

6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

OA.Nos. 217-A & 494/86

DATE OF DECISION 29.1.87

N.S. Verma & Others (217-A)	} Applicants
J.N. Goel & Others (494)	

Vs.

Union of India & Others .. Respondent

Sh. S. K. Bisaria .. Counsel for Applicants

Sh. B. R. Prashar .. Counsel for Respondent

Sh. Mukul Rohatagi .. Counsel for Respondents
3, 4 & 5 in OA 217-A/86

CORAM:

The Hon'ble Mr. S. P. Mukerji, Administrative Member

The Hon'ble Mr. H. P. Bagchi, Judicial Member

(Judgment delivered by Mr. S.P. Mukerji,
Administrative Member & *Shri H.P. Bagchi*
Judicial Member)

JUDGMENT

Since the cause of action and reliefs sought have a common origin of facts and circumstances, the aforesaid two applications are disposed of by this common order as follows. The applicants in both the applications who are working as Assistant Directors in the Directorate of Education, Delhi have moved the Tribunal under section 19 of the Administrative Tribunals Act, 1985 praying that the respondents the Delhi Administration should be directed to prepare a seniority list of the cadre of Assistant Directors.

...2

and the impugned order dated 1.4.86 promoting

respondents 3, 4 & 5 in the first application (217-A)

may be quashed and petitioners' service as Assistant

Directors should be declared to be regular from the

date of their initial appointment with all consequential

benefits. Petitioners in the second case have also

prayed that further promotion to the grade of Deputy

Director should be stayed till these applications

are disposed of.

2. The brief material facts of the case can be

summarised as follows. The petitioners as also the

respondents 3, 4 & 5 in the first case were Principals

in the Education Directorate of Delhi Administration.

The petitioners were promoted to the next higher grade

of Assistant Director in 1981 through the D.P.C. though

on an ad-hoc basis as the posts to which they were

promoted were in the direct recruitment quota. The

vacancies of Assistant Directors are allocated between

direct recruits and promotees on 50:50 basis.

Respondents 3, 4 & 5 who were junior to the petitioners

could not be promoted in 1981 because of their low

seniority but they got their promotion as Assistant

Directors in 1983 through UPSC on regular basis. The

petitioners' promotion as Assistant Director in the

promotion quota could be regularised only in 1985 when

substantive vacancies in the promotion quota were

available. Since the petitioners were regularised only

in 1985, whereas the respondents 3, 4 & 5 were promoted

on a regular basis in 1983, the petitioners were deemed

to be juniors to the respondents 3, 4 & 5 and these

respondents were promoted to the still higher grade of Deputy Director on an ad hoc basis by the impugned order dated 1.4.86. The contention of the petitioners is that on the basis of various rulings of the Supreme Court culminating in the case of Narender Chadha Vs. Union of India (ATR 1986 SC 49) the petitioners should be deemed to be senior to the respondents by virtue of their continuous officiation from 1981 and since the promotion as Deputy Director is based on seniority subject to fitness they should be promoted as Deputy Directors in place of respondents 3, 4 and 5. The respondents on the other hand have contended that seniority is based on length of regular service and therefore, petitioners cannot claim seniority over the aforesaid three respondents. Further they have argued that since in accordance with the Recruitment Rules for Deputy Director, three years of regular service is essential, the petitioners who had less than two years of regular service as Assistant Director in 1986, were not eligible for being considered for promotion as Deputy Directors. The respondents have admitted in their counter that though respondents 3, 4 and 5 had not completed 3 years of service on the date of their promotion, but these respondents have been promoted strictly in accordance with the Recruitment Rules purely on ad hoc basis and keeping in view the principles of natural justice to ensure that if a junior officer appointed to the post was considered for promotion, all persons senior to him in the grade would be considered. The respondents have stated that respondents 3, 4 and 5 were considered because their juniors were also considered for promotion. The respondents contend that the promotions have been made to provide the Supervisory Staff in the Directorate purely on ad hoc basis.

