

(9)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 984/ 1986.
T.A. No.

DATE OF DECISION August 10, 1988.

Shri Dina Nath & others Petitioners

Ms. C.K. Sucharita Advocate for the Petitioner(s)

Versus

Union of India & others Respondent

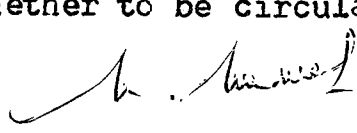
Shri P.H. Ramchandani Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, Member (A).

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*
4. Whether to be circulated to other Benches ? *No*


(KAUSHAL KUMAR)
MEMBER (A)


(K. MADHAVA REDDY)
CHAIRMAN.

10.8.1988.

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

REGN.NO. CA 984/1986

Date of decision: 10.8.1988

Shri Dina Nath & others Applicants

Vs.

Union of India & others Respondents

CORAM: Hon'ble Mr. Justice K. Madhava Reddy, Chairman
Hon'ble Mr. Kaushal Kumar, Member.

For the Applicants Ms. C. K. Sucharita,
Counsel.

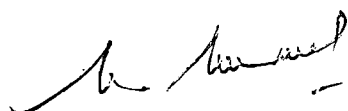
For the Respondents Shri P. H. Ramchandani,
Senior Counsel.

(Judgement of the Bench delivered by
Hon'ble Mr. Kaushal Kumar, Member)

JUDGEMENT

The applicants herein, who were officiating as Junior Investigators in the Central Statistical Organisation under the Department of Statistics, Government of India, were promoted on an ad-hoc basis as Senior Investigators in the same Organisation on various dates between 1971 and 1973 and have been continuously officiating as Senior Investigators since then. In this application filed under Section 19 of the Administrative Tribunals Act, 1985, they have prayed for directions to the respondents to treat them as regular appointees in the grade of Senior Investigator from the dates of their appointment, to assign them seniority in the said grade from the dates of their ad-hoc promotion and other consequential benefits.

2. After the main application had been filed, another application for being impleaded as 'interveners'



was moved on behalf of 5 other Senior Investigators also claiming the same reliefs as the original applicants namely, regularisation and seniority with effect from the dates of their initial ad-hoc promotion as Senior Investigator. Actually as they seek the same relief as the applicants, they must seek permission to join as applicants and not as interveners. This Misc. Application is not opposed. It is, therefore, treated as an application to be impleaded as applicants and is allowed. But for convenience they are hereinafter referred to as 'Interveners'.

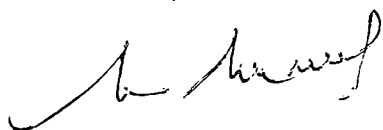
3. For a proper appreciation of the various contentions raised from both sides, a few salient facts may be noticed. The names of the original applicants and the dates on which they were promoted on an ad-hoc basis are as follows:-

<u>S.No.</u>	<u>NAME</u>	<u>Date of Ad-hoc appointment.</u>
1.	Dina Nath	1.7.1971
2.	T.C.Sharma	1.7.1971.
3.	Bodh Raj	1.7.1971
4.	Jagdish Chandar	27.7.1971
5.	Girish Chandra	23.11.1972
6.	Puren Chand	9.7.1973
7.	Smt.Sneh Gupta	9.7.1973.

The names of the interveners who were impleaded and the dates of their ad-hoc promotion are indicated below:

<u>S.No.</u>	<u>NAME</u>	<u>Date of Ad-hoc appointment</u>
1.	Naresh Kumar	25.4.1972
2.	V.K.Gupta	1.7.1971
3.	Jaipal Singh	7.5.1971
4.	S.C.Mehandiratta	1.7.1971
5.	J.S.Dahiya	19.9.1971

A Departmental Promotion Committee met in 1979 and



on its recommendations, all the five interveners were appointed as regular Senior Investigators from the dates of their initial ad-hoc promotion, vide Office Order dated 21st May, 1979 (Annexure 'D' to the application).

Another D.P.C. met on 15.11.1983 and on its recommendations, all the seven applicants were appointed as regular Senior Investigators with effect from 15.11.1983, namely, the date on which the D.P.C. met, vide Office Order dated 22.12.1983.

