

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

(18)

OA No.591/88

Date of decision: 03.04.92.

S.P. Bhatia & Others

applicants

Vs.

Union of India

respondents

Coram:

The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J)

The Hon'ble Mr. I.K. Rasgotra, Member (A)

For the applicant

Shri R.K. Singh, counsel.

For the respondents

Shri G.D. Gupta & Shri P.P. Khurana

1. Whether Reporters of the local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? Yes.

(RAM PAL SINGH)
VICE-CHAIRMAN(J)
03.04.92.

(19)

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S.P. BHATIA & OTHERS

...APPLICANTS

VERSUS

UNION OF INDIA

...RESPONDENTS

CORAM:-

THE HON'BLE MR. JUSTICE RAM PAL SINGH, VICE-CHAIRMAN(J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANTS SHRI R.K. SINGH, COUNSEL

FOR THE RESPONDENTS Shri P.P. Khurana, FOR RESPONDENTS 1-3
SHRI G.D. GUPTA, FOR RESPONDENTS

NO.4&5.

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE

MR. I.K. RASGOTRA, MEMBER (A))

S/Shri S.P. Bhatia, Rabinder Kumar and V.N. Meenakshi have filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, assailing the order of the respondents Nos. 1,2 &3 dated 21.3.1988, promoting Shri J.R. Chobdar, respondent No.4 to the post of Junior Assistant Director (Accounts) (JAD(A) for short) in the pay scale of Rs.2375-3500 in officiating capacity and order dated 8.1.1988, absorbing Shri R.K. Sood, Junior Accounts Officer, initially on deputation from the office of Controller of Accounts, Ministry of Personnel, Public Grievances & Pensions in the organisation as JAD (A) with effect from the same date.

2. The necessary facts of the case are that the applicants were promoted on adhoc basis as Auditors and subsequently regularised on the dates given below:-

S.No.	Applicant/respondent	Date of	Adhoc promotion as Auditor	Regular pro motion as Auditor
1.	Applicant No.1	23.12.71	1.6.72	
2.	Applicant No.2	23.12.71	1.6.72	
3.	Applicant No.3	9.2.72	1.6.72	

Respondent No.4 who is stated to have been appointed on adhoc basis as Auditors on 26.7.1972, was in fact a direct recruit. The applicants claim that their seniority should have been reckoned as Auditors from the date they were promoted on adhoc basis and not from the date they were promoted as Auditors on regular basis. If that is done, respondent No.4 who was directly recruited on 26.7.1972, would become junior to them. The applicants and respondent No.4 were promoted to the post of Junior Accounts Officer vide order dated 30.8.1980 (Annexure VII) in the scale of Rs.500900 w.e.f. 1.9.1980. The promotion order lists their names in the following order:-

1. Shri J.R. Chobdar
2. Smt. V.Meenakshi
3. Shri Rabinder Kumar
4. Shri S.P. Bhatia

Respondent No.4, Shri Chobdar is No.1 in the promotion list as indicated above. In the tentative seniority list published by the respondents vide letter dated 18.3.1983 (Annexure VIII) the respondent No.4, Shri J.N. Chobdar figures at srl. No.11 while the applicants are at srl. Nos. 14, 13 & 12. The applicants were thus assigned seniority at ranks lower than the respondent

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No.4. The respondents had also asked all concerned to verify the particulars shown in the tentative seniority list and send them objections etc. if any, to them within 15 days from the date of issue of the memo dated 18.3.1983. The applicants are said to have filed a representation against the tentative seniority list of 8.5.1987 vide Annexure A-IV in which according to the averment made in the application, they had pointed out that the respondent No.4 can only be placed below the applicants. We have perused the representation at Annexure A-IV and observe that the said representation does not question the seniority of respondent No.4; on the other hand their complaint agitated therein is that four posts of JAD (A) have been filled up by taking persons on deputation which would block the promotion of departmental candidates. They have also referred therein to the proposal that the Recruitment Rules are being amended to increase the promotion quota from 33.1/3% to 50%. The said representation is, therefore, not germane for resolving the controversy before us. The tentative seniority list was finalised after finalising the objections etc. and Respondent No.4 was promoted as JAD (A) on 21.3.1988 vide impugned order dated 21.3.1988 (Annexure I). The applicants, however, contend that they are senior to respondent No.4 by virtue of their appointment on adhoc basis from different dates in 1971 whereas Respondent No.4 was appointed only in 1972. The grievance against respondent No.5 Shri R.K. Sood, agitated by the applicants is that the Recruitment Rules applicable in Border Security Force (BSF) do not permit any deputationist being absorbed in BSF and, therefore, the absorption of respondent No.5 vide order dated 8.1.1988 as JAD (A) is ultra vires the rules. They maintain that even if the respondent No.5 was absorbed

