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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 101/86. 198
T.A. No.

DATE OF DECISION 29.7.1987

Shri Vijay Krishan Sharma

Petitioner Applicant

In person

Advocate for the Petitioner(s)

Versus

Union of India & Anr.

Respondent

Shri K.C. Mittal

Advocate for the Respondent(s)

Shri J.S. Bali

CORAM :

The Hon'ble Mr. Justice J.D. Jain, Vice-Chairman

The Hon'ble Mr. Birbal Nath, Administrative Member.

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

29/7/87
(BIRBAL NATH)
Member (A)
29.7.1987

J. D. Jain
(J.D. JAIN)
VICE CHAIRMAN
29.7.1987

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI.

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DATE OF DECISION: 29.7.1987

REGN. NO.. O.A. 101/86.

Shri Vijay Krishan Sharma

... Applicant

Vs.

Union of India & Anr.

... Respondents.

CORAM: Hon'ble Mr. Justice J.D. Jain, Vice-Chairman.

Hon'ble Mr. Birbal Nath, Administrative Member.

For the applicant:

Applicant in person.

For the respondents:

(Hon'ble Mr. Birbal Nath, AM delivered the following

JUDGMENT

This is application No. 101/1986 filed on 17th February, 1986 under Section 19 of the Administrative Tribunals Act, 1985.

The applicant, Shri Vijay Krishan Sharma, moved Misc. petition

No. 236/86 on 31st March, 1986 seeking to implead 11 more

respondents in addition to the official respondent Union of India

through the Secretary, Department of Agriculture & Cooperation.

On this Misc. petition, notice was issued to the respondents on 12th

May, 1986. Though there was no formal order passed on this Misc.

petition, some of the private respondents have filed replies in

respect of their promotion and seniority which will be taken

cognizance of during the discussion of the contentions raised.

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The applicant, who is working as Senior Technical Assistant (Entomology) (hereinafter referred to as 'STA(E)'), Directorate of Plant Protection, Faridabad, has challenged the ad-hoc promotions of respondents 3 to 7, S/Shri A.C. Mathur, M.L. Taneja, R.S. Tripathy, S. Padmanabhan and Amarpal Singh, ignoring the applicant, placement of respondents 5 (Sh. R.S. Tripathy), 7 (Sh. Amarpal Singh), 9 (Sh. Jagpal Singh), 11 (Sh. A.K. Banerjee) and 12 (Smt. C. Meenakshikutty) in the seniority list of STA(E) above the applicant, placements of respondents 3 to 13 above the applicant in the combined eligibility list of Senior Technical Assistants/Locust Technical Officer/Technical Assistant (Selection Grade).

2. The essential facts leading to the application may be noted to appreciate the contentions raised. The applicant joined as STA(E) after selection through the Union Public Service Commission. He joined on 28th July, 1979 though he was selected by the UPSC on November 30, 1978. He is thus a direct recruit. The post of STA(E) is a non-gazetted post under General Central Service Class II in the grade of Rs. 325-15-475-EB-20-575 and the Recruitment Rules for this post were notified vide Department of Agriculture and Co-operation Notification No. 2-16/71-PPS dated 24.4.1973. 50 per cent of the posts are to be filled-in by promotion and 50 per cent by direct recruitment. The essential qualifications for this post are as follows:-

- i) M.Sc. degree in Agricultural Zoology or Zoology of a recognised University or equivalent.
- ii) About 1 year's experience in the pest control and grain entomology
or
- i) B.Sc. degree in Zoology or Biology with Zoology as a main subject from a recognised University or equivalent.
- ii) About 3 years' experience in the pest control and grain entomology.

In terms of the above Recruitment Rules, a roster for rotation of the posts between the promotees and direct recruits is maintained

in accordance with principle 6 of the General Principles for Determination of Seniority in the Central Services as contained in Hand Book on Recruitment Rules (Supplement) issued by the Department of Personnel & Training 1985. The said principle reads as follows:-

"6. Relative seniority of Direct Recruits and Promotees.

The relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules."

