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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 130 1986
T.A. No.

DATE OF DECISION 6th August, 1986

Shri S.C. Bhatt and others Petitioner

Shri R.R. Rai Advocate for the Petitioner(s)

Versus

Union of India Respondent

Shri K.C. Mittal Advocate for the Respondent(s)

CORAM :

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

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

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


(H.P. BAGCHI)


(S.P. MUKERJI)

5-A

Registration No. OA 130/86

Date of Decision: 6.9.1986

Shri S.C. Bhatt & other	...	Petitioners
v.		
Union of India	...	Respondent
Shri R.R.Rai	...	Counsel for the petitioner
Shri K.C.Mittal	...	Counsel for the respondents.

C O R A M

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

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

JUDGMENT

The petitioners Shri S.C.Bhatt and Shri Virender Kumar who are working as Grade- I Librarian in the Department of Education and Department of Culture in the Ministry of Human Resources Development have come up with this application under Section 19 of the Administrative Tribunals Act, 1985.

seeking the following reliefs:-

- (a) The Seniority list of Librarian Grade I (General) issued by the Department of Culture vide No. A- 23022/1/80- E&C dated 8th May, 1985 (Annexure-A) be declared null and void and be quashed.
- (b) The applicants be declared as deemed to be promoted as Librarian Grade I w.e.f. 4.1.1972 on regular basis and be paid the benefits including promotion and fixation of pay.
- (c) The respondents be directed to issue a fresh seniority list be Librarian Grade I within a time schedule in the light of the decision of Hon'ble Supreme Court in the following cases:-

- (i) Union of India and others v. M.Ravi

Verma & Others (AIR 1972 (2) SER 992)

ii) A Janadhana v. Union of India and others
(AIR 1983 SC 769).

- (d) The pay of the applicants be fixed and it should not be in any case lesser than the pay drawn by any junior in the same grade i.e. Librarian Grade I (As drawn by Shri A.B.Kohli who is junior to applicants but drawing higher salary than both of them).
- (e) The present incumbent of the Assistant Director's post in NERC, Department of Education be reverted to his original post and the applicant No.1 be promoted as Assistant Director, NERC in the Department of Education.
- (f) any other relief which this Hon'ble Tribunal deems suitable in the interest of justice.

2. The brief facts of the case which are not in dispute can be summarised as follows. The petitioners were promoted on a regular basis from Grade III to Grade II of the Librarian Cadre on 9.1.1958 and 15.5.1959 respectively. In December, 1966 the respondents issued a seniority list of Grade II Librarian in which Shri A.B.Kohli and Shri Jagdish Lal were shown as senior to the petitioner even though they were promoted to that grade in 1962 and 1966 respectively as against 1958^{and 1959} when the petitioners had been so promoted. This was also against the instructions issued by the Ministry of Home Affairs in their O.M. of 22.12.1959 (Annexure D to the petition).

The representations of the applicants were ineffective. On the basis of their higher but allegedly wrong seniority Shri Kohli was promoted on an ad-hoc basis to Grade- I on 27.9.1971 and Shri Jagdish Lal on 27.6. 1973. In the meantime, on the

basis of the ruling of the Supreme Court given ⁱⁿ Union of India and others v. M. Ravi Verma and others AIR 1972(2) SCR 992⁵ since the petitioners had been appointed in Grade-II before 22.12.1959, they were to be placed senior to all those who were appointed to Grade-II after that date and accordingly under the instructions of the Department of Personnel a fresh seniority list was prepared of Grade II Librarians in October, 1972 (Annexure F to the petition) and the two petitioners were shown at S.No. ¹¹ ~~11~~ and S.No. 12 while Shri Kohli and Shri Jagdish Lal were placed below them at S.No. 13 and 14.

3. Because of the higher seniority thus given to the two petitioners in 1972, Shri Kohli who had been promoted to Grade I on 27.9.1971 on the basis of the earlier wrong seniority should have been reverted to give place to the two petitioners who were now senior to him. This was not done. Shri Kohli was not reverted. The petitioners were not promoted even on ^{an} ad hoc basis but ~~on~~ the other hand Shri Jagdish Lal who was junior to the petitioners in ^{the} 1972 seniority list was promoted to Grade I on 27.6.1973. It was only on ^{23.3.1976} 23.3.1976 that the two petitioners were given ad hoc promotion as Librarian Grade I and their pay was fixed nationally in Grade I with effect from 4.1.1972 when the ruling of the Supreme Court was available but no arrears of pay between 4.1.1972 and ^{23.3.1976} 23.3.1976 were given to them. Even in the seniority lists of 1976 and 1978 the petitioners were shown senior to Shri Kohli and Shri Lal.

4. Another blow was given to the petitioners in 1980 when according to them Shri S.S.Ahir who was junior to them in the Seniority list of Librarians Grade II was promoted on a regular basis to Grade I even though he did not possess the essential requisite qualifications.

