Technical Development, rendered by them should be

treated as regular and counted as such towards seniority. They

have also prayed that the Respondents be directed to place them

on the basis of their dates of joining the service as Development

Officer. The questions raised in all these four O.A.s are similar

and hence the Respondents should be directed to decide them together

and they can be decided by a common judgement.

In O.A. 818/87, Shri R.M. Balani & 12 others were all

appointed initially as Assistant Development Officer and then

promoted on ad hoc basis as Development Officer. Subsequently,

they were regularised as Development Officer. The dates of their

initial appointment, ad hoc promotion and regularisation as

Development Officer were different.

The first Applicant Shri R.M. Balani was appointed as

Assistant Development Officer w.e.f. 4.2.1966 and then promoted

on ad hoc basis as Development Officer w.e.f. 30.1.1971 and

regularised as Development Officer w.e.f. 20.3.1973.

The last Applicant No. 13 Shri V. Seshadri was appointed as

Assistant Development Officer w.e.f. 23.10.1969 and then promoted

on ad hoc basis as Development Officer w.e.f. 1.12.1975 and

regularised w.e.f. 16.4.1982.

The Applicants No. 1 to 7 have been further promoted

as Industrial Adviser and/or Addl. Industrial Adviser and

continuing as such but their seniority right from the stage

of Development Officers(Engg) is still affected vis-a-vis the

direct recruits inasmuch as the applicants Nos 1 to 13 have been

shown junior to the respective direct recruits. The applicants

alleged that this has caused serious prejudice to their rights

and interests.

The respondents framed recruitment rules called as

Directorate General of Technical Development (Class I Posts)

Recruitment Rules 1963 notified under Article 309 of the

Constitution of India vide notification dated 30.11.1963.

According to the recruitment, the criteria of appointment

etc. against the post of Development Officer (Engg) has been

50% by way of promotion and 33.33% by way of direct recruitment

and 16.66% by transfer failing which by direct recruitment.

The criteria for promotion was for 5 years experience as

Assistant Development Officer. In 1982, a fresh set of rules

were framed, which were called as Directorate General of

Technical Development (Grade A Posts) Recruitment Rules,

1982. Under these rules, the method of recruitment to the

post of Development Officer(Engg) was 90% by promotion

failing which by transfer on deputation (including short-term

contract), failing both, by direct recruitment. The remaining

10% posts were to be filled by transfer on deputation inclu-

ding short-term contract. The applicants' case was that the

continuous ad hoc service as Development Officer immediately

before regularisation is required to be counted towards regular

service by the respondents. But this has not been done and,

therefore, the rights and interests of the applicants have been

seriously affected. It was then stated that a number of

incumbents were appointed by way of direct recruitment through

U.P.S.C. The particulars of names, date of appointment by

UPSC and date of joining are mentioned in paragraph (xvii)

to the D.A. These officers were placed ahead of the applicants although they were acting as Development Officer from earlier dates. On 1.4.1984, the respondents released the seniority list where the position of the applicants in terms of seniority has been incorrectly shown. Their ad hoc period of service has not been counted and they have been shown junior to the direct recruits. It was stated that the applicants No. 1 and 2 who had worked as Development Officers continuously from 30.1.1971 have been placed junior to an officer joining on 1.5.1976. The applicants claimed that even though they were qualified as Development Officers, they were denied regular promotion to the higher grade but were allowed to continue in ad hoc capacity long after the regular vacancies had occurred. They urged that the long period of ad hoc service rendered by each of the applicants cannot be ignored and they are entitled to be treated as regular from their original date of promotion as Development Officer. The applicants continued to raise objections against the aforesaid impugned action of the respondents. But the respondents had adopted the negative attitude to their representations. Hence a question arose for determination of seniority taking into long period of officiation. The seniority list drawn up in the year 1984 was not correct and deprived the applicants' continuous services rendered on ad hoc basis for the purpose of seniority. The applicants, therefore, prayed that the seniority list of Development Officers prepared by respondents as on 1.4.1984 should be

quashed as invalid and the respondents may be directed to count the period of officiation of each of the applicants towards regular service as Development Officer and refix their seniority. They further prayed that the respondents be directed to hold that the applicants are entitled to all consequential benefits and to compile a proper and valid seniority list in accordance with law.

