

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.NO.465/87

DATE OF DECISION: 20th Dec. 1991

SHRI N.H. DAVE & 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. B.N. SINGHVI WITH
SH. S.S. TIWARI.

COUNSEL FOR THE RESPONDENTS : SH. K.C. MITTAL

JUDGEMENT

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

The bone of contention in this case is the inter-se seniority between the direct recruits and promotees to the post of Statistical Assistant - Class III, non-gazetted in the department of Education, Ministry of Human Resource Development, Govt. of India, New Delhi. The applicants in this O.A. are direct recruits. Their case, briefly, is, that though they were appointed against direct recruitment quota, earlier than the respondents No.2,3 and 4, and possess much higher qualifications than the said respondents, and the latter were not even eligible to be promoted as Statistical Assistants, on the dates they have been shown to have been promoted later, by showing slots, in the seniority list as on 1.9.1973, their promotion in this manner is unfair and unjust, and therefore, deserves to be undone. Their case further is that though, according

(23)

to recruitment rules, the quota between the direct recruits and the promotees was 80:20, the quota-rota rule in this case having broken down, as no eligible promotees were available, for a number of years, the promotion of respondents No.2,3 & 4, by resorting to quota-rota rule in their case, for a few solitary years, when the respondents No.2, 3 & 4 were promoted, was un-called for, and therefore, in accordance with the amended Recruitment Rules, brought into force in 1975, because of the non-availability of promotee candidates, the vacancies ought to have been filled in, by direct recruits. In other words, the seniority between the applicants and respondents No.2,3 & 4 should have been governed in the post of Statistical Assistant, from the dates they were actually appointed/promoted i.e. on the basis of the length of service in the said post, and not from the dates, in case of promotees, when the vacancies fell, even though they were not eligible on the said dates. The applicants have also reinforced their claim by submitting that they are educationally better qualified than respondents No.2,3 & 4, and hence, for this reason also their case stands at a better footing. For all these reasons, the applicants prayed for the setting aside of the seniority list as on 6.5.1986, which is being used as consideration list, for promotions to the post of Statistical Assistant, and for directions

24

to the respondents to assign seniority to the applicants in the said seniority, on the basis of the length of service.

2. It may be mentioned here that an amendment application, seeking various amendments in the O.A. was moved, which though opposed by the respondents, was allowed, vide order dated 24.4.1991, and amended O.A. as well as the amended counter, and rejoinder thereto, were filed, by the respective parties.

3. Counter was filed only on behalf of Respondent No.1, in which the contentions raised by the applicant were vehemently opposed, stating that there was no failure/ breaking down of the quota-rota rule, as alledged by the applicants. They had also contested the application on the ground that the seniority list, as on 6.5.1986, has not yet been circulated, because of the present O.A. having been filed by the applicants in this Tribunal and thus this O.A. is premature, having been filed without waiting for the circulation of the said seniority list or objections thereto, finalised. The other contention raised by the respondents was that, after the 1973 seniority list, there were some more seniority lists issued by the respondents in 1979 and in 1983, but the applicants have raised no objections with respect to the same, and therefore, it is too late in the day, now to change the seniority list, as on 6.5.1986, without the same having been circulated or any objections having been raised by the applicants. In the rejoinder filed on behalf of the applicants, their contentions put forth in the application were reiterated.

4. We had heard the learned counsel for the parties and had perused the record carefully. At the instance of the applicants, the respondents were also directed to file factual information with regard to filling-up of the vacancies for the post of Statistical Assistant, during the year 1969-1975. In the reply filed by the respondents, they had conceded that the year-wise break-up of vacancies, as well as the quota to which these vacancies fell, during the said period, was not available with them. They had, however, filed a photocopy of the recruitment-roaster (F/A), relating to the relevant period. According to the applicants, the failure on the part of the respondents, to furnish the year-wise information, in this respect, amounts to conceding by the respondents, the plea of the applicants, that the quota-rota rule had not functioned successfully, in the case of Statistical Assistants in the respondents' department, for a number of years, and therefore, should not be allowed to have its sway, only for a few years, which concern the Respondents No.2,3 & 4. By referring to AIR 1974 SC 259 (Ramchandra Shankar Deodhar & Ors. Vs. The State of Maharashtra & Ors.) and also 1990 Supply. SCC P.770 (Vimla Sharma Vs. State of Utter Pradesh), the learned counsel for the applicants pleaded that in case the applicants' case is found to have ^{some} intrinsic worth in it, the same be not denied merely on the grounds of technical objections, like limitation or latches and delay. The respondents on the other

96

hand pressed for their objection on the ground that nothing should be done to undo a settled position which existed as far back as 1975, which is not even within the jurisdiction of this Tribunal to look into, being much earlier than the period of three years, prior to coming into force of Administrative Tribunal Act, 1985 in terms of the provisions contained in Section 21(2) of the Act.

5. Though Respondents No.3 & 4 had joined at the stage of arguments, only Respondent No.4 had personally addressed arguments. While adopting arguments addressed on behalf of Respondent No.1, he submitted that seniority lists of 1979 and 1983 were circulated and objections invited. Seven persons including three of the applicants had raised objections, which were disposed of vide reply dt. 7.8.1975, given by the department, and nothing further was agitated by the applicants, which amounts to acceptance by them of the position, according to the said seniority lists. He further pleaded that he was promoted, as per seniority list of 1973, and his position was fixed at therein.

S.No.25/ After that, the seniority list of 1979 was also circulated on 4.4.1979 and thus he has completed about 17-18 years of service in the promotional post, and if affected adversely at this stage, he shall be hit very hard. He further stated that presently, he is officiating as Asstt. Education Officer and in the event of an adverse order, by way of acceptance of present O.A., his interest will be very badly jeopardized.

6. We have carefully considered the rival contentions,



as briefly discussed above. As regards the contention of some of the respondents that prior to the impugned seniority list, which has not yet been circulated, there were earlier seniority lists of 1979 and 1983, but no objections thereto have been raised by the applicants or even if raised, their adjudication in the appropriate forum was not sought for, at appropriate time, it may be stated that the so called seniority lists of 1979 & 1983 are not impugned in the case before us and accordingly we make no observation on this aspect of the matter. However, there is force in the plea put forth on behalf of the respondents that the impugned seniority list as on 5.6.1986 having not even been circulated, the present O.A. is not maintainable. Whenever the said seniority list as on 5.6.1986 is circulated, the applicants would have an opportunity to represent their case, and if, after decision is taken on their representation, if any, they still have any grievance, they would be free to approach the Tribunal in accordance with law, if so advised. The present O.A. being pre-mature is dismissed as such, with costs on parties.

(Signature)
(P.C. JAIN)
20/12/91
MEMBER(A)

(Signature)
(T.S. OBEROI)
20/12/91
MEMBER(J)