

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

REGN. NO. O.A. 577/87. DATE OF DECISION: 10.9.1992

S. Baljit Singh & Ors. ... Petitioners.

Versus

Union of India & Ors. ... Respondents.

CORAM: THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A).

For the Petitioners. ... Shri N.D. Batra,
Counsel.

For the Respondents. ... Shri M.L. Verma,
Counsel.

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice V.S. Malimath,
Chairman)

The three petitioners before us were holding the posts of UDC, Stenographer and Junior Investigator respectively in their parent department. They were appointed on an ad hoc basis in the Staff Inspection Unit of Ministry of Finance on 14.3.1978, 24.11.1978 and 4.12.1979 respectively. The orders of appointment produced in the case show that they would be appointed initially on an ad hoc basis for a period of one year and that they would be appointed against transfer/deputation quota vacancy provided such a vacancy becomes available in the meantime. There are specific orders continuing the ad hoc appointments upto 13.3.1982 so far as the first petitioner is concerned, upto 23.11.1981 so far as the second

petitioner is concerned and upto 3.12.1981 so far as the third petitioner is concerned. Thereafter, there are no specific orders continuing their appointments on ad hoc basis or otherwise. The fact is that they were allowed to continue in service as Technical Assistants. The petitioners were hoping to be absorbed by transfer/deputation as and when the vacancies became available in that quota. At the relevant point of time, recruitment to the post of Technical Assistant was governed by the Ministry of Finance (Department of Expenditure - Staff Inspection Unit) Recruitment Rules, 1965. The rules provided that 40% of the posts should be filled up by promotion and 60% of the posts by transfer/deputation, failing which by direct recruitment. The feeder category for promotion was the cadre of Investigators.

2. So far as the qualification for transfer/deputation is concerned, the prescription says that officers of the equivalent status or officers drawing a basic pay falling within the scale of pay applicable to the post or the next below post from the Central Government Departments. The petitioners did satisfy this condition and were, therefore, eligible for being appointed by transfer/deputation basis within the quota prescribed for them by the 1965 Rules. The Rules were, however, amended w.e.f. 28.11.1985 by which two essential qualifications were prescribed i.e. (i) a degree of a recognised University or its equivalent
✓ (ii) 5 years regular service in the scale of Rs.425-800 or

Rs.425-700. It is necessary to point out at this stage that even before the rules were amended, a circular was issued in the year 1981 to consider the cases of those who have put in at least 2 years of service for being appointed as Technical Assistant on regular basis. The petitioners were required to submit their applications within the specific time. Similar opportunities were once again given in the year 1983. The petitioners exercised such an option and offered themselves. Be that as it may, no steps were taken for considering the cases of the ad hoc appointees on transfer/deputation basis. It is only after the rules were amended that the steps were taken to fill up the vacancies. Even before appointments were made, the petitioners approached the Tribunal for relief and obtained an interim order on 28.7.1987 that any appointment made to the post of Technical Assistant during the pendency of these proceedings shall be subject to the final decision in this case. In accordance with the amended rules, it is now brought to our notice that several appointment were made in the year 1987 after the interim order came to be issued. It is also brought to our notice that so far as the three petitioners are concerned, they have also since been appointed on regular basis w.e.f. 20.4.1989. The resulting situation is that though the petitioners have also got into the cadre of Technical Assistant, they have done so w.e.f. 20.4.1989 whereas the others who had joined as ad hoc

Technical Assistants later than the petitioners were able to secure regular appointment as Technical Assistants w.e.f. 29.7.1987 onwards. This has resulted in an awkward situation of seniors becoming juniors in the cadre of Technical Assistants. It is in this background that we have to examine the contentions of the petitioners in this case.

3. The principal contention of Shri Batra, learned counsel for the petitioners, is that the respondents in fairness ought to have kept the assurance which they gave when the petitioners were given ad hoc appointment as Technical Assistants. We have already adverted to the specific assurance given in writing that they would be given regular appointment as and when the vacancies became available in the quota meant for appointment on transfer/deputation basis. It is settled law that so far as the vacancies are concerned, they should be filled up within a reasonable period from the date of occurrence of the vacancies by applying the rules which were in force at the relevant point of time. It was contended that if the respondents had taken such steps, the petitioners would have secured their appointments even before the rules were amended in November, 1985. On the question as to whether the vacancies were available or not, Shri Verma, learned counsel for the respondents, submitted that the petitioners can claim for consideration their appointments only in the quota meant for transfer/deputation, which is 60% of ✓ the vacancies and that they cannot lay their claims for other

40% of the vacancies meant to be filled up by promotion. Shri Verma pointed out that though the feeder cadre for promotion namely, the Investigators was abolished sometime in the year 1973, in the absence of amendment to the statutory rules, 40% of the vacancies meant for promotion could not be made available for being filled up by transfer/deputation. It is unnecessary to examine this contention for we find from the pleadings that there is a clear admission by the respondents that the vacancies were available. In paragraph 6.7 of the reply, it is stated as follows:

"The amendments to the Recruitment Rules of 1965 were under process. Till their finalisation, regular appointments were not desirable in spite of long term vacancies available in the grade. Hence ad hoc appointments were continued".

