

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1736/87 &
T.A. No. 1737/87 199

DATE OF DECISION 03.04.1992.

SH. S. BANDOPADHYAY & ~~XXXXXXXX~~ Petitioner APPLICANTS
SH. V.K. VERMA & ORS
SH. P.P. KHURANA Advocate for the ~~Petitioner(s)~~ APPLICANTS
Versus
UNION OF INDIA & ORS. Respondents
SH. M.L. VERMA & SH. V.P. GUPTA Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. T.S. OBEROI, MEMBER(J)

The Hon'ble Mr. P.C. JAIN, 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 it needs to be circulated to other Benches of the Tribunal? *no*.

(P.C. JAIN)
MEMBER(A)

(T.S. OBEROI)
MEMBER(J)

22

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.NO. 1736/87

DATE OF DECISION: 3rd April, 92.

SH. S. BANDOPADHYAY

....

APPLICANT

VERSUS

UNION OF INDIA & ORS.

....

RESPONDENTS

O.A.NO. 1737/87.

SH. V.K. VERMA & ORS.

.....

APPLICANTS

VERSUS

UNION OF INDIA & ORS.

.....

RESPONDENTS

CORAM:-

THE HON'BLE MR. T.S. OBEROI, MEMBER(J).

THE HON'BLE MR. P.C. JAIN, MEMBER(A)

COUNSEL FOR THE APPLICANTS : SH. P.P. KHURANA

COUNSEL FOR THE RESPONDENTS : SH. M.L. VERMA & SH. V.P. GUPTA

JUDGEMENT

(of the Bench delivered by Hon'ble Mr. T.S. Oberoi, Member(J).

In both these O.As., the applicants therein are aggrieved by inaction on the part of the respondents on their representations regarding their seniority as Associate Town & Country Planners in the Town & Country Planning Organisation, and thereby not giving them the positions as due to them, in the Seniority List as on 1.7.1985 (Annexure 'A'). As the questions raised in both these O.As. are similar, they are being disposed of by a common judgement.

2. Their case briefly is that Applicant No.1 in O.A.No.1737/87 joined the said organisation as Planning Assistant through U.P.S.C. on 4.11.1963. He was promoted

as Assistant Architect w.e.f. 28.3.1967, and appointed as Assistant Town & Country Planner (on adhoc basis) w.e.f. 18.7.1970 and on regular basis w.e.f. 28.3.1972. Applicant No.2 in the same O.A., joined that organisation as Assistant Architect on 22.9.1967, against a permanent post, while the only applicant in O.A.No.1736/87 joined as a Research Assistant on 14.7.1966, through U.P.S.C., was promoted as a Assistant Town & Country Planner w.e.f. 6.11.1973, and as Associate Town & Country Planner, on adhoc basis, w.e.f. 30.1.1979. According to the Recruitment Rules of 1964 (Annexure 'B'), both Assistant Town & Country Planners and Assistant Architects, formed the feeder posts for promotion upto 50%, for the post of Associate Town and Country Planner. Thus, the three applicants in these O.As. became eligible for promotion as Associate Town & Country Planner, w.e.f. 28.3.1972, 22.9.1972 and 6.11.1978, respectively. While Applicant No.1 & 2 were promoted, as such, on adhoc basis, w.e.f. 3.11.1973, vide order Annexure-'B', Applicant No.3, was promoted in the same post, on adhoc basis, w.e.f. 30.1.1979. Their contention is that they had also acquired the requisite qualification in Town and Country Planning, as per Recruitment Rules, 1964, in the meantime, but were kept as Associate Town & Country Planners, on adhoc basis, for unduly long period, and were not appointed as such, on regular basis, earlier, when due, although there were vacancies in the grade of Associate T & CPs., falling in the 50% promotion quota for the posts, while, on the other hand, 50% quota for direct appointees, was filled in, well in