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by relaxation of the rules, he cannot be deemed to be senior to those who were already functioning as JAOs in the BSF. Thus Shri R.K. Sood could be placed only below them. The applicants have also referred to the 1984 amendment of the Recruitment Rules, as the amended Rules permit filling up 50% vacancies by promotion. We however, need not be detracted by the amended Rules, as they, as they have not been notified.

By way of relief the applicants have prayed that:-

- a) Promotion of the respondent No.4 from JAO to that of JAD (A) by order dated 21.3.1988 be set aside.
- b) The absorption and appointment of respondent No.5 Shri R.K. Sood as JAD (A) in BSF vide order dated 8.1.1988 be set aside and further that the directions be issued to respondents No. 1&2 to follow the ratio of 50:50 for departmental candidates and direct recruits for appointment to the post of JAD(A) in accordance with 1984 amended rules.

3. The stand of the official respondents in their counter-affidavit is that promotion to the grade of JAD (A) Class II gazetted is regulated in accordance with the provisions contained in the Recruitment Rules Gazetted vide GSR No.1098 dated 5.10.1974 (Annexure R-1). JAD (A) is said to be the selection post according to the rules. They submit that promotion to the post of JAD (A) as per the rules is made by convening a Departmental Promotion Committee (DPC) on the basis of merit-cum-seniority. Shri Chobdar, respondent No.4 was promoted in accordance with the rank assigned to him in the select list. They further submit that even as Junior Accounts Officer, respondent No.4, Shri Chobdar was No.1 on the panel on the basis of selection held on merit-cum-seniority. In that view of

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the matter the applicant should have no grievance against respondent No.4. The next point which has been brought out by the official respondents is that the applicants have no claim to count adhoc service as Auditor for reckoning seniority as the posts of the Auditors were advertised in Early, 1972 for filling up from the open market. The applicants at that time were working as adhoc Auditors nonetheless applied for direct recruitment against the advertisement issued in the Newspapers. A duly constituted special selection board held on 29 & 30th June, 1972 went through the candidature of all the candidates and according to the selection proceedings a copy of which has been filed by the respondents (Annexure R-3). The following were selected for appointment as Auditors in the order of merit:-

1. Shri J.R. Chobdar
2. Smt. V.N. Meenakshi
3. Shri Ravinder Kumar
4. Shri S.P. Bhatia

Having appeared in the selection test for direct recruitment and having been placed below respondent No.4 in the order of merit the applicants now cannot reverse the process and claim seniority over Shri J.R. Chobdar who was No.1 in the Select List in which the applicants were at srl. Nos. 2, 3 & 4. The official respondents, therefore, refute their claim for counting adhoc service as Auditor for the purpose of assigning seniority.

Regarding respondent No.5 Shri R.K. Sood the respondents maintain that he was holding an analogous post of JAO in his parent department and he was selected for appointment to the post of JAD (A) Class II gazetted in the pay scale of Rs.2375-3500. His post had also been redesignated in the parent department as Assistant

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Account Officer (Rs.2000-3200) w.e.f. 1.4.1987.

Accordingly, he fulfilled all the conditions prescribed in the Ministry of Home Affairs' letter dated 7.3.1984 in regard to the pay scale and the nature of duties and responsibilities of an analogous post for taking him on deputation and absorption in B.S.F. The permanent absorption of respondent No.5 was made in public interest. The respondent also maintain that the Recruitment Rules were amended in 1987, incorporating the following provision:-

"Officer holding the post of Section Officer (SAS)/Junior Accounts Officer (SAS) with atleast 5 years service" under the heading 'promotion' in column 11 of the Recruitment Rules."