The Government filled in the vacancies meant for direct recruit quota but the vacancies meant for promotion were not filled in simultaneously on regular basis. The Departmental Promotion Committee did not meet during the period 1970 to 1981 though the instructions of the Department of Personnel are that such a D.P.C. must meet at least annually. The vacancies in the promotion quota for this post were filled in on ad-hoc basis starting from 1971 to 1979. Based on the roster system, a combined eligibility list of Senior Technical Assistant (Herbicides), Senior Technical Assistant (Plant Pathology), Senior Technical Assistant (Entomology), Locust Technical Officer and Technical Assistant (Selection Grade) as on 1.12.1984 was issued in which the period of the applicant and respondents 3 to 13 is shown as follow

(Annexure 3): The particulars of the concerned respondents only and the applicant are given below:

S.No.	Name of Officer	Date of regular appointment in the grade.	Post held substantively/QP.	Mode of Rectt.	Remarks.
3.	Shri A.C. Mathur, TA(SG)	24.9.81	PQI 14.8.67	Promotion	R-3.
5.	Smt. C.Meenakshikutty, STA (E)	24.9.81	PQI 8.8.75	Promotion	R-12.
6.	Shri M.L. Taneja, LTD	22.3.82	PQI 8.8.75	Promotion	R-4.

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7. Shri R.S. Tripathy, STA(E)	24.9.81	<u>PQI</u> 30.3.84	Promotion	R-5.
8. Shri D.V.N. Babu, STA(PP)	1.7.83	-	Promotion	R-13.
9. Shri A.K. Saxena, STA(PP)	24.9.83	<u>QP/TA</u> 10.1.75	Promotion	R-10-
10. Shri S. Padmanabhan	15.6.84	<u>PQI</u> 30.3.84	Promotion	R-6.
12. Shri Amarpal Singh	13.2.84	<u>PQI</u> 30.3.84	Promotion	R-7.
13. Shri Dharam Pal Singh	13.2.84	<u>TA</u> 30.3.84	Promotion	R-8.
15. Shri Jagpal Singh	13.2.84	<u>TA</u> 30.3.84	Promotion	R-9
17. Shri A.K. Banerjee	13.2.84	<u>PQ I</u> 30.3.84	Promotion	R-11
18. Shri V.K. Sharma	19.7.79	<u>FI</u> 1.3.80	Direct"	Applicant.

In terms of the above eligibility, the seniority list in respect of 5 respondents and the applicant as it existed on 1.9.1984 was issued as follows: (Annexure 2)

"S.No.	Name of officer	Date of entry in Govt. service	Date of regular appt. in the grade.	Post held substa-ntively/ QP	Mode of Rectt.
4.	Smt. Meenakshikutty	9.8.65	24.9.81	<u>PQI</u> 8.8.75	Promotion
6.	Sh. R.S. Tripathi	15.7.66	24.9.81	<u>PQI</u> 30.3.84	Promotion
8.	Shri A.P. Singh	27.9.67	13.2.84	<u>PQI</u> 30.3.84	Promotion
10.	Sh. D.P. Singh	13.12.67	13.2.84	<u>TA</u> 30.3.84	Promotion.
12.	Sh. Jagpal Singh	10.7.69	31.2.84	<u>TA</u> 30.3.84	Promotion.
15.	Sh. V.K. Sharma	3.11.1973	19.7.79	<u>F.I.</u> 3.11.76	Direct (QP)

This was a provisional list and objections were invited. Earlier, respondents No. 3 to 7 were given ad-hoc promotion as follows vide order dated 28th July, 1984 (Annexure 1):

"Sl. No.	Name of the Officer/ Designation	Post on which appointed.
4.	Shri R.S. Tripathy STA(E), CRCS, Raipur	A.P.P.

5. Shri S. Padmanabhan, L.T.O., A.P.P.
FSIL, Bikaner.
6. Shri A.P. Singh, STA(E) A.P.P.
PQFS, Bombay
7. Shri A.C. Mathur, TA(SG) P.P.D.(PP)
CPPS, New Delhi.
8. Shri M.L. Taneja, LTO, Hqrs. P.P.D.(P.P.)

The D.P.C. Group 'B' had met on 24th September, 1981.