In their reply on behalf of the respondents, an objection was taken as to the maintainability of the C.As on the ground of being "barred by limitation". The applicants have come very belatedly to the Tribunal and they have not even explained each day delay. Even otherwise, there was no sufficient reason for condonation of delay. It was further stated that in service matters, the seniority list is not to be disturbed where the persons included have acquiesced in it.

It was stated that the departmental officers are generally promoted on ad hoc basis against the vacancies reserved for other categories such as direct recruits/deputationists when such officers are not immediately available. Such ad hoc promotees are reverted as soon as the direct recruit UPSC nominees or deputationists are available. Ad hoc arrangements are resorted to as recruitment by the UPSC and completion of formalities precedent to appointment takes considerable time. Such promotions are, therefore, necessarily to be on ad hoc basis. The beneficiaries in these arrangements are the

Departmental Officers so promoted. But this concession is

not to be taken as a matter of right for the Department has

discretion to keep the post vacant until such time the regular

candidates are available. The seniority list prepared by the

department is in accordance with the instructions of the

Department of Personnel and it cannot be changed until the

Department of Personnel revise the guidelines. It was stated

that the applicants are not entitled to count their ad hoc

service towards regular service and consequent seniority,

issued by the in accordance with the instructions of Department of Personnel

and Training. The applicants have derived benefit of

ad hoc promotion against vacancies reserved for others and they

now want to derive further advantage through it in terms of

revision of seniority and lasting benefits flowing from it.

The posts were filled on ad hoc basis including those reserved

for the Direct Recruits. However, when the direct recruits

were available, the departmental candidates were assigned their

rightful positions in the seniority list. The ad hoc service,

even if without a break, does not count towards seniority as

all ad hoc persons are to be shown below the regular candidates.

Further, it was urged that the applicants do not appear to

know the difference between "continuous 'ad hoc' service" and

"continuous 'officiating' service". It was pointed out that

the continuous officiating service is service rendered on

regular promotion through Departmental Promotion Committee and

is counted towards seniority. This position has been correctly

drawn up in the seniority list. Lastly, it was stated that there

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was no impropriety in drawing up the seniority list of officers and in the additional plea it was stated that the Application is bad for non-joinder of necessary parties as the applicants have failed to implead the persons who are likely to be affected in the event of the Application being allowed.

A rejoinder was filed denying the allegations and the contentions raised in the reply of the respondents.

It was stated there that the applicants were under the earlier bonafide belief and they could not file the C.As/unless there was a final order stating that the seniority list dated 17.4.1984 was being treated as final. They were entitled to get condonation of delay on this ground.

Reference was made to the case of NARENDER CHADHA Vs. UNION OF INDIA (1986(2)SCC 157) and it was further stated that the reasons given by the respondents themselves show that the quota rota system failed and for that reason the applicants cannot be made to suffer. Lastly, it was stated that the Application was not bad for non-joinder of necessary parties. Since the challenge was on the general principles regarding fixation of seniority, other persons who were wrongly shown seniors on such principles were not necessary parties.

There was also an M.P. under Section 27(3) for condonation of delay, filed on 27.5.1987 in which it was

stated that some of the applicants including Sarvashri G.L. Keshwani, S.K. Bhatia and T. Ramasubramaniam made written representations and others verbally represented to Respondent No. 1 after the release of the impugned seniority list to correct the same and place the applicants at appropriate place on the basis of their original date of promotion. In the case of Shri S.K. Bhatia, one of the applicants, his representation was turned down by the Respondent No. 1 vide letter dated 24.9.1985 without stating any reasons. Similarly, the representation of Shri G.L. Keshwani was also turned down. It was stated that the attention of the respondents was drawn to the decision in the case of K.N. Mishra rendered by the Principal Bench, the case of Narender Chadha decided by the Supreme Court and the case of S.C. Kacktawana, decided by the Principal Bench on 6.3.1967, with a request to follow those decisions and to suitably amend the seniority list. A copy of the order of the Supreme Court was asked for by the Department in the case of Vinay Kumar, one of the applicants, on 15.12.1986.

