

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 567 of 1986  
~~XXXXXX~~

DATE OF DECISION 11.9.87

Sh. Ashok Kumar and others Petitioners/Applicants

Sh. Vijay Mehta Advocate for the Petitioner(s)

Versus

Union of India and others Respondents

Shri M. L. Verma Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S. P. MUKERJI, ADMINISTRATIVE MEMBER

The Hon'ble Mr. CH. RAMAKRISHNA RAO, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*

  
(CH. RAMAKRISHNA RAO)

  
(S. P. MUKERJI)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A.NO.567/86

DATE OF DECISION : 11.9.87

Sh.Ashok Kumar and Others . . . Applicants

Vs

Union of India and Others . . . Respondents

Shri Vijay Mehta . . . Counsel for Applicants

Shri M.L.Verma . . . Counsel for Respondents

CORAM

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

The Hon'ble Sh. Ch. Ramakrishna Rao, Judicial Member

(Judgment of the Bench delivered by Hon'ble  
Sh.S.P. Mukerji, Administrative Member)

JUDGMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985 the applicants who were recruited through the UPSC as Assistant Directors in the Department of Statistics have challenged the ad-hoc promotion of respondent no.3 as Deputy Director overlooking their claims by virtue of their alleged seniority.

2. The <sup>main</sup>~~order~~ admitted facts of the case can be summarised as follows. The Department of Statistics placed a requisition with the UPSC (Respondent No.2) on 12.6.80 for direct recruitment against 4 vacancies of Asstt. Directors in the

Computer Centre. Three of these vacancies were for general candidates and 1 vacancy was reserved for Scheduled Tribe and not to be treated as un-reserved. The Commission advertised these vacancies on 19.7.1980. On 27.6.80 the Deptt. requested the Commission to enhance the number of vacancies (from 4) to 6 of which one was reserved for Scheduled Tribe and 1 for Scheduled Caste. On 8.8.1980 the Respondent No.2 replied that it would be possible to recruit 1 more general candidate through the selection on hand for the 4 ~~general~~ vacancies advertised earlier but that for the vacancy to be reserved for the Scheduled Caste a separate requisition has to be sent. Accordingly the Deptt. of Statistics sent another requisition on 11.9.1980 for filling up 1 vacancy of Assistant Director reserved for Scheduled Caste, not to be treated as un-reserved. The Commission notified this vacancy on 25.10.80.

3. For the 4 general and one Scheduled Tribe (ST) vacancies advertised on 19.7.1980, 122 applications were received of which 63 applicants were called for written test on 2.2.81 and were interviewed between 3rd and 6th February, 1981. No ST candidate could be recommended and 4 general candidates were recommended by the UPSC in their letter dated 26.2.81. Amongst the four, applicants were graded as no.2 and 4. <sup>The</sup> first candidate expired and the third left the Department subsequently.

12

4. For the single Scheduled Caste(SC) vacancies advertised on 25.10.1980 32 applications were received and without holding any written test 9 were called for interview on 7.2.81. Respondent no.3 Sh. S. A. Kamble was the only candidate who was recommended by the UPSC in their letter dated 23.2.1981.

5. The contention of the applicants is that since they were selected by a Selection Committee by written test and an interview which was over on 6.2.1981 whereas the respondent no.3 was interviewed on 7.2.81, because of their earlier selection they should have been placed in the grade of Assistant Directors as senior to respondent no.3. They further claim that because of their seniority they should have been promoted as Deputy Directors in preference to respondent no.3 who was so promoted on 10.7.84 whereas the 2 applicants are still stagnating as Assistant Directors.

6. According to respondents, in accordance with the Ministry of Home Affairs' O.M. of 22nd December, 1959 the inter-se seniority amongst the direct recruits is determined by the order of merit and persons appointed as a result of earlier selection are senior to those appointed by a subsequent selection. The matter was referred to the UPSC who indicated that since the applicants were recommended along with

23

2 other candidates through UPSC's letter dated 26.2.1981 and respondent no.3 Shri Kamble was recommended by the Commission through their letter of 23rd February, 1981, the latter should be ranked senior to the applicants.

7. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. We also went through the relevant files of UPSC regarding the Selection of 4 general candidates and the Scheduled Caste candidate. It will be useful to keep the following chronology in view.

Sl. No.	Event	Date for two Applicants	Date for Respondent No.3
1	Completion of Interview	6.2.81	7.2.81
2	Selection Voted by Members/Chairman, UPSC	16.2.81	16.2.81
3	Fair letter approved by UPSC on	25.2.81	19.2.81
4	Fair letter issued by UPSC on	26.2.81	23.2.81
5	Fair letter received by respondents on	28.2.81	28.2.81

From the above it will be clear <sup>that</sup> even though the interview of the applicants was completed on a <sup>than</sup> date earlier <sup>and</sup> that of the respondent no.3, the Members or the Chairman approved the Selection on the same date i.e. 16.2.81, the formal letters indicating UPSC's recommendations were approved and issued earlier in case of respondent no.3 and later on both these counts for the two applicants. The relevant provisions for determination of inter-se seniority as given in the Annexure 2 to the Ministry of Home Affairs' O.M. No.9/11/55-RPS dated 22nd December, 1959 reads as follows:

14  
"4. Direct Recruits:

Notwithstanding the provisions of para 3 above, the relative seniority of all direct recruits shall be determined by the order of merit in which they are selected for such appointment, on the recommendations of the UPSC or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection: provided that where persons recruited initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment, seniority shall follow the order of confirmation and not the original order of merit." (Emphasis supplied)

The determining factor in the present case is the points of time at which the applicants and respondent no.3 can be deemed to have been selected. The aforesaid provision clearly states that the seniority is based on the order "in which they are selected for such appointment, on the recommendations of the U.P.S.C. or other selecting authority. . .". These words make it clear that selection for an appointment is complete only on the recommendations of the UPSC. This means that the selection can be co-terminus or subsequent to the recommendations of the UPSC but in no case can it be anterior to the UPSC's recommendations. In other words, even if the interview board or selection committee had given their decisions, unless the imprimatur of the UPSC is available the selection would be incomplete. In the instant case as the records of the UPSC showed the two Members of the UPSC approved the selection of the four general candidates including the two applicants on 16.2.81 while the Chairman UPSC gave his approval on behalf of the Commission

15

to the selection of respondent no.3 on 16.2.81. However, since the formal letter in the case of general candidates was approved on 25.2.1981 and issued on 26.2.81 while formal letter in case of respondent no.3 was approved on 19.2.1981 and issued on 23.2.81, there is no doubt in our mind that the recommendations of the UPSC were formalised and despatched earlier in case of respondent no.3 than in case of the applicants. In other words, the process of 'selection for appointment on the recommendations of the UPSC' <sup>both</sup> culminated in the form of a formal letter and also emanated from the office of the UPSC earlier in case of respondent no.3 than in case of the two applicants.

Accordingly, the selection of respondent no.3 on the recommendations of the UPSC has been earlier than that of the applicants. Respondent no.3 has been correctly adjudged to be senior to the applicants who cannot challenge his ad-hoc promotion as Dy. Director on the ground of seniority. The application has, thus, no force and is rejected. There will be no order as to costs.

  
(CH. RAMAKRISHNA RAO)  
JUDICIAL MEMBER

  
(S. P. MUKERJI)  
ADMINISTRATIVE MEMBER