[Handwritten signature]

time, in 1968. Thus, according to applicants, though there was no impediment in the way of applicants' promotion as Associate Town & Country Planners, on regular basis, by way of any writ petition or any dispute regarding finalisation of any seniority list etc. being pending, yet the respondents did not hold the D.P.C. from 1968 to 1976, and thus kept the applicants on so-called adhoc basis on posts, which were regular and existing and not fortuitous or temporary. By so doing, the respondents allowed officers not eligible for being considered for a long period to acquire senior places, and getting in, against the quota. The respondents thus arbitrarily allowed the senior positions to direct recruits and fixed them in slots kept vacant, although because of non-observance of the quota system over a number of years, rota had failed. This, according to the applicants, resulted in the applicants continuing to work on adhoc basis till 6.1.1984, when they were regularised, vide order dated 28.1.1984 (Annexure 'E' to paperbook in OA 1737/87), inspite of their having worked continuously, without any break, since November 1973, notwithstanding that they had drawn regular increments during all this period, till they reached the maximum of the scale in 1983, though still adhoc. The applicants further contended that this policy of adhocism was against the instructions of Department of Personnel & Administrative Reforms, according

There

to which ahoc appointments could be made for six months, to be extended for a period of further six months, in the maximum.

3. Applicants No.1 & 2 in O.A.No.1737/87 are aggrieved in the case, from another aspect also. Their contention is that while the Recruitment Rules of 1964, framed under the Proviso to Article 309 of the Constitution of India, to regulate the method of recruitment to Class-I and Class-II posts in the Town & Country Planning Organisation, did not envisage any tilt in favour of persons with Town & Country Planning qualifications, there was a deliberate attempt to give an edge to Assistant Town & Country Planners in the matter of promotion, and inspite of protests from Assistant Architects and assurance that Assistant Architects and Asstt. Planner, with Town & Country Planning qualifications (later called as Assistant Town & Country Planners) will be on equal footing, w.e.f. 1.1.1966 the post of Assistant Town & Country Planner was made Class-I, and officers having those qualifications were up-graded, and, to the detriment of Assistant Architects and in violation of the Recruitment Rules, 1964, those who acquired the above qualifications subsequently, were also promoted to this Class-I post. This discrimination further perpetuated in the Recruitment Rules effective from 28.8.1975, wherein only 20% quota of promotion vacancies of Associate T.C.Ps. was fixed for Assistant Architects and that, too, for persons with 8 years of regular service as Asstt.

24

Architect, whereas 80% quota was earmarked for Assistant T.C.Ps., for whom only 5 years service in the grade was stipulated. This, according to applicants, further marred their chances of promotion. In nutshell, the applicants in OA 1737/87 and 1736/87 prayed that their promotion as Associate T&C.Ps. w.e.f. 3.11.1973, and 30.1.1979 respectively, on adhoc basis, for a period of 3 months, which continued till 6.11.1984, when it was regularised, be taken as having been regularly made, w.e.f. the respective dates i.e. 3.11.1973 and 30.1.1979 and their placement shown accordingly, in the Seniority List, as on 1.7.1985.

4. The applicants' claim has been opposed by the respondents, in the counter filed by them, to which rejoinder has also been filed, in each case. In OA 1737/87, out of private respondents, only Respondent No.3 had also filed counter, at a later stage, on a Misc. Petition, moved and allowed for the purpose. We have also heard the learned counsel for the parties.

5. The learned counsel for the applicants pleaded that the applicants in OA 1737/87 had been continuously working as Associate Town & Country Planners, from 3.11.1973, though as ^{per} order Annexure 'B' to the OA, they were promoted initially for a period of three months, which continued till 6.1.1984, when they were regularised as per Annexure 'E', and this continued-working, though on adhoc basis,

Beena

25
of
should result in counting the entire period towards their service as Associate Town & Country Planners, particularly as their selection on 3.11.1973 was through a Selection Committee appointed for the purpose. The learned counsel for the applicants pleaded that mere expression as 'ad hoc' does not make an appointment as ad hoc, and with that regular appointment in accordance with the rules subsequently, the seniority is to be reckoned from the date of ad hoc appointment. He further pleaded that continued ad hoc appointment over a number of years is no bar to promotion to the next higher grade and ad hoc appointments continued over a number of years are to be treated as regular appointments for the purpose of counting of certain number of years of service in the feeder cadre. The learned counsel further pointed out that the vacancies upto 1975 in the post of Associate Town and Country Planners when the amended rules came into force should be governed by the Recruitment Rules of 1964, which put the Assistant Architects and the Assistant Town and Country Planners, at equal footing, but this has not been done in the present case, which has resulted in a deleterious effect to the applicants, in the matter of their seniority in the post of Assistant Town & Country Planner. Similar arguments were addressed in OA-1736/87.

