

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) ... Respondents.
and another.

DA 1047/87

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

Versus

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

DA 1070/87

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

Versus

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

CA 1390/88

S.V. Bhopardikar ... Applicant.

Versus

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

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. Charya
& Shri S.S. Tiwari,
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.As are similar 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,

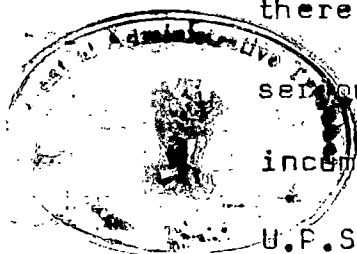
therefore, the rights and interests of the applicants have been

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 deter-

mination 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 service 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 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

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 bonafide belief and they could not file the O.As/^{earlier}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



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stated that some of the applicants including Sarvashri G.L. Keshwani, S.K. Bhatia and J. 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. Kackhawana, 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.

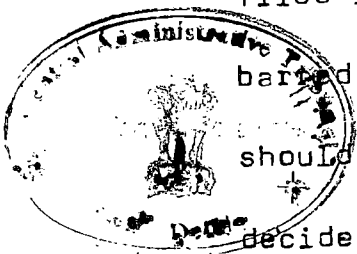
We have heard learned counsel for the parties and also considered their arguments.

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.As 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.As filed in the years 1987 and 1988 were hopelessly belated and barred by limitation and the further plea ^{was} 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 reasons given in the M.P. under Section 21(3) of the Act does not give particulars of the representation made by each applicant as to when they came to know about the dispute in seniority list 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 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 objection 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 ^{not} 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 ^{not} 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

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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".

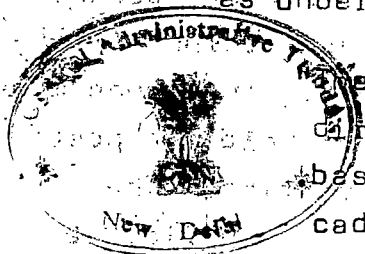
The Bench thereafter observed -

"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. Lamba Vs. Union of India

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

was 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. Lamba case should not be adopted here also".

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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 II 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 confir-

mation. 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 way of stop-gap arrangement, without considering the claims of all the eligible/available 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 unequals 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

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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. Lamba, Patwardhan and Narender 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 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/^{was}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.As 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

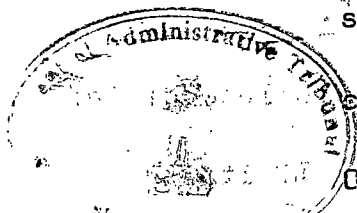
rules or they were only ad hoc, or they were made as

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 in accordance with the existing rules/^{except} 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 Recruits' (Supra).

We are conscious of the fact that it is likely to upset 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 afresh 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



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Dated:

Section Officer
Central Administrative Tribunal
Pr. No. ... N.W. 1981