4. A Review D.P.C. was held on 7th May, 1987 and on its recommendations, in supersession of the Office Order dated 21.5.1979, the interveners at Sl.No.1 (Naresh Kumar), Sl.No.3 (Jaipal Singh), Sl.No.4 (S.C.Mehndiratta) and Sl.No.5 (J.S.Dahiya) were regularised as Senior Investigators from 3rd May, 1979, namely, the date of the meeting of the D.P.C. in 1979 vide Office Order dated 8th May, 1987. By the same Office Order, the applicant at Sl.No.1 (Dina Nath) was also regularised as Senior Investigator with effect from 3.5.1979. However, the name of the Intervener at Sl.No.2 (V.K.Gupta) who was earlier regularised from the date of his initial ad-hoc promotion vide Office Order dated 21.5.1979 was dropped on the recommendation of the Review D.P.C. held in 1987. The applicants at Sl.No.2 (T.C.Sharma), Sl.No.3 (Bodh Raj) and Sl.No.5 (Girish Chandra) were also regularised on the recommendations of the Review D.P.C. held in 1987 with effect from 15.11.1983, vide Office Order dated 15th May, 1987. However, applicants at Sl.No.4 (Jagdish Chander), Sl.No.6 (Puran Chand) and Sl.No.7 (Mrs. Sneh Gupta) who were regularised earlier in 1983 were dropped on the recommendations of the Review D.P.C. held in 1987.

5. The case of the applicants as also the interveners is that long years of ad-hoc officiation in a higher post



followed by regularisation entitles them to the seniority and regularisation from the dates of their initial promotion. It is further contended that the respondents have failed to hold meetings of the D.P.C. at regular annual intervals and the vacancies were filled by ad-hoc promotion. It is further argued that there had been complete break-down of the quota rule since there was no direct recruitment in the years 1971, 1973, 1974 and from the year 1976 to 1981. The intake of direct recruits was 16 in 1972 and 20 in 1975. While during the course of 11 years from 1971 to 1981, the extent of direct recruitment was 36 there were as many as 69 promotions made during the same period. Since there was a complete break-down of the quota rule, the applicants were entitled to seniority on the basis of continuous officiation.

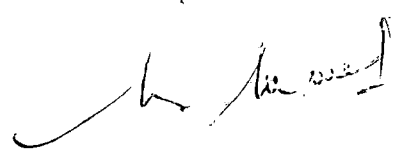
6. The case of the respondents is that the post of Senior Investigator was a 'Selection' post whereas the D.P.C. which met in 1979 wrongly adopted the method of 'Non-Selection' i.e., seniority-cum-fitness. Again the D.P.C. which met in 1983 also adopted the same method and, therefore, the recommendations were vitiated. Further whereas the Government instructions envisaged that regularisation should be made only from the date of the meeting of the D.P.C., it was through sheer mistake that the D.P.C. of 1979 recommended regularisation from the dates of initial ad-hoc promotion.

7. The recruitment to the post of Senior Investigator was originally governed by the General Central Service (Class II and Class III Posts in the Central Statistical Organisation) Recruitment Rules, 1960. According to these rules, recruitment to the post of Senior Investigator was to be made 75% by direct recruitment and 25% by departmental promotion. It was also categorised as



'Selection' post. These rules were subsequently amended vide Notification dated 16.2.1976 and the earlier rules were superseded by the Central Statistical Organisation, Department of Statistics (Senior Investigator) Recruitment Rules, 1976. According to these rules, the recruitment to the posts of Senior Investigator was to be made 50% by direct recruitment and 50% by promotion, failing which by direct recruitment. The post was again categorised as 'Selection' post. Rule 5 of the 1976 Rules also vested the Central Government with the power of relaxation. All the three D.P.Cs in 1979, 1983 and 1987 were held after the new Rules of 1976 had come into force. It is also clear that the post was a 'Selection' post and if the method of assessment was based on treating the post as 'Non-Selection', the D.P.Cs of 1979 and 1983 did not act in accordance with the recruitment rules. Be that as it may, two features clearly emerge, namely, that all the applicants and the interveners have been continuously officiating without any break from 1971-1973 i.e., for a period of nearly 15 years and secondly that while in some cases the promotion has been regularised by the Review D.P.C. in a few other cases there has been no regularisation. However, even in those cases where the Review D.P.C. has not regularised the promotion, it is not disputed that the concerned applicants or the interveners were regularised by the earlier D.P.C. even though the assessment might be based on a wrong criterion of 'Seniority-cum-fitness' i.e., 'Non-Selection' instead of 'Seniority-cum-merit' i.e., 'Selection'.