6. The plea of the learned counsel of the respondents on the other hand, was that, in fact, in the present OA, the applicant's grievance relates to as far back as 1973, as it originated from the order dated 3.11.1973

Ans

by which the applicants were promoted, on ad hoc basis, for a period of three months. But they did not agitate /before a legal forum, till filing of these OAs, at any time thereafter about the same/ so much so that there was a seniority list also, as on 1.8.1978, which was duly circulated and in which the position of Respondent No.3 has been shown at Sl.No.14 whereas that of applicants No.1 & 2 in OA No.1737/87 is at Sl.Nos. 17 & 18. But no agitation has been expressed by the applicants with regard to the same at any time. It is well known that established positions in the seniority should not be disturbed at belated stages so as to unsettle the settled things, as has been held in P.S. Sadashiv Swamy Vs. State of Tamil Nadu (AIR 1974 SC 227). The learned counsel for the respondents pointed out that the present O.A. is also not maintainable as plural reliefs have been claimed in the same, besides, the applicants have not filed independent OAs rather have come in a single application jointly. The learned counsel for the respondents also pointed out that the respondents were within their competence to amend the recruitment rules, so as to suit the exigencies of service. In this connection, he cited the judgement of the Supreme Court in the case of State of Jammu and Kashmir Vs. Triloki Nath Khosha and Others (1974(1) SLR 536). The learned counsel for the respondents further pointed out that the recruitment rules having been duly amended, action strictly in accordance therewith is justified as held in A.K. Bhatnagar and Ors. Vs. Union

[Signature]

of India (1991(1) SCC 544). Lastly, the learned counsel for the respondents pointed out that the applicants in both the OAs were not possessing the requisite qualifications regarding Assistant Town & Country Planners, on the dates they were promoted on ad hoc basis and as such their initial promotion to the said post was not strictly in accordance with the rules, and, therefore, as held in the case of Direct recruit Class II Engineering Officers' Association Vs. State of Maharashtra and Ors. (1990(2) SCC 715), they cannot claim their seniority right from their promotion on ad hoc basis i.e. from 3.1.73 to 30.1.79. He further pointed out that, significantly, the applicants in OA 1737/87 have not specifically mentioned the date when they had acquired this qualification except mentioning in a general manner that they had acquired this qualification later, which, according to the respondents, was acquired by Applicants No. 1 & 2 in this OA in 1969 & 1972 respectively.

7. We have given our careful consideration to the rival contentions and have perused the entire material placed by both sides on record. Taking up the question of limitation first, we find that the cause of action arose to the applicants in OA No.1737/87 in November, 1973 and in OA No.1736/87 in January, 1979, but the applicants did not seek recourse to the same, till filing of the present OAs. The learned counsel for the applicants had placed reliance on a judgement of the Principal Bench

[Signature]

of this Tribunal in OA 818/87 alongwith some other OAs decided on 31.10.1991 (Sh. R.M. Balani & 12 Others Vs. the Secretary (TD) & DG(TD) and another, wherein the question of limitation came to be discussed. We have perused the said judgement, but we are of the view that the circumstances in which the limitation was held as not applicable in that case were that, at the stage of admission, this question came to be discussed and an order passed to that effect, was not challenged and, in the circumstances, it was held that the order to that effect had become final. It was nonetheless observed, while dealing with this aspect that the matters which have become stale should not be allowed to be reopened. However, the impugned seniority list depicted the position as on 1.7.1985 and according to the respondents' case, was circulated amongst the concerned, but it was only in June 1987 i.e. roughly after two years that the applicants filed their objections, obviously, much beyond the permissible period to file objections. As against the order dated 24.6.1987 (annexure 'G') by which one Shri Kolhatkar, Associate Town and Country Planner was appointed as Architect Planner, the applicants have themselves admitted that they are not aggrieved by his appointment, as such, he being senior to them as Associate Town & Country Planner as well as in the earlier feeder posts. That order could not, therefore, become the impugned

[Signature]

24

order in these cases. Both the OAs were filed on 17.11.1987, and therefore, considered from any angle, the present OAs are time-barred. No application for condonation of delay, as per rules, has been moved in the cases. In view of this, other objections regarding a common application having been filed in OA 1737/87 or regarding plurality of reliefs, sought for, etc. are not considered necessary to be gone into.

