

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No.
T.A. No.

777

199 88

DATE OF DECISION

9-8-1991

Shri P.K. Sen PetitionerShri S.C. Gupta. Advocate for the Petitioner(s)

Versus

Union of India RespondentShri P.H. Ramchandani Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. G. Sreedharan Nair, .. Vice-Chairman

The Hon'ble Mr. S. Gurusankaran, .. Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

V ICE-CHA IRMAN.

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH: DELHI 18

O.A. NO. 777 OF 1988

DATE OF DECISION: 9-8-1991.

Shri P.K.Sen and others.

.. Applicants.

Union of India and others.

.. Respondents.

CCRAM:

Hon'ble Mr.G.Sreedharan Nair, .. Vice-Chairman.
Hon'ble Mr.S.Gurusankaran, .. Member (A)

Shri S.C.Gupta, Counsel for the applicant.

Shri P.H.Ramchandani, Counsel for the Respondents.

S.GURUSANKARAN, MEMBER (A):

JUDGMENT

The eight applicants, who were promoted on various dates from 12-2-1973 to 1-1-1981 as Investigators Grade-I in the Ministry of Labour from the post of Investigators Grade-II as departmental candidates, have filed this application seeking the following reliefs:

"~~The applicants pray~~

- (a) That Applicants Nos. 1 to 4 be given seniority from the dates of their initial promotions,
- (b) That Applicants Nos. 5 to 6 be regularised and given seniority from the dates of their initial promotions;
- (c) The applicants Nos. 7 and 8 be regularised and be given seniority w.e.f. 1-1-1981.
- (d) The advertisement issued by respondent-2 for filling up four vacancies of Investigators Grade-I be also quashed."

2. They had also prayed for issue of interim orders for staying the implementation of the advertisement dated 9-4-1988 issued by respondent-2 and thereby restraining the first respondent from recruiting any person on the basis of the said advertisement for the post of Investigator Grade-I in the Ministry of Labour and allowing the petitioners to continue in the said posts on the same terms and conditions. Interim orders were issued on 6-5-1988 to maintain status quo as on that date. Further orders were passed on 30-5-1988 after hearing both the parties stating that no case for

staying the operation of the direct recruitment as interim measure was made out and the applicants should not be reverted till regularly appointed persons are available to fill up the posts. In the orders passed dismissing R.A. No.68 of 1988, it was made clear that if any regular appointment was made against the posts claimed by the applicants, it will be subject to the outcome of the main application and the regular appointee should be informed accordingly.

3. The applicants have stated that according to Rule 4 of the Investigator (Grade-I) Recruitment Rules, 1963 (Annexure-P.II) 50 per cent of the posts are to be filled up by promotion and 50 per cent by direct recruitment. The total number of posts of Investigators are 10, but varies according to exigencies of service. They have pointed out from the ^{provisional} ~~provisional~~ seniority list of Investigator Grade-I published on 1-7-1985 (Annexure-P.III) that after 1965, one person was directly recruited in 1976, one in 1978 and one in 1979. Thus, there was no direct recruitment from 1965 to 1976 and again from 1979 till date. The applicants were promoted from Grade-II to Grade-I on ad hoc basis against the available vacancies as and when they arose from 1973 to 1981. The department issued a provisional seniority list (Annexure-P.III) on 1-7-1985 showing the seniority of Investigators Grade-I borne on the cadre of Ministry of Labour. This list included only the names of applicants 3 and 4. Objections were invited regarding the provisional seniority list by 19-8-1985. The applicants have stated that as they were not aware of all the facts and law, they did not make any representation. Since the seniority list has not been finalised, the applicants sent a representation on 24-6-1987 (Annexure-PI) to the first respondent requesting him to give seniority from the dates of their continuous officiation, as per the decision of the Chandigarh Bench of this Tribunal. Even though, the respondents have implemented the decision of the Chandigarh Bench in the case of Labour Bureau

Investigators, Grade-I of Chandigarh only, though all investigators Grade-I belong to same Labour Ministry, the respondents have not accepted the claim of the applicants evidently since no reply has so far been given to them to their representation dated 24-6-1987 (supra). Aggrieved by this, the applicants have filed this application.

4. The respondents in their reply have stated that prior to the introduction of the Recruitment Rules there was a joint cadre of Ministry of Labour and Labour Bureau for the Investigators Grades-I and II. The joint cadre was subsequently bifurcated with effect from 1-10-1963 into Ministry of Labour Cadre and Labour Bureau cadre. Thus, at present there are three cadres running parallel namely Joint Cadre, Ministry of Labour Cadre and Labour Bureau Cadre. The candidates recruited subsequent to 1-10-1963 are borne either on the Ministry of Labour Cadre or Labour Bureau Cadre. Applicants 1 to 4 were recruited/appointed as Investigators Grade-II prior to 1-10-1963 and are borne on the Joint Cadre whereas applicants 5 to 8 are borne on the cadre of Ministry of Labour because they were recruited/appointed after 1-10-1963. Presently all the 8 applicants are working as Investigators Grade-I in the Ministry of Labour (main Secretariat). The respondents have stated that initially all the applicants were appointed to officiate as Investigators Grade-I on purely ad hoc basis against short term vacancies which arose on account of leave/training/resignation/deputation/etc. They have indicated in Annexure-R1 the details of various orders to show that their appointments were made on ad hoc basis for a period of three months and were extended subsequently as per requirement. They have also stated that the appointment to the post of Investigator Grade-I is to be done by selection as per Recruitment Rules and this procedure was not followed. They have also given the details of the various efforts made for direct recruitment of Investigators Grade-I against 50 per cent of the posts as per the Recruitment Rules. They have

