

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.**

O.A. 1537/88.

Date of decision: February 2, 1989.

Shri Balbir Singh ...
Shri Sudarshan Lal ...

Applicant No.1.
Applicant No.2.

Vs.

Union of India & Ors ...

Respondents.

CORAM:

Hon'ble Mr. Justice Amitav Banerji, Chairman.

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

For the applicants ...

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 applicants Shri Balbir Singh and Shri Sudarshan Lal have prayed that their seniority in the cadre of ACIO-I and ACIO-II in the Intelligence Bureau (IB) should be fixed after counting their service from 25.7.1978 (Applicant No.1) and w.e.f. 20.6.1973 (Applicant No.2) in their respective grades, and consequently the applicants 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 No.1 was a police officer in Delhi State and came on deputation to the Intelligence Bureau, Ministry of Home Affairs, Govt. of India on 1.11.1962 as a Head Constable (JIO-II). The applicant continued as such until he was promoted to the next higher ranks of

JIO-I(G) w.e.f. 1.9.1965 and ACIO-II (G) w.e.f. 30.11.1968 respectively. He was permanently absorbed as JIO-I in the I.B. on 1.8.1971 while still officiating in the grade of ACIO-II. After absorption, the applicant became a regular member of the I.B. and was promoted as ACIO-I w.e.f. 25.7.1978 vide order dated 17.7.1978 and was posted at Subsidiary Intelligence Bureau (SIB) Lucknow and took charge on 25.7.1978

That applicant No.2 belonged to the Punjab Police and came on deputation as Constable (now known as Security Assistant) on 1.12.1958. The applicant continued as such until he was promoted to the next higher ranks of JIO-II(G) in 1963 and JIO-I (G) w.e.f. 26.10.1967. He was absorbed as JIO-II (G) in the I.B. w.e.f. 1.8.1971. After absorption, the applicant became a regular member of the I.B. and was promoted as ACIO-II w.e.f. 20.6.1973.

The applicants grievance is that till the date of making this Original Application i.e., 16.8.1988, they had not been assigned seniority in the grade of ACIO-I to Applicant No.1 w.e.f. 25.7.1978 and as ACIO-II to Applicant No.2 w.e.f. 20.6.1973. Further it is pointed out that applicant No.1 has not been assigned seniority in the rank of ACIO-I (G) because he has not been regularised in that grade. The applicant No.2 has been assigned seniority w.e.f. 3.12.1977 instead of 20.6.1973, the date from which he was holding the post of ACIO-II continuously on officiating basis.

The applicants have referred to a decision of the New Bombay Bench of the Central Administrative Tribunal in (1) LAXMAN NARAYAN NAIK, ACIO-II Vs. DEPUTY DIRECTOR (E), IB who was similarly placed. The applicants further stated that they had made representations to respondent No.2 to fix their seniority in the grade of ACIO-I and ACIO-II after the judgment in NAIK's case (supra). Applicant No.2 made a detailed representation on 13.11.1987 praying for being assigned seniority from 20.6.1973 in the rank of ACIO-II instead of 3.12.1977.

They have also referred to another decision of the Principal Bench in the case of BALDEV SINGH & ORS. Vs. U.O.I. & Ors - T/870/85 decided on 13.11.1988 where the Bench chose to follow the ratio in the case of 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 of the applicants in the I.B. It has, however, been stated that the applicants were subsequently appointed to the posts of ACIO-I and ACIO-II against the deputation quota. In the background of these facts, the claim of the applicants as mentioned in the Original Application was refuted and it was further stated that the judgments in the case of NAIK (supra) and BALDEV SINGH & ORS (supra) were on different footings and have no application to the present case.

It is, however, stated that the department has gone out of its way to give justice to both the applicants by giving three steps promotions in the I.B. against deputation quota. Otherwise the applicants would not have earned more than one or two promotions during their entire span of service. It was urged that the applicants are not entitled to seniority and the application merited to be dismissed.

We have heard Shri S.C. Luthra, counsel for the applicants 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 service in the I.B.

The relevant case law on the subject has been by the Hon'ble Supreme Court laid down in the case of NARENDER CHADHA AND OTHERS Vs. UNION OF INDIA AND OTHERS⁽²⁾. 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 adhoc 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 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 dates are not the dates when the applicants were regularised in the I.B. but the dates on which they actually took over the posts after being absorbed in the I.B. and promoted to the ranks of ACIO-I / ACIO-II respectively. Consequently, they were in the same cadre as of the direct recruits. The dates when their services were regularised are not the relevant or material dates. Further the earlier period of their services as JIO-II, JIO-I will not be taken into consideration for their seniority in the department for it was not in the same cadre as that of

direct recruits. As far as the Applicant No.1, Shri Balbir Singh is concerned, he was absorbed in the I.B. on 1.8.1971 when he was ACIO-II. Although he was promoted in the rank of ACIO-II on 30.11.1968, yet as he had not been absorbed in the I.B., the above date would not be the material date. He would be in the same cadre as of the direct recruits of ACIO-II only when he was absorbed in the I.B. Since he was absorbed on 1.8.1971, that would be the material date in his case for he had been promoted earlier on 30.11.1968. The date when his services were regularised i.e. 25.7.1978 is not the relevant or material date.

In respect of Applicant No.2, Shri Sudarshan Lal, the position is slightly different. He was absorbed in the I.B. on 1.8.1971 but had actually been promoted to the rank of ACIO-II on 20.6.1973. In his case the latter date viz. the 20th June, 1973 would be the material date for the purpose of calculating his seniority. We are, therefore, firmly of the view that in the case of Applicant No.1, the relevant date for the purpose of calculating his seniority is 1.8.1971 in the cadre of ACIO-II and that of Applicant No.2 as 20.6.1973.

In the counter affidavit filed on behalf of respondent No.1 and 2, it has been stated that Applicant No.1 was allowed to officiate in the higher post of ACIO-I w.e.f. 25.7.1978 against the deputation quota. It is further stated that he has been assigned revised seniority in the grade of ACIO-I w.e.f. 1.8.1971 and his case for the regularisation of his appointment as ACIO-I/G from earlier date in accordance

with the procedure for national promotion is under consideration.

In view of the above, there is no need to issue a direction in the case of Applicant No.1 to calculate his seniority w.e.f. 1.8.1971. In regard to his relief for being assigned seniority in the grade of ACIO-I from 25.7.1978, we are not prepared to give any direction except to say that it would be considered in accordance with the Rules applicable and appropriate orders passed.

In respect of Applicant No.2, Shri Sudarshan Lal, in the counter affidavit the stand of the respondents is that he was not eligible to claim the seniority in the rank of ACIO-II w.e.f. 20.6.1973 but from 3.12.1977 when his services were regularised. We have already held that the latter date is not the relevant date for the purpose of calculating seniority. He is entitled to claim seniority in the rank of ACIO-II w.e.f. 20.6.1973 and we accordingly direct the respondents to calculate his seniority from 20.6.1973 in the rank of ACIO-II/G. In regard to the second prayer made on behalf of the Applicant No.2, we have only to say that the applicant will be considered as eligible for promotion as and when due. We are not inclined to give direction to the respondents to promote the applicants from any particular date. If they are eligible for promotion in accordance with the Rules applicable, taking into consideration the dates from which their seniority is to be calculated, the respondents will consider and pass appropriate orders. With these observations the second prayer is accordingly

answered.

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

Banerji

(B.C.Mathur)
Vice-Chairman
2.2.1989.

AB

(Amitav Banerji)
Chairman.
2.2.1989.