

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 696/87
T.A. No.

1987

DATE OF DECISION 19.4.1988

Shri K.V. Rama Raju & Others Petitioner

Ms. Mridula Roy Advocate for the Petitioner(s)

Versus

Union of India & Others Respondent

Shri N.S. Mehta Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judicial) *[Signature]*

The Hon'ble Mr. S.P. Mukerji, Administrative Member.

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*

S.P.M.
(S.P. Mukerji)
Administrative Member

P.K.K.
(P.K. Kartha)
Vice-Chairman (Judl.)

Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. OA-696/87

Date: 19.4.1988

Shri K.V. Rama Raju & Others Applicant

Versus

Union of India & Others Respondents

For the Applicant Ms. Mridula Roy,
Advocate.

For the Respondents Shri N.S. Mehta,
Advocate.

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman (Judicial)
Hon'ble Shri S.P. Mukerji, Administrative Member.

(Judgement of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice-Chairman)

The applicant, presently working as Assistant Director in the D.G.S. & D. and who has filed this application under Section 19 of the Administrative Tribunals Act, 1985, is seeking reliefs which are identical to those claimed by his colleagues working in the Calcutta office of the Directorate General of Supplies & Disposals in applications filed by them before the Calcutta Bench of the Tribunal. The Calcutta Bench of the Tribunal in the cases of Shri M.C. Bhattacharya vs. Union of India & Others (TA-1663/86), Shri Dalip Kumar Goswami vs. Union of India and Others (TA-808/86), Shri M.C. Banerjee and Others vs. Union of India & Others (TA-616/86), and Shri Khageshwar Das vs. Union of India and Others (TA-807/86), has delivered judgements directing that the same should be implemented by 31.7.1987 in respect of the issue of the seniority list, regularisation of services of ad hoc Assistant Directors (Grade II) and their consideration for further promotion to the grade of Assistant Director (Grade I).

2. Though the names of 7 persons figure as applicants in the present application, only 2 of them - Shri K.V. Rama Raju and Shri K. Sivaswamy - appeared before us in person and through their counsel.

3. The facts of the case in brief are that the applicants who are Assistant Directors (Grade II) in the Office of the Director General of Supplies & Disposals, New Delhi, have officiated in that post on ad hoc basis without any break in service for years. In the case of Shri Rama Raju, the date of appointment was 22.6.1971 while in the case of Shri Sivaswamy it was 8.4.1965. Despite their continuous officiation, their seniority was recognised arbitrarily from 19.3.1977 and their names were included, accordingly, in the seniority list of Assistant Directors (Grade II) as prepared on 1.3.1979. In the absence of timely regularisation, they were not taken into consideration for further promotions.

4. Under the relevant recruitment rules for the post of Assistant Director (Grade II), 50 per cent of the posts are to be filled up through promotion departmentally by eligible candidates from the feeder channels and the remaining 50 per cent by direct recruitment through Union Public Service Commission by persons possessing a degree in Civil, Electrical or Mechanical Engineering.

5. Recruitment to Grade I is regulated by another set of rules issued by the Ministry of Works & Housing and Supply in 1961. The applicants have contended (and this is not disputed by the respondents) that ^{as} the responsibilities, duties and financial powers delegated being identical, at the time of posting, the officers of Grade I and Grade II are freely inter-changed.

6. The applicants have stated that the Indian Supply Service has not proved attractive enough for the new engineers who are successful in the Engineering Service examinations to opt for the service, with the result that direct recruitment to Assistant Directors has been very slow. This led to resorting to ad hoc promotions from feeder channels.

7. According to the applicants, the quota rules as prescribed by the recruitment rules of 1965 were never adhered to and, therefore, the quota rules in reality collapsed. Hence, all the appointments made on ad hoc basis would be regular appointments and the applicants would be entitled to continuity of service from the date of joining as Assistant Director (Grade II) with consequential benefits like salary, status, increments and promotion. Our attention has also been drawn to the fact that the promotees appointed in the year 1965 onwards appear in the seniority list junior to the direct recruits appointed 10-12 years later. This situation has arisen as the applicants have not been given the benefit of numerous years of continuous officiation as Assistant Director (Grade II), on ad hoc basis. The applicants have contended that they are entitled to be regularised from the date of continuous appointment as also to the consequential benefits from that date as per the judgement of the Supreme Court in Narendra Chhadha Vs. Union of India AIR, 1986 S.C. 638.

