

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH.: NEW DELHI

(92)

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O.A. No.310 of 1987

Dated at New Delhi the 11<sup>th</sup> day of February, 1994

Hon'ble Shri J. P. Sharma, Member (J)  
Hon'ble Shri B. K. Singh, Member (A)

1. Shri Ramesh Chand Sharma  
S/o Shri D. N. Bhardwaj  
R/o WZ-36, Palam Village  
NEW DELHI
2. Shri S. K. Bhardwaj  
S/o Shri D. N. Bhardwaj  
R/o WZ-36, Palam Village  
NEW DELHI
3. Shri Azad Singh  
R/o 68-A/GG II  
Vikas Puri  
NEW DELHI
4. Shri Gopal Ram  
S/o Shri Mool Ram  
R/o 122/C, Sector IV  
Pushpa Vihar  
NEW DELHI
5. Shri P. D. Mathur  
S/o Late Lal Bahadur  
R/o XI/115(98)  
West Azad Nagar  
DELHI
6. Shri Satinder Kumar  
S/o Late K. S. Ahluwalia  
R/o C-42, Shakti Nagar East  
DELHI
7. Shri Inderjit Singh  
S/o Late Gobind Singh  
R/o A-3/207, Janakpuri  
NEW DELHI
8. Shri Om Parkash Madani  
S/o Shri Banarasi Dass  
R/o House No.1459-B  
Mohalla Jation Ka  
V.P.O. Najafgarh  
NEW DELHI

... Applicants

By Advocate Shri S. K. Bisaria

VERSUS

1. Lt. Governor  
Through Chief Secretary  
Delhi Administration  
DELHI
2. Secretary (Services)  
Delhi Administration  
DELHI

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S/Shri

3. Bhoop Singh
4. S. P. Jain
5. Ram Rattan Sharma
6. Parkash Chand
7. Khazen Singh
8. Prem Raj Sharma
9. K. C. Rana
10. Saroj Singh Chauhan
11. Daulat Ram
12. D. S. Kaushik
13. Ajit Singh Rana
14. Behari Lal
15. Laxmi Chand
16. R. C. Rana
17. L. R. Saini
18. Suraj Singh
19. Balbir Singh Sharma
20. Kartar Singh
21. Jagdev Singh
22. Kundan Singh
23. Umrao Singh
24. G. R. Adhlochab
25. K. D. Bhardwaj
26. Jagdev Kumar
27. Jagdish Singh
28. Ganga Swarup
29. Rishal Singh
30. Sarup Singh
31. S. P. S. Rawal
32. RamBhaji Gupta
33. Karan Singh Yadav
34. Jagmohan Prasad
35. R. P. Kaushik
36. Pratap Singh
37. Ranvir Singh
38. Baldev Prakash

... Respondents

(Address of Respondents No.3 to 38 -  
to be served through Respondent No.2)

By Advocate Ms Veena Kalra, Proxy for  
Smt. Gita Luthra

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O R D E R

Hon'ble Shri B. K. Singh, Member(A)

This O.A.No.310/87 Shri Ramesh Chand Sharma and others as applicants and the Lt. Governor of Delhi and others as respondents, has been filed against the Order dated 19/24 December, 1986 promoting 227 persons including respondent No.3 to 38 on the recommendations of the Departmental Promotion Committee (DPC) on regular basis as Grade-II(executive) superseding the applicants in regularisation and seniority.

2. The admitted facts are that the Delhi Administration Subordinate Service consists of two cadres - (a) Executive, and (b) Ministerial. These are governed by the Delhi Administration Subordinate (Executive/Ministerial) Service Rule, 1967, effective from 10.2.1967.

Rule 3 of sub-section 2 provides that each service shall have four grades namely, Grade-I, Grade-II, Grade-III and Grade-IV.

Rule 5 provides for the initial appointment and Rule 6 provides for the method of promotion/recruitment in the different grades. Rule 6(ii) deals with recruitment to Grade-II.

3. In the present O.A. we are concerned with the filling up of vacancies in Grade-II(executive). The vacancies in Grade-II(executive) as per 1967 Rules

are based on 'Rota-Quota' system.

- 1st Vacancy -- By direct recruitment
- 2nd Vacancy -- By promotion on the basis of seniority
- 3rd Vacancy -- By direct recruitment
- 4th Vacancy -- By promotion on the basis of merit to be determined as a result of examination.