Certain representations were made against this DPC as a result of which, another review D.P.C. group 'B' was held on 18th June, 1983 which recommended the case of Shri A.C. Mathur (R-3) for the post of Technical Assistant (S.G.) for the year 1968. This review DPC recommended the following respondents for the posts and in the years shown against them:

Sr. Technical Assistant (Entomology)	1975	Smt. C. Meenakshikutty	R-12.
Locust Technical Officer	1978	Shri M.L. Taneja	R-4.
Sr. Technical Assistant (E)	1981	Shri R.S. Tripathi	R-5.

3. Having noted the factual position in respect of inter-se seniority as existing and disputed, we note the legal contentions raised by the parties. It is the case of the applicant, who argued his case in person at the bar, that the promotion of respondents 3,4,5,6 and 7 to the posts of Assistant Entomologist, Assistant Plant Pathologist and Plant Protection Officer from the feeder posts of Senior Technical Assistant, Locust Technical Officer and Technical Assistant (S.G.) issued vide Annexure I without circulating the seniority list of feeder cadre, was illegal not only on the ground of wrong seniority but also on the ground that the promotees had not completed five years of requisite experience, as prescribed in the Recruitment Rules. The applicant challenged the ad-hoc

promotions on the ground that they were arbitrary and the private respondents promoted vide this order, were ineligible for promotion. The applicant conceded that respondent No. 5 (Shri R.S. Tripathi) and respondent No. 12 (Smt. C. Meenakshikutty) were senior to him. He argued that by non-observance of quota rules for about 8 years, the rights of the applicant had been adversely affected. He described ad-hoc promotions were continued deliberately for favouring the respondents by not reverting them. He further argued that even if the ad-hoc service was to be counted, the applicant could not be placed junior to respondent No. 8 (Shri D.P. Singh), respondent No. 9 (Shri Jagpal Singh) and respondent No. 11 (Shri A.K. Banerjee). The applicant submitted written arguments to this effect.

Shri J.S. Bali, counsel for respondent No. 4 (Shri M.L. Taneja) and respondent No. 9 (Shri Jagpal Singh) argued that the respondents had put in more than five years qualifying service to earn their promotion and the ad-hoc promotion has to be counted for seniority purposes in terms of the Supreme Court rulings in the case of D.R. Nim Vs. Union of India, A.I.R. 1967 S.C. 1301, wherein it was held that the seniority could not be reckoned in relation to an artificial and arbitrary² date, in the case of N.K. Chauhan and others Vs. State of Gujarat & Ors., 1977 S.C.C. 127, wherein it has been held that rotational mechanics were not implied in the quota system, in the case of Baleshwar Dass and others v. State of U.P. & ors., AIR 1981 S.C. 41, wherein the Hon'ble Supreme Court has held that a person is said to hold a post in a substantive capacity when he holds it for an indefinite period and if the appointment is made after the prescribed test has been taken and passed, and that the service has to be counted from the date of

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commencement of the officiating service against permanent appointments, in Narender Chadha & Ors. v. Union of India & Ors., A.T.R. 1986 SC 49 the Hon'ble Supreme Court has held that when an officer has worked for a long period of nearly 15 to 20 years in a post and had never been reverted, it could not be held that the officer's continuous officiation was a mere temporary, local or a stop gap arrangement even though the order of appointment may state so and that in such circumstances, the entire period of officiation has to be counted for seniority and in the case of G.K. Dudani & Ors. vs. S.D. Sharma & Ors., AIR 1986 SC 1455, wherein it was held by the Supreme Court that those working against temporary posts were entitled to have their seniority fixed vis-a-vis direct recruitments on the basis of continuous officiation.

4. It is now well settled that when an officer has worked for a long period in a post and has 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 use such a nomenclature and in such circumstances, the entire period of officiation has to be counted towards seniority. It has been held that any other view would be arbitrary and violative of Articles 14 and 16(1) of the Constitution since the service in the post in question is not a stop-gap one. In view of these facts, treating the period of continuous officiation of the concerned respondents towards seniority has to be examined on factual basis.

has

The Central Government Standing Counsel filed a composite charge with respect to the seniority of the respondents and their promotion to the post of Senior Technical Assistant (E) and the position of the applicant in this regard, which is extracted

below:

Resp. No.	Name of respondent	Seniority position as on the seniority list of 1984.	Date of ad-hoc promotion.	Date of regularisation in the promoted posts.	Period during which the promote posts held on ad-hoc basis.
3.	A.C. Mathur		<u>TA(SG)</u> 24.4.72	TA(SG) 24.9.81	9 yrs. 3 months.
4.	M.L. Taneja		<u>STA(E)</u> 5.8.77	L.T.O. 22.3.82	4 yrs. 7 months 17 days.
5.	R.S. Tripathi	6	<u>STA(E)</u> 7.4.75	<u>STA(E)</u> 24.9.81	6 yrs. 9 months 17 days.
6.	S.Padmanabhan		<u>STA(E)</u> 7.9.77	<u>L.T.O.</u> 15.6.84	6 yrs. 9 months 8 days.
7.	A.P. Singh	8	<u>STA(E)</u> 12.7.78	<u>STA(E)</u> 13.2.84	5 yrs. 7 months 1 day.
8.	D.P. Singh	10	<u>LTO</u> 31.5.78 to 31.12.81 <u>STA(E)</u> 11.1.82	<u>STA(E)</u> 13.2.84	3 yrs. 7 months. 2yrs. 1 m. 12days
9.	Jagpal Singh	12	<u>STA(E)</u> 25.5.79	13.2.84	4 yrs. 8 months 18 days.
10.	A.K. Saxena			<u>STA(PP)</u> 24.9.83	
11.	A.K. Banerjee	14	<u>STA(E)</u> 21.1.82	13.2.84	2 yrs. 22 days.
12.	C.Meenakshikutty.	4	<u>STA(E)</u> 16.7.76	<u>STA(E)</u> 24.9.81	5 yrs. 3 months 8 days.
13.	D.V.N. Babu		30.10.73	<u>STA(PP)</u> 1.7.83	9 yrs. 8 months.
Appl.	V.K. Sharma	15		19.7.79	Selected on 30.11.1978, by the UPSC

In the case of Narendra Chadha & Ors. Vs. Union of India & ors.

(supra), the Hon'ble Supreme Court has observed that the

direct recruits shall be given seniority with effect from the

date on which their names were recommended by the U.P.S.C.

for appointment to a grade or post. As such, the applicant's

date of appointment has to be considered as 30.11.1978 for

purposes of computing his seniority. When we take this date,

it is clear by perusing the above quoted statement that the applicant was senior to S/Shri Jagpal Singh (respondent No. 9) who became STA(E) on 25.5.79, A.K. Saxena (respondent No. 10) who became STA(PP) on 24.9.1983 and A.K. Banerjee (respondent No. 11) who was promoted as STA(E) on 21.1.1982 on ad-hoc basis. Therefore, grant of upgraded seniority to the above three respondents over the applicant is factually erroneous and needs to be rectified. Similarly, treating their period of ad-hoc promotions will not entitle them to any further benefits. Respondents 1 and 2 are, therefore, directed to recast the seniority of the applicant vis-a-vis respondents S/Shri Jagpal Singh, A.K. Saxena and A.K. Banerjee and convene a review D.P.C. to consider the claim of the

*To be substituted by words "Assistant Entomologist, Assistant Plant Pathologist and Plant Production Officer" vide order on RA 95/87 passed on 27.7.88.

applicant for selection to group 'B' [i.e. Senior Technical Assistant (Entomology) etc.] as per his seniority. The applicant will be entitled to all the consequential benefits on the revision of his seniority, as indicated above. The seniority of other respondents and their promotions will not be disturbed. Since no respondent whose seniority we have quashed figures in the impugned Annexure I, i.e. the promotion order dated 28th July, 1984, the said order is held to be valid. The challenge that those who have been promoted by this order were not eligible is found to be without basis as the case was ^{for promotion} considered by a duly constituted DPC and it had taken full note that only those with ^{and note system had broken} requisite qualifications and experience were empanelled. Reliance placed by the applicant in this regard on the judgments in Ravish Gupta v. Secretary, Department of Personnel & Training, ATR 1986 CAT 23 and Miss Prabha Devi v. GOI, ATR 1986 CAT 121 would not apply in the instant case.

22/7/87
(BIRBAL NATH)
Member (A)

This Application stands disposed of with the above directions with no orders as to costs.

J. D. JAIN
Vice-Chairman