This provision was incorporated in accordance with Department of Personnel's letter dated 13.10.1987. The respondents Nos. 4&5 each have filed a separate counter. They have taken the preliminary objection to the effect that the Original Application filed by the applicants is time barred under Section 20 and 21 of the Administrative Tribunals Act, 1985. They further submit that respondent No.4 was directly recruited as Auditor on 26.7.1972 though his selection took effect from 1.6.1972 through open competition after the post has been advertised. The applicants had also applied for recruitment through open competition and were considered along with respondent No.4 in the aforesaid selection, but they did not make the grade and they were, however, regularised as Auditors w.e.f. 1.6.1972. The tentative seniority list of the Auditors was circulated vide circular letter dated 1.10.1977. Shri J.R. Chobdar, respondent No.4, in that seniority list figures at srl.

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No.8 while applicant No.1 is at srl. No.10, applicant No.2 at srl. No.9 and applicant No.3 at srl. No.12. As far as respondent No.4 is aware, no objections were filed by the applicants against the seniority so assigned. Thereafter no seniority list was issued on 3.12.1980 (Annexure X3 page 105 of the paper book). In the said list respondent No.4 Shri J.R. Chobdar is at srl. No.6, applicant No.2 at srl. No.7, applicant No.3 at srl. No.8 and applicant No.1 at srl. No.9. Again no objection appears to have been filed by the applicants against the said seniority list. Thereafter the respondent No.4 was promoted as officiating JAO w.e.f. 1.9.1980 (Annexure VII) vide office order dated 30.8.1980. Thereafter respondent No.4 and the applicants were appointed as J.A.O. in substantive capacity vide order dated 8.7.1987 w.e.f. 1.9.1982 in the same order in which they were appointed on officiating basis viz. Shri J.R. Chobdar on 1.9.1982, Smt. V.N. Meenakshi on 1.9.1982, Shri Rabinder Kumar on 1.9.1982 and Shri S.P. Bhatia on 1.9.1982. Thus even when the posts of JAO were filled by the process of selection of seniority-cum-merit basis. Shri J.R. Chobdar, respondent No.4 was placed senior to the applicants.

According to the Recruitment Rules of 1974, 50% of Junior Accounts Officer are required to be filled up by promotion, failing which by transfer on deputation and the remaining 50% of the posts by transfer on deputation or permanent transfer. The promotion is to be made from amongst Auditors with 8 years' service in the grade. In the seniority list of JAOs issued in March, 1983, again respondent No.4 was shown as senior to the applicants, as he figured at srl. No.1 and thereafter he promoted as JAD (A) w.e.f. 21.3.1988 which post too is a selection post wherein 33-1/3% are filled

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by promotion, failing which by transfer on deputation and the remaining 66-2/3% by transfer/ transfer on deputation. The applicants were also considered alongwith respondent No.4 for promotion to the post of JAD (A) on merits. While respondent No.4 was promoted as JAD (A) vide order dated 21.3.1988, one of the applicants Smt. V.N. Meenakashi was later promoted as JAD(A) in September, 1988. The respondents No. 4&5, therefore, submit that the question of seniority cannot be allowed to be agitated at this belated stage, as it is clearly time barred. The applicants having accepted the seniority in 1977, 1980 & 1983, cannot be allowed to question the same. The stand of respondent No.5 is that he was promoted as JAO (Functional Grade) in his parent department in the pay scale of Rs.2000-3200 which post was redesignated w.e.f. 1.4.1987 as Assistant Accounts Officer Group 'B' (gazetted). There is a considerable confusion about the copies of the Recruitment Rules filed by the applicants and respondents. To our relief the respondents Nos. 4&5 have filed a photo copy of the Gazette Notification (Hindi Version) No.1098 of 5.10.1974 with their counter-affidavit and have followed it by furnishing a photo copy of the English Version of the Recruitment Rules. The learned counsel for Respondents 4&5 stressed that the case is clearly time barred and the seniority of respondent No.4 cannot be allowed to be assailed at this belated stage. He further drew our attention to the **State of Gujarat v. C.G. Desai** AIR 1974 SC 246 wherein the Hon'ble Supreme Court had held that it is not permissible to treat the member of the same class differently and to make a distinction in the matter of their promotion by taking into account the pre-selection service of an officer when recruited

