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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

O.A. No.975/1988.

Date of decision: February 2, 89

Shri Onkar Chand ... Applicant.

Vs.

Union of India and others ... Respondents.

CORAM:

Hon'ble Mr. Justice Amitav Banerji, Chairman.

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

For the applicant ... 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 applicant Shri Onkar Chand has prayed that his seniority in the cadre of ACIO-II in the Intelligence Bureau (IB) should be fixed after counting his service from 2.1.1978 in that grade and consequently that the applicant 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 originally belonged to Himachal State Police and came on deputation to the Intelligence Bureau, Ministry of Home Affairs, Government of India on 17.3.1970 as Junior Intelligence Officer Grade-I (JIO-I, in short). The applicant continued as such until he was promoted to the next higher rank of Assistant Central

Intelligence Officer Gr.II (ACIO-II, in short) vide order dated 11.10.1977. However, he took over the charge of the same post on 2.1.1978. Another relevant fact was that the applicant was absorbed permanently in the I.B. on 31.12.1977 as JIO-I. This order was, however, passed on 10.12.1980.

The services of the applicant in the grade of ACIO-II were regularised with effect from 1.1.1985 vide order of the same date.

The applicant's grievance is that till the date of making this original application i.e. 25.5.1988, he had not been assigned seniority in the grade of ACIO-II on the plea that his services were regularised on 1.1.1985. He pointed out that he was promoted as ACIO-II on 11.10.1977 and had been working in the same capacity w.e.f. 2.1.1978 even after absorption on 31.12.1977. He alleged that he had been gravely prejudiced and discriminated against as he would only be eligible for promotion to the next post of Assistant Central Intelligence Officer Gr.I (ACIO-I) after completing 5 years in the grade i.e. on or after 2.1.1990. He claimed that on the basis of the continuous length of service, he would be eligible on 2.1.1985 to be considered in the next post as a direct department/promoted ACIO-II on that date.

He further referred to a decision of the

New Bombay Bench of the Central Administrative Tribunal in OA 31/86 decided on 16.12.1986 in the case of LAXMAN NARAYAN NAIK, ACIO-II Vs. DEPUTY DIRECTOR (E), I.B. who was similarly placed. The applicant further stated that he had been making representations to respondent No.2 to fix his seniority in the grade of ACIO-II after the judgment in Laxman Narayan Naik's case (supra) and further made a detailed representation on 5.10.1987 praying for being assigned seniority from 2.1.1978.

He also referred to another decision of the Principal Bench in the case of BALDEV SINGH & OTHERS Vs. U.O.I. & Ors - T-870/85 decided on 13.1.1988 where the Bench chose to follow the ratio in the case of LAXMAN NARAYAN 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 in the I.B. of the applicant. It has, however, been stated that he was subsequently appointed to the next post of ACIO-II (G) w.e.f. 2.1.1978 against the deputation quota. It was alleged that according to the general principles of seniority issued by the Ministry of Home Affairs, the seniority of transferees was determined from the date they were

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appointed on transfer basis in the department. The applicant was, therefore, placed below ~~to~~ all departmental officers promoted earlier than the date of his permanent absorption in the grade of JIO-I but as he was also confirmed from the date of absorption, his seniority was determined in the order of date of confirmation.

The applicant acquired departmental status on his permanent absorption w.e.f. 31.12.1977. He was not reverted to the rank of JIO-I but he was allowed to continue in the post of ACIO-II on which he had been appointed on an ad-hoc basis against the deputation quota. His turn came for promotion as ACIO-II (G) only in 1984 as his junior departmental JIOs (G) were promoted on the basis of 1984 D.P.C. The adhoc and irregular appointment of the applicant against deputation quota was regularised w.e.f. 1.1.1985. In the seniority list of ACIOs-II (Departmental) circulated on 23/24.5.88, his name was at S. No. 1883. In the background of these facts, the claim of the applicant as mentioned in the Original Application was refuted and it was further stated that the judgment in the case of LAXMAN NARAYAN NAIK (supra) and judgment in the case of BALDEV SINGH & ORS. and SHEODAN SINGH were on different footings and have no application to the facts of the present case. In other words, it was urged that the applicant was not entitled to seniority with effect from 2.1.1978 and his application merited to be dismissed.

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A rejoinder had also been filed in the present case where the pleas taken in the counter were squarely denied and the pleas raised in the original application were reiterated. It was also stated that the principles laid down by the various judgments of the Hon'ble Supreme Court and the High Courts that once an officiating appointment is followed by a regular appointment, the whole service is to be counted for seniority. Consequently, even though his service was regularised w.e.f. 1.1.1985, he can rightly claim seniority w.e.f. 2.1.1978. It was reiterated that the cases of LAXMAN NARAYAN NAIK and BALDEV SINGH (supra) were apt and applied to the facts and circumstances of the present case as well.

We have heard Shri S.C. Luthra, counsel for the applicant 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. On the basis of the facts which are not in dispute in this case, the relevant dates may be restated. The applicant comes on deputation to the I.B. on 17.8.1970 as JIO-I and is promoted to the next higher grade of ACIO-II on 11.10.1977 and he takes charge on 2.1.1978. He is permanently absorbed in the I.B. on 31.12.1977 as

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JIO-I and is regularised w.e.f. 1.1.1985. The applicant is not claiming seniority from the date of his service in the I.B. as JIO-I. He is claiming his seniority from 2.1.1978 the date when he took over the charge as ACIO-II. The applicant was absorbed permanently in the I.B. w.e.f. 31.12.1977 as JIO-I. He had, however, been promoted to the next higher grade of ACIO-II vide order dated 11.10.1977 but taken the charge of the post on 2.1.1978. It is thus clear that on being permanently absorbed in the I.B. he had taken charge as ACIO-II on 2.1.1978. That is the relevant date for he has been rendering service as ACIO-II from that date. He is holding that post even today. The relevant case law on the subject has been laid down ^{by the Hon'ble Supreme Court} in the case of NARENDER CHADHA AND OTHERS Vs. UNION OF INDIA AND OTHERS (1). 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 ad-hoc basis, it would be unjust to hold that he has no sort of claim to such post or treated as person not belong^{-ing} to the service at all.

Ans

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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 LAXMAN NARAYAN 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 date is not the date when the applicant was regularised in the I.B. but the date on which he actually took over the post after being absorbed in the I.B. and promoted to the rank of ACIO-II. Consequently, he was in the same cadre as of the direct recruits. The date when his services were regularised i.e. on 1.1.1985 is not the relevant or material date. Further, the earlier period of his service as JIO-I will not be taken


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into consideration for his seniority in the department for it was not in the same cadre as that of direct recruits. We are, therefore, firmly of the view that in the case of the applicant the relevant date for the purpose of calculating his seniority would be w.e.f. 2.1.1978. We would, therefore, direct the respondents to calculate his seniority from the above date. The first prayer is answered accordingly.

In regard to the second relief claimed by the applicant, an objection was taken by Shri P.P.Khurana, ld. counsel for the respondents. We find the prayer to be innocuous. It only says that the applicant be considered as eligible for promotion as and when due. We are not inclined to give direction to the respondents to promote the applicant to the post of ACIO-I from any particular date. If he is eligible for promotion in accordance with the Rules applicable, his case will be considered and appropriate orders passed. With these observations, the second prayer is accordingly answered.

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


(B.C. MATHUR)
VICE-CHAIRMAN.
2.2.1989.


(AMITAV BANERJI)
CHAIRMAN
2.2.1989.