

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

MP No.2324/90

O.A. No. 1787/87

T.A. No.

199

DATE OF DECISION 21.2.1991

S/Sh. D.J. Andrew & M.C. Scaria Petitioner sShri G.K. Aggarwal Advocate for the Petitioner(s)

Versus

Union of India & Others RespondentShri P.H. Ramchandani, Senior Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman

The Hon'ble Mr. I.K. Rasgotra, Member (A)

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 ? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓

(AMITAV BANERJI)
CHAIRMAN

14 13

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

MP NO. 2324/90

OA NO.1787/87

DATE OF DECISION: 21.2.91

SHRI D.J. ANDREW &
SHRI M.C. SCARIA

...APPLICANTS

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM:

THE HON'BLE MR. JUSTICE AMITAV BENERJI. CHAIRMAN

THE HON'BLE MR. I.K. RASGOTRA. MEMBER (A)

FOR THE APPLICANTS

SHRI G.K. AGGARWAL, COUNSEL

FOR THE RESPONDENTS

SHRI P.H. RAMCHANDANI,
SENIOR COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

The issue for decision in this OA is whether in the face of the judgements delivered by Hon'ble Supreme Court, Principal Bench of the Central Administrative Tribunal and Delhi High Court, quashing the seniority list of Assistants and directing the respondents to redraw the seniority of the Assistants on the principle of 'length of service' with consequential benefits, the status and the position of the existing Assistant Civilian Staff Officers (ACSOs) and Civilian Staff Officers (CSOs) who were promoted on the basis of quashed seniority list can be protected.

S/Shri D.J. Andrew and M.C. Scaria, the applicants working as CSOs in the Armed Forces Headquarter (AFHQ) have filed this application under Section 19 of the Administrative Tribunals Act, 1985 challenging

21

14

the following orders issued by the respondents:-

- i. No.A/21371/CAO(P-1)/APJ/IMP, dated 13.10.1987, granting consequential benefits to those Assistants who have been promoted as a result of promotions made on review of panels of Assistants and ACSOs and CSOs respectively on the revised seniority list. The said order further provides that the officials who do not figure in reviewed promotion panels of ACSOs or CSOs would be reverted to the lower grade(s).
- ii. No.A/05111/Reviewed Panels 77-78 to 86-87/CAO(P-1). dated 2.11.1987, issuing the Select Lists of Assistants for officiating promotion on long term basis to the grade of ACSO in AFHQ for the years 1977-78 to 1986-87; and
- iii. No.72038/Asstt/CAO(P-1) dated 8.5.1987, issuing a complete list of Assistants of AFHQ, Civil Service, revised in the light of the Hon'ble Supreme Court's judgement dated 17.2.1987 in SLP Nos.3513-14 of 1986 and K.N. Mishra & Ors. v. UOI & Ors.

2. The applicants were appointed as Assistants against direct recruit quota in April/May, 1971 on the basis of the examination held in 1969. They were placed against direct recruit vacancies for the years 1968-69 and 1969-70. The applicant No.1, Shri D.J. Andrew was confirmed as Assistant in service w.e.f. 22.4.1973 and the applicant No.2, Shri M.C. Scaria was confirmed as Assistant in service w.e.f. 22.5.1973. They were promoted as ACSOs w.e.f. 30.10.1978 and declared permanent as ACSOs with effect from 9.2.1981. They were promoted as CSOs

2

in accordance with the recommendation of the Departmental Promotion Committee (DPC) and placed in the panel of 1981 and 1982 respectively. Applicant No.1 completed his probation as CSO on 25.9.1984 and applicant No.2 on 17.12.1984. They have become eligible for consideration for promotion to the post of Senior Civilian Staff Officer (SCSO) in accordance with the AFHQ Civil Service Rules, 1968 in September and December, 1987 respectively, having rendered the requisite regular service in the grade of CSO. The seniority list of the Assistants was drawn in 1977 and amended on 10.8.1984 which formed the basis of their promotion to the higher grades was, however, assailed by the departmental promotees (A.C. Joshi & Ors. in Civil Writ No.278, Delhi High Court and in Civil Writs No.15346-49 of 1984 in the Supreme Court by N.K. Dhawan & Ors.). By its order dated 25.4.1985 the Hon'ble Supreme Court quashed the 1984's seniority list. Their Lordships of the Supreme Court in their order dated 25.4.1985 directed that:-

"The impugned seniority list will not be enforced or given effect to till fresh seniority list according to the relevant rules and valid principles is drawn up. Rule is made absolute to that effect as no order as to costs.