8. Regarding the applicants having suffered because of the alleged tilt in favour of the Assistant Town & Country Planners vis a vis Assistant Architects to which both the applicants in OA 1737/87 initially belonged, and also regarding the same trend having culminated in the amendments of the rules in 1975, suffice it to say that as held in para 22 of the judgement in State of Jammu and Kashmir Vs. Triloki Nath Khosa & Ors. (1974(1) SLR 536), supra, the relevant extract reproduced below, the respondents could have amended the rules keeping in view the exigencies involved:-

".....If rules governing conditions of service cannot ever operate to the prejudice of those who are already in service, the age of superannuation should have remained immutable and schemes of compulsory retirement in public interest ought to have foundered on the rock of retroactivity. But such is not the implication of service rules nor is it their true description to say that because they affect existing employees they are retrospective. It is well settled that though employment under the Government like that under any other master may have a contractual origin, the Government servant acquires a 'status' on appointment to his office. As a result, his rights and obligations are liable to determined under statutory or constitutional authority which, for its exercise, requires no reciprocal consent. The Government can alter

Devi

the terms and conditions of its employees unilaterally and though in modern times consensus in matters relating to public services is often attempted to be achieved consent is not a pre-condition of the validity of rules of service, the contractual origin of the service notwithstanding."

Further, in paragraph 7 & 13 of the judgement in A.K. Bhatnagar and Ors. Vs. Union of India, supra, the Supreme Court, inter-alia, held as under:-

"7. The law is clear that seniority is an incidence of service and where the service rules prescribe the method of its computation, it is squarely governed by such rules. In the absence of a provision ordinarily the length of service is taken into account."

"13. On more than one occasion this Court has indicated to the Union and the State Governments that once they frame rules, their action in respect of matters covered by rules should be regulated by the rules. The rules framed in exercise of powers conferred under the proviso to Article 309 of the Constitution are solemn rules having binding effect. Acting in a manner contrary to the rules does create problem and dislocation. Very often government themselves get trapped on account of their own mistakes or actions in excess of what is provided in the rules. We take serious view of these lapses and hope and trust that the government both at the Centre and in the States would take note of this position and refrain from acting in a manner not contemplated by their own rules....."

In the instant case, there were rules which were amended according to the requirements of the services which, in the light of the above rulings, had been made the basis for determining the seniority of the applicants.

9. The applicants urged yet another aspect of the case. They contended that DPC meetings were not convened, in accordance with the instructions issued by the Department of Personnel and Administrative Reforms, according to which periodical meetings should be held to consider the yearly vacancies, and in case such meetings for any reason are not possible, to be held, not the vacancies should be bunched,

but considered separately for each year. The applicants' plea was that these instructions have not been complied with in the instant case, with the result that interests of the applicants suffered. The respondents have attributed the delay in holding the DPC meetings to the insistence by the U.P.S.C., who were also to be associated in the D.P.C., upon amending the Recruitment Rules, because of the change of Status of Asstt. T.C.Ps. viz-a-viz Asstt. Architects, etc., the former having been made as Class-I post w.e.f. 1.1.1966. The required amendment in the Rules took quite considerable time, which were eventually amended in 1975. After carefully considering this aspect also, we are of the view that there is a satisfactory explanation in this regard, and there appears to be no malafides, on the part of the respondents, in not being able to hold the DPC meetings in time, as alleged.

10. As a result of the foregoing discussion, we do not find any merit in the applicants' case in both the OAs, which are accordingly dismissed. In the circumstances, however, we make no order as to costs.

A copy of this judgement be placed on both the case files.

Cec
(P.C. JAIN)
MEMBER(A)

Obero
(T.S. OBEROI)
MEMBER(J)