8. There is no difficulty in holding that for one reason or the other, there was a break-down of the quota rule and appointments to the posts of Senior Investigator were not made in the ratio of 1:1 by direct recruitment and promotion.



9. Ms.C.K.Sucharita, learned counsel, appearing for the applicants and Shri K.K.Rai, learned counsel for the interveners, argued that on grounds of equity and because of lapse of time, the promotions made in 1971-73 had become final and could not be reviewed after a lapse of more than 10-11 years. In cases where ad-hoc promotion was followed by regularisation or even where long years of continuous officiation/ was not followed by regularisation, but there was a power vested in the Government for relaxation, the concerned officials were entitled to regularisation and seniority from the date of initial ad-hoc promotion. Shri Rai was at pains to emphasise that inasmuch as the applicants had in fact been regularised by a duly constituted D.P.C. from the date of their initial promotion, the present case attracts the doctrine of promissory estoppel and the respondents could not at this stage back out or resile from the said position. Learned counsel for the respondents Shri P.H.Ranchandani argued that the applicants or the interveners could not take benefit from an inadvertent error in the method of selection by the DPC or claim seniority contrary to the instructions issued by the Government.

10. Shri Rai relied on the following observations of the Supreme Court in M.P.Sugar Mills V. State of U.P. (AIR 1979 S.C. 621):

".... It would, therefore, be correct to say that in order to invoke the doctrine of promissory estoppel it is enough to show that the promisee has, acting in reliance on the promise, altered his position and it is not necessary for him to further show that he has acted to his detriment. Here, the appellant clearly altered its position by borrowing moneys from various financial institutions, purchasing plant and machinery from M/s.De Smet (India) Pvt. Ltd. Bombay and setting up a vanaspati plant, in the

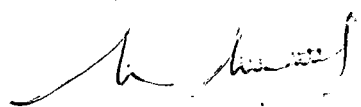
h. [Signature]

belief induced by the representation of the Government that sales tax exemption would be granted for a period of three years from the date of commencement of the production. The Government was, therefore, bound on the principle of promissory estoppel to make good the representation made by it..... "

11. In Union of India and others v. Godfrey Philips India Ltd. (AIR 1986 S.C.806), the Supreme Court referred to the earlier decisions on the applicability of the doctrine of promissory estoppel and observed as follows:

"14. Of course we must make it clear, and that is also laid down in Motilal Sugar Mills case (AIR 1978 SC 621) (supra), that there can be no promissory estoppel against the legislature in the exercise of its legislative functions nor can the Government or public authority be debarred by promissory estoppel from enforcing a statutory prohibition. It is equally true that promissory estoppel cannot be used to compel the Government or public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make. We may also point out that the doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires, if it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be inequitable to hold the Government or public authority to the promise or representation made by it, the court would not raise an equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public authority. The doctrine of promissory estoppel would be displaced in such a case, because on the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it....."

12. In the light of the facts of the present case when the rules framed under the proviso to Article 309



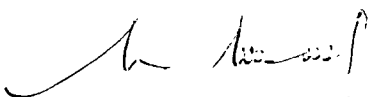
of the Constitution clearly provided that the post was a 'Selection' post and the DPC adopted a wrong criterion, it cannot be held that the doctrine of promissory estoppel is attracted. As held by the Supreme Court, there cannot be a promissory estoppel against a statute and the applicants or interveners cannot derive benefit of a representation or promise held out on wrong application of a statutory rule.