3. We have heard the arguments of learned counsel for both the parties and gone through the documents carefully. We cannot agree with the argument of the respondents that for the purpose of the seniority the petitioners can count their service as Assistant Directors only from the date they were regularly promoted against substantive vacancies in their quota. The entire spectrum of the cases in which the Supreme Court has considered the vexed question

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9

of determination of inter-se seniority between direct recruits and promotees when quota-rota system fails has been lucidly analysed in the elaborate judgment of Hon'ble Shri K. Madhava Reddy, Chairman Central Administrative Tribunal in K.N. Mishra and Others Vs. Union of India and Others (ATR 1982(2) CAT 270). Analysing case after case in which the Supreme Court has been consistently upholding the concept of length of continuous and regular officiation in the grade as the only equitable criterion in fixing seniority between promotees and direct recruits when quota-rota system has collapsed, Hon'ble Shri Reddy has summed up his findings in the aforesaid case as follows:

"In sum, the benefit of this long period of service would accrue to all promotees, who have continuously officiated against long term vacancies and long term vacancies would be those that "are not for a few days or a few months or are otherwise adventitious". Irrespective of whether the posts were temporary or permanent, so long as the promotion was against long term or substantive vacancies and not against short term or fortuitous vacancies, the period of continuous officiation would have to be reckoned for determining seniority, whether the vacancies occurred due to long term deputation or long leave due to death, retirement, resignation, dismissal or removal, or due to promotion regular, ad-hoc, officiating or otherwise, and whether the deputationists or promotees held a lien or not, the benefit of continuous officiation would accrue to promotees against such vacancies".

In the judgment following observation of the Supreme Court in the case of N.K. Chauhan Vs. State of Gujarat

(AIR 1977 SC 251) were quoted which may be very pertinent to this case;

"Promotees regularly appointed during the period 'A' in excess of their quota, for want of direct recruits (reasonably sought but not secured and because carrying longer would injure the administration) can claim their whole length of service for seniority even against direct recruits who may turn up in succeeding periods ..."

Referring to the case of G.S. Lamba Vs Union of India (1985(I) SLJ 676), Hon'ble Chairman mentioned that

"the Supreme Court dealing with the question whether the appointment of departmental promotees in excess of the quota prescribed by the rules would be illegal or invalid and whether such promotions or the services rendered by them on such "irregular" promotion should be ignored for the purpose of computing seniority, the Supreme Court held such appointments to be valid on the ground that the Rules empowered the Government to relax any provisions of the service rules".

4. We need not elaborate the point further because the learned counsel for respondents during the course of arguments conceded that seniority has to be based on the length of continuous service but only where the quota-rota system has completely failed. The learned counsel averred that in the instant case the quota-rota system cannot be deemed to have collapsed. In order to examine this point we were given the yearwise number of vacancies filled up through direct recruitments and departmental promotions as follows.

Year	No. of Direct Recruits	No. of Departmental promotees.
1967	Nil	1
1968	1	Nil
1969	3	Nil
1970	4	Nil
1973	4	Nil
1974	3	Nil
1978	4	Nil
1979	1	Nil
1980	2	16
1981	Nil	Nil
1982	Nil	Nil
1983	3	Nil
1984	Nil	Nil
1985	Nil	12

The above figures which were supplied by the learned

counsel for petitioners have not been challenged by the

learned counsel for respondents. The figure that emerges

from the aforesaid statement goes to show that in no

year between 1967 and 1985 was the quota system

followed and equal number of vacancies were filled

through direct recruitment and departmental promotions.

If the quota-rota system was not observed in a single

year during 18 years, it cannot be stated that the quota

rota system was not drastically violated and therefore

the ruling of the Supreme Court of reverting to length

of continuous regular offication cannot be invoked.

The Hon'ble Chairman, Central Administrative Tribunal

in K.N. Mishra's case observed as follows.

"We are unable to agree with this contention.

This contention is again an insistence upon

the partial implementation of the quota and

P 8

and rota rule which we have already held, has broken down. No such distinction of partial break down or total break down of quota and rota rule can be drawn. Either it has broken down or it has not. Once we have come to the conclusion that it has broken down, there is no escape from the application of well settled principle of computing the period of continuous officiation for determining the seniority"

5. We have no doubt in our mind that in the instant case, quota ^{Cum} and rota system was honoured more in the breach than in observance and therefore,

the principle of computing the seniority on the basis of length of continuous officiation in accordance with the rulings of the Supreme Court is inexorably compelling.