It was supplied but no reply had been sent.

Similar pleas were taken in the cases of N.G. Basak, I.K. Kapur and S.V. Bhopardikar and others. The pleas, replies and the rejoinders were more or less on the same lines as in the case of Shri R.M. Balani.

We have heard learned counsel for the parties and also considered their arguments.

There are three main contentions in these cases;

firstly, whether the Applications are maintainable as they

seek to challenge the seniority list of 1984 in the years

1987 and 1988; secondly, whether the applicants are entitled to

claim the period during which they officiated as Assistant

Development Officer or Development Officer on ad hoc or

officiating basis till their regularisation; thirdly, whether

the case of the applicants is covered by the decision of the

Supreme Court in The Direct Recruit Class II Engineering

Officers Association Vs. State of Maharashtra (1990(2) JT P-264).

FIRST POINT

There can be no dispute that the 1984 seniority list

is being challenged in these O.A.s in the year 1987 in the

cases of R.M. Balani, N.G. Basak and I.K. Kapur and in the

year 1988 in the case of S.V. Bhopardikar. There is an

application for condonation of delay under Section 21(3) in

each O.A. The applicants were aware of the seniority list

of 1984 in the year 1985. They did not file any writ

petition in the High Court or any Application under Section

19 in the Tribunal. The respondents contended that there was an

inordinate delay in challenging the order of 1984 and the O.A.s

filed in the years 1987 and 1988 were hopelessly belated and

was barred by limitation and the further plea that the Tribunal

should not interfere in a matter of seniority which has been

decided long ago and it would be a travesty of justice if an

order is made to accept the seniority list after such a length

of time.

It is well settled that whenever there is a delay or laches, the same has to be explained meticulously. It has been laid down by the Supreme Court that in case of delay, each day's delay has to be explained. Similarly, in the case of laches, the applicant must give sufficient grounds for explaining laches. Mere making of the prayer for condonation of delay is not enough. It was also contended that the reason given in the M.P. under Section 21(3) of the Act does not give particulars of the representation made by each applicant in regard to when they came to know about and what did they do thereafter. Copies of the representations have not been filed nor their dates have been mentioned. Further, the facts and circumstances set out in the aforesaid M.P. cannot be said to be adequate or sufficient to condone the delay.

We have heard learned counsel for the parties on this aspect of the matter and we are inclined to agree with the learned counsel for the parties. But we find one difficulty. Reference may be made to the order dated 18.7.1988 passed by the Division Bench on M.P. No. 1001/87 in O.A. No. 1070/87 (I.K. Kapur Vs. Union of India). This shows that the question of condonation of delay came up before the Division Bench. The prayer for condonation was opposed by the Respondents on two grounds; firstly, no objections were filed by the applicants to the seniority list issued with effect from 1.4.1984; secondly, this seniority list merely carries forward the seniority of the applicants determined nearly 16 years ago and that having become final, cannot be questioned at this distance of time.

The Division Bench observed that as far as the first question was concerned, the seniority list issued by the Respondents (Annexure P-2) was not final. It invited objections, if any, with regard to the factual errors/omissions which were required to be filed not later than 15th May, 1984. The Bench took the view that even if no objection was filed, nothing prevented the respondents from correcting the factual errors/omissions, if any, and issuing a final list or declaring the said list as final. The Bench further took the view that since the seniority list has not been finalised but is now being acted upon, OA 1070/87 cannot be deemed as time-barred.

As regards the second question, the Bench took the view that even if it is held that the Application was not time-barred qua seniority list of 1984, it does not follow that the applicants are entitled to the relief claimed. That will have to be considered on its own merits. Further, the respondents took the plea that if the seniority list is disturbed on the basis of these principles, all persons who would be affected will have to be joined. In the circumstances, the Bench admitted OA No. 1070/87 and directed the applicants to implead the persons likely to be affected in the event of the application being allowed as party respondent.



Since the point had been adjudicated upon and decided and not set aside or recalled, the order passed by the Bench

will be deemed to have become final.