Panel of promotions will have to be redrawn in the light of the revised seniority list. We order accordingly. All promotions till now made and till new seniority list is drawn up will be subject to the fresh seniority list which should be drawn up within four months from today."

2

On 24.9.1985, the Delhi High Court struck down the seniority list dated 4.6.1977 and directed the respondents to redraw it as per the ultimate decision in Writ Petition Nos.15346-49/84, N.K. Dhawan & Ors. v. UOI & Ors. The Delhi High Court also allowed all consequential benefits to the affected Assistants. The Writ Petition Nos.15346-49/84 - N.K. Dhawan & Ors. v. UOI & Ors. were ultimately decided by the Tribunal on 22.8.1986 when the respondents were directed to draw a complete seniority list of Assistants incorporating therein names of permanent, temporary and officiating Assistants working against substantive vacancies and to give them the benefit of continuous officiation in the grade with consequential benefits. In its order dated 17.2.1987 the Hon'ble Supreme Court further directed that the seniority of the direct recruit Assistants among themselves should be regulated as per Rule 16 (6) of the 1968 Rules i.e. in the order of their ranking in the examination without affecting in any manner the seniority of promotee Assistants. As a consequence of the above judicial pronouncements the respondents have redrawn the seniority list of Assistants on the basis of continuous officiation in the grade and fixing of direct recruits among themselves as per Rule 16(6) of the seniority/Rules on 8.5.1987. The applicants contend that even though the seniority list has been revised in accordance with the orders of the Hon'ble Supreme Court, the High Court and the Central Administrative Tribunal, their existing positions as ACSOs and CSOs should be protected, as was done in the case of **P.S. Mahal v. UOI AIR 1984 Vol.71 P.1291** by creating supernumerary posts in the affected grades. In **P.S. Mahal** (supra) case the Hon'ble Supreme Court, had directed that:-

18/17

"When the seniority in the grade of Executive Engineers is rearranged in accordance with the directions given in the judgment, the cases of Assistant Engineers who would have been due for consideration for promotion as Superintending Engineers and thereafter as Chief Engineers on the basis of their revised seniority, will be considered by a duly constituted Departmental Promotion Committee as on the dates on which they would have been due for such consideration if the correct seniority had been given to them, and if on the basis of their performance and record as on those dates they would have been selected for promotion, they must be given promotion with retrospective effect from such dates and if necessary, supernumerary posts in the grades of Superintending Engineers and Chief Engineers shall be created for the purpose of accommodating them and all arrears of salary and allowances shall be paid to them on the basis of such retrospective promotions."

3. Shri G.K. Aggarwal, the learned counsel for the applicants submitted that the applicants do not challenge the seniority list of the Assistants as drawn by the respondents and published in 1987 in accordance with the Hon'ble Supreme Court's decision. The learned counsel, however, submitted that the applicants have rendered regular service of 5 years in the grade of CSO and are now due for promotion as SCSO from September

22

and December, 1987 respectively. He, therefore, contested the action of the respondents in holding fresh DPCs instead of review DPCs, restricting the consideration to only those who had not been considered earlier and who by virtue of the revised seniority are now due for consideration for promotion. He contended that the DPCs earlier had not become non-est, as these DPCs have not been declared invalid. All that is required to be done is and it has been done in other cases like **P.S. Mahal** (supra) etc. that only those who had not been considered earlier and who became eligible for consideration consequent to revised seniority alone were considered on the basis of their performance by the review DPC and their names interpolated horizontally in the existing panel recommended by the DPC by creating supernumerary posts, if necessary. The learned counsel also submitted that the review DPC should also take into consideration the casualities in the service that have taken place since the DPCs were held initially, consequent to retirement in service etc. affecting the number of vacancies and the zone of consideration. In effect, his contention is that review DPC should consider only those persons whose seniority has been revised and who have consequently come into the zone of consideration. If, however, the review panel is to be prepared de novo, as indeed is being done then the number of vacancies should be reassessed. With a view to avoid adverse effect on the status of the existing persons in the grades of ACSO, CSO. On a query from the Bench regarding the number of persons whose seniority has undergone revision, the learned counsel submitted that the seniority of about one thousand persons has