5. Another chapter in the story of the petitioners opened when on 8.5.1985, a seniority list of Grade I Librarians was published (Annexure A to the petition) in which even though the applicants were shown senior to Shri A.B.Kohli who ^{was} ~~were~~ wrongly promoted earlier than the petitioners, the latter were shown junior to Shri Inder Dev, Shri Bhalla and Shri Ahir who were promoted to Grade I in 1978 and 1980 as against the earlier promotion to Grade I of the two petitioners. According to the respondents, the seniority of the petitioners was corrected in accordance with the general instructions. As regards promotion to Grade I it has been stated that in 1980, ^{there were} five vacancies of which one post each was reserved for Scheduled Caste and Scheduled Tribe candidates and Shri Ahir was selected by the Departmental Promotion Committee against the reserved vacancy. For the remaining general vacancies, other candidates were selected and one of the petitioners Shri S.C.Bhatt was placed in the panel for appointment to future vacancies. Necessary relaxations of educational qualifications was given to Shri Ahir and other two candidates. Regarding Shri Inder Dev who has been shown senior to the petitioners in the seniority list of Grade I Librarian it has been stated that he was appointed in the Direct Recruitment Quota and was rendered senior to the petitioners who were appointed in 1980 in the promotion quota. Shri Inder Dev was appointed as Chief Documentation Officer by selection. Shri I. Dev was later reverted in 1984 and since no grade I librarian was eligible for the higher post of Chief Documentation Officer/Assistant Director, it was filled by getting a deputationist.

6. We have heard the arguments of the learned counsel for both the parties and gone through the documents very carefully.

Insofar as ad hoc promotion of the petitioners to Grade I is concerned we are satisfied that since they were all along senior to Shri Kohli and Shri Kohli was continued without any break in the Grade I ever since 27.9.1971, there is no reason why both the petitioners who are admittedly senior to Shri Kohli should not get the benefit of notional pay fixation in Grade I with effect from 27.9.1971 instead of 4.1.1972. The only question that remains is whether they should be given arrears of pay between 27.9.1971 and 23.2.1976 when they were actually promoted to Grade I ^{on} ad hoc basis ^{on} 23.2.1976. Since both the petitioners as well as their juniors Shri Kohli and Shri Lal had been promoted on an ad hoc basis and the petitioners had not physically discharged the duties of Grade I Librarian before 23.2.1976, we do not find it expedient to allow them the arrears of pay during the period from 27.9.1971 to 23.2.1976. In any case, we have already decided that on 23.2.1976 their pay in Grade I should be notionally fixed as if they were promoted to Grade I with effect from 27.9.1971. This will also remove any anomaly in the pay of the petitioners in Grade I being less than the pay to Shri Kohli who is junior to them.

7. As regards promotion of Shri S.S.Ahir to Grade I and his higher seniority, we are satisfied that since the Departmental Promotion Committee graded Shri Ahir as a Scheduled Caste Candidate higher than the petitioner Shri Bhatt who was placed in a waiting list and educational qualifications were relaxed ⁱⁿ to Shri Ahir's case in accordance with rules, there is no reason to disturb the seniority of Shri Ahir. In accordance with seniority instructions Shri Ahir having got a regular vacancy in Grade I earlier than the petitioners has to be placed above the petitioners in spite of the fact that in case of the petitions ad hoc

officiation atleast from 4.1.1972 existed. This is because of the sanctity of the seniority instructions. The counting of ad hoc officiation for the purpose of seniority in accordance with the various rulings of the Supreme Court is permissible only when the normal seniority rules and orders become inoperative ^{and ineffective} because of the collapse of rota and quota system. Since in this case direct recruits and promoted officers have been systematically appointed, we do not find any valid ground for the violation of the normal seniority rules and instructions.

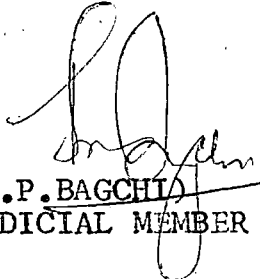
8. As regards Shri Inder Dev and Shri S. C. Bhatta since they were appointed to Grade I in the direct recruitment quota on a regular basis in 1978 and confirmed in 1980 and 1983 as against the regular appointment of the petitioners later in the promotion quota the seniority given to them cannot be faulted in Grade I. As regards the higher seniority given to Shri Gian Chand in the promotion quota, Shri Gian Chand was senior to the petitioners in Grade II and had started officiating as Librarian Grade I on ad hoc basis with effect from 23.2.1976 as against such officiation from ~~23.6.1976~~ ^{5.6.1976} and 23.2.1976 by the two petitioners. If ~~the~~ ^{the} benefit of notional officiation from 27.9.1971 is to be given to the petitioners being senior to Shri Kohli and Shri Lal, the benefit of same notional officiation has to be given to Shri Gian Chand also as he was senior to even the petitioners. We, therefore find nothing wrong or inequitable in Shri Gian Chand being placed above the petitioners in the gradation list of Librarian Grade I.

9. As regards the petitioners' claim for higher promotion as Chief Documentation Officer or Assistant Director by reckoning the national promotion from 4.1.1972 we do not find much force in the contention in view of the

fact that Shri Gian Chand, himself a senior promotee officer would have had a more convincing claim to such promotion than the petitioners. As stated earlier, Shri Gian Chand could have claimed notional officiation in Grade I from 27.9.1971 and being senior in Grade II and having been selected by the Departmental Promotion Committee from Grade I on a regular basis earlier than the petitioners, would have been a far more deserving candidate for the higher posts of Assistant Director than the petitioners. In any case, the basis being by selection, the petitioners cannot have any legitimate grievance against their non-selection either on grounds of seniority or on merits.

10. In the facts and circumstances of the case discussed above, except to the extent of awarding notional fixation of pay to the petitioners with effect from 27.9.1971 instead of 4.1.1972, we do not find any merit in the application and reject the same accordingly.

There will be no order as to costs.


(H.P. BAGCHI)
JUDICIAL MEMBER 6-86


(S.P. MUKERJI)
ADMINISTRATIVE MEMBER