4. Substantive appointment to the grade shall be in order of seniority of temporary cadre officers of the grade on the recommendations of the DPC except when, for reasons to be recorded in writing, a temporary cadre officer is not considered fit for such appointment in his turn.

5. Rule 26 deals with the seniority in the cadre and reads as under:

"26. Seniority: The inter-se-seniority of the members of the Service appointed to any grade substantively or in a temporary capacity under rule 5 shall be determined in accordance with the principles laid down in the Delhi Administration(Seniority) Rules, 1965."

6. The applicants and the respondents No.3 to 38 belong to Executive Cadre Grade-II.

7. The applicants initially joined the service in Executive Cadre Grade-IV. After qualifying the departmental they were competitive examination/promoted to Grade-III(executive) and were subsequently promoted to Grade-II(executive) on purely ad-hoc basis vide order dated 16th April, 1983.

8. Respondent No.13, Shri Ajit Singh Rana <sup>subsequently</sup> filed a writ petition before the High Court of Delhi for

quashing of the seniority list, Hon'ble Mr Justice S. S. Chadha dismissed the writ petition vide Judgement dated 29th February, 1980. Being aggrieved by the judgement, Shri Ajit Singh Rana filed an appeal No.166 of 1980 which was heard by a Division Bench and the Judgement was pronounced on 1st February, 1985 allowing the appeal and setting aside the orders of the Single Bench with the following observations:

"We, therefore, set aside the judgement of the learned Single Judge and strike down the seniority list dated 8.5.1978 and direct the Delhi Administration to revise the seniority list giving credit to the petitioners for their continuous officiation in Grade-III from the date of their initial appointment in that Grade. We hope that the new seniority list is finalised without any further delay."

9. In the light of the judgement of the Division Bench mentioned above, respondent No.1 & 2 issued an order on 19/24 December, 1986 promoting 227 on regular basis as Grade-II(executive). In the said order respondent No.3 to 38 have been regularised in Grade-II while the names of the applicants have been omitted, involving the supersession of the applicants.

10. The relief prayed for by the applicants is: the applicants may be regularised with effect from the date of their initial appointment in grade-II(executive) and be given due seniority accordingly.



11. A notice was issued to the respondents who filed their reply and contested the application and the grant of relief prayed for.

12. We heard the learned counsels - Shri S.K. Bisaria for the applicant and Ms Veena Kalra, proxy counsel for Smt. Gita Luthra, counsel for the respondents, and perused the record of the case.

13. The learned counsel for the applicants argued that the applicants have been continuously officiating from 1983 and have acquired a vested right in their post and have claimed for regularisation since they have been working on an officiating basis for the last eleven years or so.

14. A perusal of the records shows that the stay was granted against the reversion of the applicants on 23.7.87 when the applicants had completed only 4 years of service in an officiating capacity. The remaining period is on account of the stay granted by this Hon'ble Tribunal. The integrated seniority list as on 4.12.90 of officers appointed under Rule 5, 6 & 19 to various posts and in Grade-III of Delhi Administration Subordinate Service Cadre was revised as a result of the judgement of the Hon'ble Delhi High Court on 9.1.87. In the relief prayed for the applicants have not challenged the seniority list published by the Delhi Administration. They have simply claimed

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regularisation against the post on which they have been working purely on ad-hoc basis with effect from 1983. Their initial appointment to Grade-IV was on different dates from 1970-72. They were promoted to Grade-III(executive) on different dates between 1976-79 after qualifying in the departmental competitive examination. They were promoted as Grade-II (executive) on 16/4/1983 on ad-hoc basis. Rule 26 has been amended as a result of the verdict of the Hon'ble Delhi High Court and a new Rule 26 was notified on 12th July, 1985. The order No.F.10(7)/82-S.II dated 16th April, 1983 reads as follows:

"The appointment shall be subject to the orders of competent authority revising the inter-se-seniority of the personnel in the feeder grade. The above officials will not be entitled to any benefit for purpose of seniority and will have no claim for regular appointment to this or any equivalent post on the basis of this order."

The two grades Ministerial and Executive were merged by Notification dated 4.12.1980. The notification dated 4.12.1980 was challenged in the High Court of Delhi and subsequently in the Hon'ble Supreme Court and the Special Leave Petition was dismissed on 12.8.1985 upholding the validity of the order passed by the Division Bench of the Hon'ble Delhi High Court. During the pendency of this writ petition and S.L.P., the Administration had no option but to make appointment of the applicants to meet the functional requirements on ad-hoc basis to the Executive and Ministerial cadres.