6. Now let us examine whether the officiation of the petitioners between 1981 and 1985 even though ad-hoc can pass muster for the purposes of seniority.

We have examined the original documents and found that the petitioners were selected as Assistant Directors by the DPC in 1981 which was chaired by the Chief Secretary and attended by the Education Secretary and Secretary Services. This is in accordance with the amended Recruitment Rules as the Chairman/Member of the UPSC was excluded from the D.P.C. by the amendment of 28th September, 1979. The amendment was done at the instance of UPSC which found that since the promotion from the post of Principal to that of Assistant Director was based on seniority subject to rejection of the unfit,

13

and the element of selection was marginal, there was no reason for the association of Commission with the DPC. It is also admitted that the petitioners did not even revert to the post of Assistant Directors after their initial appointment in 1981 till they were regularised by NPC in 1985 which was also ^{as per amended rules} without any association with the UPSC. It is also admitted that they were appointed ^{on} ad-hoc basis only because they were holding posts in excess of promotion quota and there was some cases pending in the Courts. Therefore, we are fully satisfied that there was ^{a nothing} no irregular or fortuitous in the promotion of the petitioners as Assistant Directors in 1981. It has already been held by the Supreme Court in Narender Chadha & Others Vs. Union of India and Others (AIR 1986 SC 49) that ^{where} a violent departure is 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 then placing such ad-hoc promotees in seniority at a place lower than the place held by the direct recruits recruited after they had been promoted on ad-hoc basis would violate Articles 14 and 16 of the Constitution.

7. Accordingly we have no hesitation in ~~finding~~ holding that the petitioners should compute ^{their} ~~the~~ continuous officiation as Assistant Directors since 1981 for the purposes of seniority. The petitioners have been doubly victimised by the exclusion of their officiating service as Assistant Directors prior to 1985 not only in the matter of seniority but also in reckoning the period of three years of qualifying service for being eligible to be considered for promotion as Deputy Directors.

14
10

In the facts and circumstances indicated above, we have no hesitation in finding that since the petitioners had been selected as Assistant Directors by regular DPC and satisfactorily discharged the duties as Assistant Directors continuously for the period between 1981 and 1985 and their appointment on ad hoc basis was for circumstances not related to their merit and performance, their entire service as Assistant Directors from their initial appointment to the grade should count for seniority as also for computation of qualifying service for being eligible to be considered for promotion as Deputy Director.

7. In the facts and circumstances discussed above, we hold that since the seniority of the petitioners have not been properly fixed, the impugned order dated 1.4.86 is bad in law which is hereby quashed. With these remarks, we allow these two applications with the following directions:-

- a) The respondents should immediately draw up a seniority list of Assistant Directors/Education Officers strictly on the basis of the rulings of the Supreme Court as discussed above and on the basis of length of officiation as Assistant Directors or equivalent posts during the period when quota-cum-rota system was not followed;
- b) The period of officiation of the petitioners as Assistant Directors should be taken into account as qualifying service for being considered for the purpose of promotion as Deputy Directors;
- c) The seniority list of Assistant Directors should be finalised after inviting objections, if any, from the concerned officers on a tentative list, within a period of three months;

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- d) A regularly constituted DPC should be arranged for regular promotion as Deputy Directors and promotions be made on a regular basis within a period of two months after the seniority list is finalised;
- e) As agreed to during the course of arguments by the learned counsel for respondents 3,4 and 5, in the event of their reversion, these respondents should be given an opportunity to opt, if they so like, to go back as Principals in order to avail of the benefit of higher age of retirement; and
- f) The respondents 1,2 & 3 in OA 217-A will be at liberty to consider the petitioners and others who are senior to respondents 3,4 & 5 on the basis of their length of service, for promotion on an ad hoc basis as Deputy Directors during the interim period in the exigencies of public service. The interim stay order issued in OA 494 stands vacated.

The aforesaid two applications are disposed of on the above lines. There will be no order as to costs.

Sd/-
(H.P. BAGCHI)
JUDICIAL MEMBER

Sd/-
(S.P. MUKERJI)
ADMINISTRATIVE MEMBER