Similar pleas have been taken in M.Ps under Section

21(3) of the other O.As. All of them raised the same

pleas. In view of the reasoning in the order dated

18.7.1988, we are / inclined to take a different view in the

connected O.As. It means, going into question of seniority

in all these O.As. Although it questions a list which has

become final long ago, we are, however, of the view that

it would be in the interest of justice to over-rule the

preliminary objection in Point No. 1 mentioned above.

The second question for consideration is whether the

period of officiation or on ad hoc basis is to be taken into

consideration for computing the seniority of a Government

servant. In the case of NARENDER CHADHA (Supra), the Supreme

Court was considering the cases of officers of the Indian

Economic Service and the Indian Statistical Service. They

were asking for being confirmed and regularised in the

posts held by them as and from the dates when they became

due for confirmation or regularisation in accordance with

the relevant rules and to consider them for all future

promotions when due on the basis of such seniority. In

paragraph 14, their Lordships observed -

"But we are faced in this case with the problem of

resolving conflicts which have arisen on account

of a violent departure made by the Government from

the Rules of recruitment by allowing those, who were

appointed contrary to the Rules to hold the posts

continuously over a long period of time. 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".

The Bench thereafter observed -

"It is significant that neither the Government has issued orders of reversion to their former posts nor has anybody so far questioned the right of the petitioners to continue in the posts which they are now holding. It would be unjust to hold at this distance of time that on the facts and in the circumstances of this case the petitioners are not holding the posts in Grade IV. The above contention is therefore without substance. But we, however, make it clear that it is not our view that whenever a person is appointed in a post without following the rules prescribed for appointment to that post, he should be treated as a person regularly appointed to that post. Such a person may be reverted from that post. But in a case of the kind before us where persons have been allowed to function in higher posts for 15 to 20 years with due deliberation it would be certainly unjust to hold that they have no sort of claim to such posts and could be reverted unceremoniously or treated as persons not belonging to the Service at all, particularly where the Government is endowed with the power to relax the rules to avoid unjust results. In the instant case the Government has also not expressed its unwillingness to continue them in the said posts".

After going through the case of G.S. Lambe Vs. Union of India

(1985(2) SCC 604), their Lordships observed in paragraph 18

as under -

The Court ultimately quashed the seniority list and directed the preparation of seniority list on the basis of length of continuous officiation in the cadre. The facts in this case being almost identical there is no reason why the view expressed in G.S. Lambe case should not be adopted here also".



Their Lordships ultimately directed the Union Government to treat all persons who are stated to have been promoted in this case to several posts in Grade IV in each of the two Services contrary to the Rules till now as having been regularly appointed to the said posts in Grade IV under Rule 8(1)(a)(ii) and assign them seniority in the cadre with effect from the dates from which they are continuously officiating in the said posts.

In a recent decision by a Constitution Bench of

the Supreme Court in the case of 'The Direct Recruit

Class III Engineering Officers' Association Vs. State of

Maharashtra (Supra), the Supreme Court held that 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. In this case, after dealing with the principles

laid down in the case of S.B. PATWARDHAN & ORS. VS. STATE

OF MAHARASHTRA (1977(3) SCR 775), it was reiterated in the following words -

"The principle for deciding inter se seniority has to conform to the principles of equality spelt out by articles 14 and 16. If an appointment is made by the way of stop-gap arrangement, without considering the claims of all the eligible/persons and without following the rules of appointment, the experience on such appointment cannot be equated with the experience of a regular appointee, because of the qualitative difference in the appointment. To equate the two would be to treat two unequal as equal which would violate the equality clause. But if the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly

till the regularisation of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority. Same will be the position if the initial appointment itself is made in accordance with the rules applicable to substantive appointments as in the present case. To hold otherwise will be discriminatory and arbitrary".

Referring to NARENDER CHADHA'S CASE (Supra), the

Supreme Court held that it was a case where the officers were promoted although without following the procedure prescribed under the rules, but they continuously worked for long periods of nearly 15-20 years on the posts without being reverted. The period of their continuous officiation was directed to be counted for seniority as it was held that any other view would be arbitrary and violative of articles 14 and 16. The following passage therefrom is of significance -

"There is considerable force in this view also. We, therefore, confirm the principle of counting towards seniority the period of continuous officiation following an appointment made in accordance with the rules prescribed for regular substantive appointments in the service".