22

been affected out of a total of three thousand Assistants. On a further query if with such a large scale change in the order of seniority of the Assistants it would be feasible to undertake a limited exercise as suggested by him, the learned counsel submitted that the principles regulating review DPC would remain unchanged irrespective of the number of persons affected. He added that he was not assailing the Rules regarding the DPC but only the redrawn panels in higher grades. As a legal point the learned counsel argued that the promotion of the applicants was not declared at any time null and void. Therefore, the year of promotion of the applicants should not be disturbed by the review DPC, as has been in the panels of ACSOs. The applicants who were in the panel of ACSOs relating to the year 1977-78 have now been placed in the panel of 1980-81. This should not happen as the length of service in each grade can not be ignored.

4. Shri P.H. Ramchandani, the learned Senior counsel for the respondents submitted that the respondents have redrawn the seniority list of the Assistants in accordance with the orders and directions of the Hon'ble Supreme Court and the Tribunal. Since the earlier seniority lists viz. 1977, 1984 were quashed the consequential action of promoting Assistants in accordance with the seniority lists now quashed cannot stand judicial scrutiny. In fact, in law the panels drawn based on the 1977/1984 seniority lists cannot be legally sustained. The learned Senior Counsel submitted that the review DPC had not made any change in the grades of the applicants

2

given by the earlier DPCs. However, if the applicants do not come within the zone of consideration in 1977-78 in accordance with the revised seniority lists their relegation to the subsequent panel(s) cannot be helped, as they have to be considered for promotion in their turn. The learned counsel also submitted that direction in the case of **P.S. Mahal** (supra) cannot be considered in isolation as the ratio of the case has to be determined keeping in view the facts of the case. He further drew our attention to the decision dated 28th August, 1986 of the Tribunal in the case of **K.N. Mishra & Ors. v. UOI & Ors. ATR 1986 (ii) CAT 270** where the Tribunal had "directed to draw up a complete seniority list in the light of this judgment including therein all the temporary, permanent and officiating Assistants working in substantive vacancies giving them the benefit of continuous officiation and also to frame a fresh panel of promotion based on that seniority list within three months of the receipt of this order."

The order of the Hon'ble Supreme Court too was to redraw the seniority list. As against this in the case of **P.S. Mahal** (supra) there were specific directions given by the Hon'ble Supreme Court to accommodate the persons by creating supernumerary posts to avoid disturbance in the grades of Superintending Engineers and Chief Engineers.

5. We have heard the learned counsel of both the parties. We are of the view that the respondents have acted scrupulously in accordance with the orders of the Hon'ble Supreme Court and directions of the Tribunal

d

and the High Court. The preparation of a complete seniority list and to redraw the seniority list implied a complete overhaul in accordance with the principles laid down in the relevant judgements. The Hon'ble Supreme Court has also held that all promotions made upto now i.e. 25.4.1985 and till new seniority list is drawn up will be subject to the fresh seniority list. It is quite clear from these directions that consequent to the redrawing of the seniority list the panels in the higher grades would necessarily undergo a major overhaul. If the very basis i.e. seniority list on which the promotions were made has been held to be illegal, the consequential benefits that accrued from the illegal seniority cannot be legally sustained. We, therefore, do not see any merit in the argument that the seniority list of the Assistants may be kept in tact as revised but the fall out therefrom should be contained so as not to affect those who had benefitted from the seniority lists which have been quashed.

In the facts and circumstances of the case, the application does not merit interference by us and is, accordingly, dismissed with no order as to costs.


(I.K. RASGOTRA)
MEMBER(A)


(AMITAV BANERJI)
CHAIRMAN

'SKK'