The final seniority list of officials appointed to Grade-III(Ministerial) cadre for the period prior to

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4th December, 1980 was issued vide No.5/1/85-JSC dated 2nd January, 1987. The final seniority list of officials appointed to Gra-III(Executive) prior to 4th December, 1980 was issued vide No.F.5(3)/85-S.II dated 30th December, 1985. This is annexed with the counter as Annexure R-5.

15. As a result of sub-rule (3) of new Rule 26 notified on 12.7.1985, the integrated seniority list of officials appointed prior to 4.12.1980 in Grade-III of the Delhi Administration Subordinate Service was issued vide No.F.5(2)/87-JSC dated 9th January, 1987. A copy of the said integrated seniority list is annexed as Annexure R-6 to the counter, Before the judgement of the Division Bench of Hon'ble High Court of Delhi and rejection of S.L.P., the present applicants were at the following serial no. of the seniority list:

<u>Name</u>	<u>Sl. no. in the list</u>
1. Shri Ramesh Chand Sharma	339
2. Shri S. K. Bhardwaj	352
3. Shri Azad Singh(SC)	360
4. Shri Gopal Ram (SC)	361
5. Shri P. D. Mathur	342
6. Shri Satinder Kumar	346
7. Shri Inderjit Singh	350
8. Shri Om Prakash Maidani(SC)	358

16. Subsequently, as a result of the revision of seniority list in the light of the judgement of Hon'ble Delhi High Court and the rejection of the S.L.P., the applicants are now at serial no.:





1. Shri Ramesh Chand Sharma	...	3838
2. Shri S. K. Bhardwaj	...	3948
3. Shri Azad Singh(SC)	...	3844
4. Shri Gopal Ram(SC)	...	3852
5. Shri P. D. Mathur	...	3936
6. Shri Satinder Kumar	...	3942
7. Shri Inderjit Singh	...	3946
8. Shri Om Prakash Maidani(SC)	...	3842

17. The revision in the seniority list has downgraded the applicants' position by more than 3000 places below others. It has been clearly stated by the respondents that the applicants were just given ad-hoc promotion in the exigencies of public service. These were just 'stop-gap' arrangements to meet the functional requirements of the administration and it does not confer any right and the reversion in such a case be resorted to without any show cause notice or without any enquiry. A government servant acquires his right in respect of a post when appointment is in conformity with the rules and the competent authority who has power to make rules under Proviso 309 is also empowered to modify rules as in the instant case as a result of the verdict of the Hon'ble Delhi High Court and rejection of S.L.P. by the Hon'ble Supreme Court. The administration is under obligation to honour the sanctity of the verdict of the Hon'ble Delhi High Court and in view of therejection of the S.L.P. by Hon'ble Supreme Court, Delhi Administfation had no option but to revise the seniority list.

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18. As we have stated above, the applicants were promoted only on ad-hoc basis in 1983 and are continuing in that capacity because of an interim order passed by the Principal Bench. This officiation does not confer on them any right. They have encroached on the rights of those direct recruits/promotees who are due for appointment by direct recruitment/promotion against these posts. The Delhi Administration, as a result of the interim order, have been compelled to maintain the status-quo against the rules and against the seniority list prepared as per direction of the Hon'ble Delhi High Court.

19. The wording of the appointment of these applicants reveals that it was purely an ad-hoc arrangement during the pendency of the writ petition in the Hon'ble Delhi High Court and subsequently the S.L.P. filed in the Hon'ble Supreme Court which was finally rejected. It is only after this that the seniority list was revised in 1987 and the regular appointments against the vacancies were made. The present applicants who have been placed at the bottom of the list of the seniority, cannot claim to retain these posts by encroaching on the rights of others against the statutory rules.


20. We do not find any merit in the contention of the learned counsel for the applicant in regard to


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regularisation. Regularisation can take place on the basis of the seniority and the seniority list has not been challenged here. This seniority list has become final as a result of the verdict of the Hon'ble Delhi High Court and the rejection of the S.L.P. filed in Hon'ble Supreme Court. The purely temporary and ad-hoc arrangement would automatically be deemed to have lapsed the day the seniority list was made final. There may be an element of hardship in their case, but they have already drawn pay scale and allowances for practically 11 years against posts which they were not entitled to hold.

21. Thus, the application is dismissed as devoid of merit.

The interim order passed by this Tribunal on 17.3.1987 will stand vacated. Costs on parties.

  
(B. K. Singh)  
Member (A)

  
(J. P. Sharma)  
Member (J)

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