4. In the context of this case where the petitioners have asserted their rights for regular appointment in the quota meant for being filled up by transfer/deputation basis, the statement made in the reply must be understood as conveying that the vacancies were available for being filled up by the process of transfer/deputation. If it was the case of the respondents that the requisite number of vacancies were not available for being filled up by the process of transfer/deputation, the respondents would have given necessary figures in this behalf and demonstrated that there were no vacancies in which the petitioners could have been appointed in that quota.

✓ We, therefore, proceed on that basis having regard to the nature

of the pleadings that the necessary vacancies were available for being filled up in the quota of transfer/deputation. This was, however, not done because the amendment of the recruitment rules was under process. It is necessary to point out that one can appreciate non-filling of the vacancies for a reasonable period when amendment of recruitment rules is under contemplation. But it is necessary to point out that this is a case in which the petitioners have continued as ad hoc appointees for nearly seven years before the rules came to be amended in the year 1985. In fairness, the vacancies that were available should have been filled up by applying the rules that were in force at the relevant point of time. As already stated, the petitioners were eligible in accordance with the 1965 rules for being appointed by transfer/deputation basis. So far as the question of suitability of the petitioners is concerned, there is sufficient material before us in favour of the petitioners. The first factor is that the petitioners were continued in the post of Technical Assistant even after the rules were amended in the year 1985 which rendered the petitioners ineligible for appointment under the amended rules. Another factor to be noticed is that the respondents themselves gave to the petitioners regular appointments/w.e.f. 20.4.1989 though they were not eligible in accordance with the amended rules. The only

reasonable inference to be drawn is that this must be deemed to have been done in exercise of the relaxation of the powers conferred in Rule 12 of the Rules. It is, therefore, clear that the respondents themselves felt that the petitioners' cases were fit enough to be considered in relaxation of the rules for appointment as Technical Assistants in the quota meant for transfer/deputation. Having regard to these facts and circumstances of the case, we have no hesitation in holding that non-appointment of the petitioners was mainly for the reason that the respondents took the view that as they contemplated amendment of the rules, they need not fill up the vacancies. We are inclined to take the view that action of the respondents is unreasonable having regard to the facts of the case that the petitioners were given appointments on ad hoc basis on/that they would be appointed in the quota meant for transfer/deputation as and when the vacancies became available. The second factor is that they were continued in service for several years and even after the 1985 rules were amended, the respondents appointed the petitioners in relaxation of the rules w.e.f. 20.4.1989. Though prima facie the respondents have done justice though belatedly, it is not adequate and it has resulted in an unjust discrimination against the petitioners. If the ✓ action was taken well in time, the petitioners would have

found their place in the seniority earlier than their juniors as regular appointments were made only in the year 1987 when some of the juniors of the petitioners who were eligible secured regular appointment. This has brought about a situation of the seniors becoming juniors in the cadre of Technical Assistants. As this is manifestly unjust, we consider it appropriate to issue a direction to neutralise the discrimination flowing from the situation as discussed above.

5. As we are satisfied that the petitioners should have been appointed in accordance with the legitimate seniority in the quora meant for being filled up by the process of transfer/deputation, we are inclined to take the view that they should be given ranking for the purpose of seniority among the Technical Assistants in the same order in which they came to be appointed on ad hoc basis as Technical Assistants. Though those who should have been regularly appointed as Technical Assistants are not parties in these proceedings, in view of the fact that an interim order was made on 20.7.1987 by the Tribunal that any appointment shall be made subject to the final outcome of this application, non-impleading of the persons who were subsequently appointed cannot come in the way to place the petitioners in such a manner in appropriate positions, if necessary placing them above those who have been appointed during the pendency of this

application.

6. For the reasons stated above, this petition is partly allowed. We direct the respondents to reassign ranking to the three petitioners in the cadre of Technical Assistants in the Staff Inspection Unit deeming that they were appointed as on the dates on which their immediate juniors holding ad hoc appointments were regularly appointed to that cadre during the pendency of these proceedings. The seniority shall be given to the petitioners in the light of the above directions. No costs.

Subir
(I.K. RASGUTRA)
MEMBER(A)

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Malimath
(V.S. MALIMATH)
CHAIRMAN