Referring to the decision in Patwardhan's case

the Supreme Court held -

"In such a situation it is not expedient to depart from the decision lightly. It is highly desirable that a decision, which concerns a large number of government servants in a particular Service and which has been given after careful consideration of the rival contentions, is respected rather than scrutinised for finding out any possible error. It



is not in the interest of the Service to unsettle a settled position every now and then".

It is clear from the above that the views taken in the cases of G.S. Lemba, Patwardhan and Narendra Chadha(Supra) were confirmed on principle by the Constitution Bench of the Supreme Court.

We now take up point No. 2. The question is

what is the effect of the Supreme Court's decision in the case of 'The Direct Recruit'(Supra). We have already referred to the passages of the decision of the Supreme Court. But it will be necessary to quote sub-paragraphs (A) and (B) of paragraph 47:

"To sum up, we hold 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 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".

The first para 'A' and the corollary differ

about the manner of initial appointment. If it is according to rule, his seniority has to be counted from

the date of his appointment. But if the initial
appointment is not according to rules and is ad hoc

and made as a stop-gap arrangement, officiation,

cannot be counted towards his seniority. It is,

therefore, evident that the material factor is how

the initial appointment was made. If it was made in

accordance with the rules, the incumbent benefitted.

However, in case there was a stop-gap arrangement and

if it was not according to rules, and ad hoc appointment,

then the entire period of service as such on a promotion

post would not be taken into consideration for computing

his seniority. This view makes the position clear. It

is, therefore, necessary to find out whether the appointments

of the applicants in all these O.A.s were made in accordance

with the rules or purely as an ad hoc or as a stop-gap

arrangement. If the answer was in affirmative, they would

not get benefit. If the answer was in the negative, i.e.

to say they were appointed according to rules, the incumbents

would get benefit of their continuous officiation.

A perusal of the pleadings does not indicate that

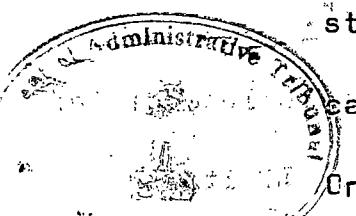
these appointments were made not in accordance with the

rules or they were only ad hoc, or they were made as

stop-gap arrangement. In any event, stop-gap arrangement

cannot continue indefinitely or for a long number of years.

Once it is held that a person has been appointed in accordance
with the rules, his position is on a sound basis.



Let us now consider Clause 'B' which points out that if the initial appointment is not laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, he would get the benefit of the officiating period, for computing seniority.

In the present case there was a quota for promotees

and a quota for direct recruits. If somehow the posts could

not be filled up by the direct recruits and consequently these

posts were filled up due to the exigencies of situation by

promotee officers, there is nothing to indicate that these

promotees were screened for promotion. It is nobody's case

that these promotees were promoted in haphazardous manner.

If that was so, other Government servants in the same

department would have made representations against such

officiating promotions. It will, therefore, be proper to

draw an inference that all these applicants were appointed

except in accordance with the existing rules/following the quota,

undoubtedly they were appointees in excess of the quota for

promotees. But if they were chosen and selected after

observing the procedure for making the permanent appointment,

that would be in order. Since nothing has been pointed out

to us to the contrary, we are inclined to take the view that

the applicants are entitled to the benefit of the rule as

enunciated in clause 'B' of the summary of the judgement of

the Constitution Bench in the case of The Direct Recruité (Supra).

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We are conscious of the fact that it is likely to

up set the position of a number of direct recruits, but

then we are bound by the decision of the Supreme Court as
indicated above.

In the result, therefore, we are of the view that
the applicants in these O.As are entitled to have their
seniority computed a fresh from the date of their initial
appointments on being regularised. We, therefore, allow
these O.As accordingly and direct the respondents either
to correct the seniority list of 1984 or to draw a fresh
seniority list in the light of the judgement. The applicants
will be entitled to consequential benefits as well.

There will be no order as to costs.

(B.C. MATHUR)
VICE CHAIRMAN (A)

(AMITAV BANERJI)
CHAIRMAN

SRD



CERTIFIED TRUE COPY
Dated.....

Section Officer
Central Administrative Tribunal
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