submitted that it is not possible to regularise the departmental promotees working on ad hoc basis against the posts earmarked for direct recruitment as it is against the statutory Rules and is also violative of the provisions of the Recruitment Rules.

5. During the arguments, the learned counsel Sri S.C. Gupta, for the applicants argued that in view of the fact that there was no direct recruitment from 1965 to 1968 and from 1979 till date the quota system has completely failed. Referring to the decision of the Supreme Court in THE DIRECT RECRUIT CLASS-II ENGINEERS OFFICERS' ASSOCIATION AND OTHERS v. STATE OF MAHARASHTRA AND OTHERS [1990(2) SLJ 407] particularly to the propositions laid down in para 44 (A) to (J), he has pointed out that the case of the applicants will be squarely covered by the proposition contained in para 44(B) (supra). He argued that applicants 1 to 4 have already been regularised through a departmental selection and hence they should be given seniority from the date of their initial appointment on ad hoc basis. Regarding the applicants 5 to 8, he contended that since the quota system has failed completely they should be considered for regularisation and on such regularisation given seniority from the date of their initial appointments.

6. The learned senior Standing Counsel for the respondents Sri P.H. Ramchandani, vigorously argued that it is not correct to say that the quota system has completely failed and there were direct recruitments of 5 persons from 1976 to 1979. He also submitted that since the initial appointments of these applicants were purely on ad hoc basis as a stop gap arrangement against available vacancies and not according to Rules proposition 44(A) laid down in the Direct Recruit Class-II Engineers Officers' Association's case (supra) should apply.

7. We have heard both the parties and gone through the records. The submission of the respondents that the appointments

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of the applicants as Investigator Grade-I were purely on ad hoc basis as a stop gap arrangement and not according to the Rules cannot be fully accepted ~~only~~ ^{merely &} on the basis of the information supplied vide Annexure-R1. Since the copies of all the office orders have not been produced before us, we can only conclude that these office orders were issued purely on a routine basis every three months and there is nothing to show that these ad hoc appointments were purely stop gap arrangements against short term vacancies as there has been no break at all for years together. Hence, proposition 44(B) of the Direct Recruit Class-II Engineers Officers' Association's (Supra) case will be ^{more} appropriately applicable to this case. At the same time, we are not able to agree with the contention of the applicants that the quota system has completely failed as there has been direct recruitments between the years 1976 to 1979. The applicants have also failed to represent against the seniority ^{list of 1985} in time and hence any relief asked for by them which would result in upsetting the seniority list published in 1985 may be barred by limitation. The Supreme Court in P.S. SADASIVASAMY v. STATE OF TAMILNADU (AIR 1974 SC 2271) have observed that "it would be a sound and wise exercise of discretion for the court to refuse extraordinary powers under Article 226 in case of persons who do not approach expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward claims and try to unsettle settled matters". We also note that the employees included in the seniority list of 1985 have not been impleaded in this application. In our opinion, they are necessary parties as the seniority of some ~~other~~ ^{of the} direct recruits recruited in 1976, 1978 and 1979 would be upset ^{are} if the reliefs as asked for by the applicants are granted. We, therefore, of the opinion that while applying proposition 44(B) in the Direct Recruit Class-II Engineers Officers' Association's case (supra) the seniority of the persons included in the 1985 seniority list cannot be allowed to be disturbed particularly in view of the fact that there has been direct recruitment upto

the year 1979 and the applicants have all been confirmed very many years later. We have also been informed that even though there was no stay against the recruitment process, no direct recruit has joined so far on the basis of the advertisement dated 9-4-1988. Thus the quota system has completely failed from 1979 to 1991 and hence as and when the direct recruits join, they cannot claim seniority over the promotees, who have been regularised already.

8. In view of the above discussion, the application is partly allowed and we direct respondent-1 -

- (i) to accord seniority to applicants 1 to 4 below Shri O.P.Dahiya recruited directly on 27-12-1979, but with the same date and maintaining ~~their~~ inter-se seniority.
- (ii) to regularise the services of applicants 5 to 8 as per the Recruitment Rules on the basis of the propositions laid down in Direct Recruit Class II Engineers' Association case (supra), and give them seniority, subject to their being successful in the departmental selection, below applicants 1 to 4, but from the same date or the date of their initial ad hoc promotion, whichever is later and maintaining their inter-se seniority.

9. The application is disposed of as above.

Harkaran
9/8/1991
MEMBER (A)

Dr. S. S. 9.8.1991
VICE-CHAIRMAN