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Land the action taken by the respondent in relation thereto

8. The reliefs sought in the present application/are as follows:-

- (i) Granting of confirmation and seniority in the post of Assistant Director (Grade II) from their respective dates of joining to that post.

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The respondent has issued orders on 29th June, 1987 appointing Assistant Directors (Grade II) on regular basis in that grade from their respective dates of joining to the post.

(ii) The seniority list dated 1.3.1979 should be rectified. The respondent has rectified the seniority list by order dated 31.12.1987.

(iii) Granting of all consequential benefits like salary, promotion, etc. The respondents have not granted this relief as yet.

9. The case was heard by us on 7.3.1988 and finally on 11.4.1988. At the hearing on 7.3.1988, the representative of the respondent submitted that based on the revised seniority of Assistant Directors (Grade II), a Review D.P.C. had met in December, 1987 and recommended both the applicants for promotion to Grade I. But since there were certain infirmities in the proceedings of the D.P.C., the respondent is proposing to have a further review D.P.C. The question of revising seniority of the applicant in Grade I and on that basis further promotion as Deputy Director will be consequential upon the result of the Review D.P.C. being proposed. As, however, the applicant, Shri K. Sivaswamy, is retiring in July, 1988, we direct that all these stages of promotion of the applicant should be completed within a period of one month and the representative of the respondent undertook to meet this deadline. It was added in our order that the question of giving the relief sought for by the applicants will be taken up after one month, irrespective of whether the respondent has been able to take the final decision in the matter of promotion of the applicants to Assistant Director (Grade I) and as Deputy Director.

10. The learned counsel for the respondent stated during the hearing on 11.4.1985 that the arrears of salary have not been paid to the applicants in view of the Ministry of Home Affairs' O.M. No.20011/1/77-Estt.(D) dated 19th April,1978, according to which, the arrears of pay are not to be allowed in such cases. We do not see any relevance of the said office memorandum in the context of adjudication of this application by the Tribunal. In Charan Dass Chadha Vs. State of Punjab and another, 1980(3)SLR 702, the High Court of Punjab and Haryana held that once promotion is made with retrospective effect the promotee cannot be deprived of higher pay and other benefits because the Government cannot take advantage of its own wrong or illegal order in not promoting him. The same High Court had held in K.K.Jaggia Vs. State of Haryana and another, 1972 SLR 578 that promotion with retrospective effect at the conclusion of the departmental enquiry entitles the promotee to arrears of higher pay as he could not work in the higher post for no fault of his. Similar views were expressed in Mrs. Asha Rani Lamba Vs. State of Haryana, 1983(1) SLR 400 and P.P.S. Gumber Vs. Union of India, 1984(2)SLJ 631 (Delhi). In Maharaja Sayajirao University of Baroda and others Vs. R.S.Thakkar, I(1988)ATLT 267, the Supreme Court upheld the order of the High Court which had allowed the claim of back wages for the period when the service of the employee stood terminated by holding the order of termination as illegal.

11. In S.P.Sampath Kumar Vs. Union of India & Others (1987 (1) SLR 182) the Constitution Bench of the Supreme Court had held that the Administrative Tribunal is a substitute of the High Court providing an equally efficacious alternative remedy for adjudication of disputes in service matters. Referring to this judgement, the Supreme Court has observed in J.B.Chopra & Others Vs. Union of India & Others (ATR1987(1) SC 46) that

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"the Administrative Tribunal being a substitute of the High Court, had the jurisdiction, power and authority to adjudicate upon all disputes relating to service matters, including the power to deal with all questions pertaining to the constitutional validity or otherwise of such laws as offending Articles 14 and 16(1) of the Constitution."

12. In the facts and circumstances of the case, we order and direct as follows: -

- (i) The respondent should complete all stages for the consideration of the applicant for promotion confirmation, etc., to the post of Assistant Director (Grade I) and Deputy Director before 31st July, 1988 and confer all consequential benefits on the applicants including Shri K. Sivaswamy, who will be superannuating from service on that date. These benefits would include arrears of pay and computation of the revised pay for the purpose of pension.
- (ii) The arrears of pay and allowances, consequent to the revision of seniority, should be paid within a period of one month from the date of this order.
- (iii) There will be no order as to costs.

S.P.M.
19.4.88
(S.P. Mukerji)
Administrative Member

Ans. 14/58
(P.K. Kartha)
Vice-Chairman (Judl.)