13. In G.P. Doval and others v. Chief Secretary, Government of U.P. (1984 (4) S.C. Cases 329), the Supreme Court observed as under:-

".....If the first appointment is made by not following the prescribed procedure but later on the appointee is approved making his appointment regular, it is obvious commonsense that in the absence of a contrary rule, the approval which means confirmation by the authority which had the authority, power and jurisdiction to make appointment or recommend for appointment, will relate back to the date on which first appointment is made and the entire service will have to be computed in reckoning the seniority according to the length of continuous officiation..... "

The Supreme Court further observed:-

"..... In fact a fair rule of seniority should ordinarily take into account the past service if the stopgap arrangement is followed by confirmation. This view which we are taking is borne out by the decision of this Court in Baleshwar Dass v. State of U.P. wherein this Court observed that the principle which has received the sanction of this Court's pronouncement is that "officiating service in a post for all practical purposes of seniority is as good as service on a regular basis. It may be permissible, within limits for Government to ignore officiating service and count



only regular service when claims of seniority come before it, provided the rules in that regard are clear and categorical and do not admit of any ambiguity and cruelly arbitrary cut-off of long years of service does not take place or there is functionally and qualitatively, substantial difference in the service rendered in the two types of posts." It was said that service rules will have to be reasonable, fair and not grossly unjust if they are to survive the test of Articles 14 and 16. It is thus well-settled that where officiating appointment is followed by confirmation unless a contrary rule is shown, the service rendered as officiating appointment cannot be ignored for reckoning length of continuous officiation for determining the place in the seniority list."

14. In Baleshwar Dass and others v. State of U.P. and others (AIR 1981 S.C. 41), the Supreme Court had occasion to consider what a substantive appointment is and observed as follows:-

"..... Substantive capacity refers to the capacity in which a person holds the post and not necessarily to the nature or character of the post. To approximate to the official diction used in this connection, we may well say that a person is said to hold a post in a substantive capacity when he holds it for an indefinite period especially of long duration in contradistinction to a person who holds it for a definite or temporary period or holds it on probation subject to confirmation."

15. The cases of the applicants and the interveners whose ad-hoc promotions were regularised by the Review D.P.C. which met in 1987 are fully covered by the decisions of the Supreme Court in the cases of G.P. Doval and others v. Chief Secretary, Government of U.P. and Baleshwar Dass



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and others v. State of U.P. and others and they are entitled to regularisation and seniority with effect from the date of their initial ad-hoc promotion. As regards the intervener at Sl.No.2 (V.K.Gupta) and the applicants at Sl.No.4 (Jagdish Chander), Sl.No.6 (Puran Chand) and Sl.No.7 (Mrs. Sneh Gupta) who had been earlier regularised by the DPCs which met in 1979 and 1983 and whose names were dropped by the Review DPC which met in 1987, they have been holding continuously the posts of Senior Investigator for nearly 15 years. There was also a provision in the recruitment rules of 1976 conferring on the Central Government the power of relaxation of the rules.

16. In Narender Chadha v. Union of India (AIR 1986 S.C.638), the Supreme Court observed as follows:-

" But in a case of the kind before us where persons have been allowed to function in higher posts for 15 to 20 years with due deliberation it would be certainly unjust to hold that they have no sort of claim to such posts and could be reverted unceremoniously or treated as persons not belonging to the Service at all, particularly where the Government is endowed with the power to relax the Rules to avoid unjust results.....

" As observed in D.R. Nim v. Union of India (1967) 2 SCR 325: (AIR 1967 SC 1301) when an officer has worked for a long period as in this case for nearly fifteen to twenty years in a post and had never been reverted it cannot be held that the officer's continuous officiation was a mere temporary or local or stop gap arrangement even though the order of appointment may state so. In such circumstances the entire period of officiation has to be counted for seniority. Any other view would be arbitrary and violative

h. Shrivastava

of Arts. 14 and 16(1) of the Constitution because the temporary service in the post in question is not for a short period intended to meet some emergent or unforeseen circumstances....."

Thus even in those cases where the concerned persons were not regularised by the Review D.P.C. of 1987, they are entitled to regularisation and seniority from the dates of their initial ad-hoc promotion.

17. In the result, the application is allowed with the direction that all the applicants and the interveners shall be regularised as Senior Investigators from the dates of their initial ad-hoc promotion and they shall be entitled to seniority and other consequential benefits accordingly. This order shall be complied with within a period of 3 months from the date of its receipt by the Respondents.

18. There shall be no order as to costs.


(KAUSHAL KUMAR)
MEMBER


(K. MADHAVA REDDY)
CHAIRMAN

10.8.1988