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directly. To fortify his case further he also cited **Ashok Gulati v. B.S.Jain AIR 1987 SC 435** where the Hon'ble Supreme Court in paragraph 22 observed as under:-

"22. According to the accepted canons of service jurisprudence, seniority of a person appointed must be reckoned from the date he becomes a member of the service. The date from which seniority is to be reckoned may be laid down by rules or instructions (a) on the basis of the date of appointment (b) on the basis of confirmation (c) on the basis of regularisation of service (d) on the basis of length of service; or (e) on any other reasonable basis. It is well settled that an 'ad hoc' or fortuitous appointment on a temporary or stop-gap basis cannot be taken into account for the purpose of seniority even if the appointee was qualified to hold the post on a regular basis, as such temporary tenure hardly counts for seniority in any system of service jurisprudence....."

4. We have heard Shri R.K. Singh, counsel for the applicant, Shri P.P. Khurana, counsel for respondents Nos. 1-3 and Shri G.D. Gupta, counsel for respondents 4&5. We have considered the submissions made by the learned counsel and perused the record carefully. We are of the view that the applicants and respondent No.4 were appointed as Auditors on the basis of a direct recruitment selection held in response to open advertisement. They were placed in the order of merit by the Selection Board as under:-

1. Shri J.R. Chobdar
2. Smt. V.N. Meenakshi
3. Shri Ravinder Kumar
4. Shri S.P. Bhatia

appointed as Auditors on the basis of a direct recruitment selection held in response to open advertisement. They were placed in the order of merit by the Selection Board as under:-

1. Shri J.R. Chobdar
2. Smt. V.N. Meenakshi
3. Shri Ravinder Kumar
4. Shri S.P. Bhatia

The applicants, therefore, are not entitled to reckon their seniority from the date they were initially appointed as Auditors on adhoc basis. Their seniority shall be reckoned from the date they were placed by the Selection Board. The respondent No.4 right from 1977 has been shown as senior to the applicants vide seniority list of 1977, 1980 and 1983. This O.A. has been filed on 6.4.1988. Obviously, this is a highly belated claim and, therefore, we have no hesitation in rejecting the relief prayed for against respondent No.4 as time barred under Section 20 & 21 of the Administrative Tribunals Act, 1985 and hence is not sustainable in law.

The grievance against respondent No.5 on the other hand is that he was absorbed in B.S.F. even when there was no provision in the Recruitment Rules. We have perused the photo copy of the gazette notification in Hindi and a photo copy of the English version of the Recruitment Rules. Column 11 of the Recruitment Rules relating to the post of J.A.D(A) makes the following provision:-

contd....

Name of Post	Scale of pay	Method of recruitment, whether by direct recruitment or by promotion or by deputation/ transfer and percentage of the vacancies to be filled by various methods.	In case of recruitment by promotion/deputation/transfer, grades from which promotion/ deputation/ transfer to be made.
1	4	10	11
Joint Assistant		33 $\frac{1}{2}$ % by promotion failing which by transfer on deputation; 66 $\frac{2}{3}$ % by transfer on deputation.	Promotion: Superintendent/ Account and (Pension) with five years service in the grade rendered after appointment thereto on a regular basis.
Director (Accounts).	Rs.840-40-1000-EB-40-1200. (Revised) Rs.500-900 (Old scale).		Transfer: Officers holding analogous posts under the Central Government.
			Transfer on Deputation: Officers of the rank of Accounts Audit Officers or Subordinate Accounts Service Accountants with five years as such from any of the organised Accounts Departments such as Indian Audit and Accounts Department. Indian Defence Accounts Department, Indian Railway Accounts Department etc.
			(Period of deputation ordinarily not exceeding three years).

It will be observed from the above that the rules permit the transfer of officers holding analogous post under the Central Government. Respondent No.5 was holding an analogous post as had been brought out earlier and, therefore, his transfer on permanent basis to the cadre of JAD (A) cannot be found fault with.

In view of the above, the application is bereft of merit and is accordingly dismissed. No costs.

Sh. K. Rasgotra
(I.K. RASGOTRA)
MEMBER (A)

Ram Pal Singh
(RAM PAL SINGH)
VICE-CHAIRMAN (J)

Pronounced by me today in the open Court.

Ram Pal Singh
(RAM PAL SINGH)
VICE CHAIRMAN (J)
03-04-1992