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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Registration No. CA-1057 of 1987

Date of Decision:-

Mrs. Indira Sawhney .. Applicant

Versus

Union of India & Others ... Respondents

Counsel for the applicant ... Mr. Arvind Gupta

Counsel for the respondents Nos. 1 & 2 Mr. P.P. Khurana

Counsel for the respondents nos. 3 & 5 Mr. G.D. Gupta

Coram:- Justice U.C. Srivastava, Hon'ble Vice-Chairman (J)

Hon'ble Shri I.P. Gupta, Member (Administrative)

J U D G M E N T

Hon'ble Shri I.P. Gupta, Member (Administrative):-

This is an application under section 19 of the Administrative Tribunals Act, 1985. In the application the following have been mentioned:-

(i) The applicant was first promoted as Research Assistant in July, 1961 through open competitive examination conducted by the Central Hindi Directorate. Though the competition was departmental in nature the applications were invited by the Directorate from various Governments, Ministries and departments including Technical Assistants already working in the Directorate and selection was held on the basis of the written examination. Whereas the applicant appeared in the said competition and succeeded, respondents nos. 3 to 5 did

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appear in the competition. Later when the Directorate held that UPSC's approval is required for such direct recruitment another selection through written examination was held by UPSC in 1962. In this competition the applicant as also the said respondents appeared. While the applicant succeeded in the competition the said respondents did not;

(ii) There was no quota existing for direct recruitment or promotion until 1966. The seniority, therefore, has to be assigned on the basis of the actual date of appointment/promotion. On this basis too the applicant is senior to the respondents nos. 3 to 5.

(iii) Merely because quota of 1 : 3 (DP and DR) was proposed in the draft recruitment Rules in 1963 it cannot be said that such quota has come into existence. What was approved and notified in 1966 was a quota of 1 : 9 (DP : DR) which could come into force only with effect from the date of issue of the Notification of the Rules of 1963. The Rules did not contain any mention that the Rules and quota contained therein will apply retrospectively. Therefore, no quota could be applicable prior to 1963;

(iv) The UPSC had given a categorical ruling that the Direct Recruits of years prior to 1963 had to be ranked enbloc senior to later promotees. There is, therefore, no lawful justification for the department to make Respondent Nos. 3 to 5, who were later promoted as senior to the applicant;

(v) In the case before the High Court ~~xxxxxx xxxxxxxx xxxxx as~~ none of the officials of Bureau, including the applicant were made party

J. L. Chaudhary

to the writ petition, ~~IN WHICH THE APPLICANT~~ ^{jud}
~~JUDGMENT WAS DELIVERED BY THE HON'BLE HIGH COURT.~~ ^{jud}
 Therefore, that judgment given, in fairness cannot
 bind her and other like her ~~xxx~~ nor can be deemed to
 have been delivered after consideration of full and
 correct facts;

(vi) It is settled law that no rota
 applies unless it is expressly provided in the Rules
 as a concomitant of the quota. Furthermore, even if
 so provided, if quota fails, rota automatically fails.
 In the instant case, there were no rules in existence
 till 1963. There were some draft Rules which also were
 put up in the form of proposal until ~~in~~ 1963. These
 were never approved as such. While these draft Rules
 contain a proposal of 1 : 3 quota (DP : DR), the rules
 were finalised and notified in 1964, ^{prescribed} and ~~had~~ a quota 1 : 9
 (DP : DR). Therefore, until 1964, there was no quota at
 all. And after 1964, too, the quota that was notified
 was 1 : 9. Therefore, so far as promotees and direct
 recruits prior to the notification of the quota are
 concerned, they will have to be given seniority according
 to their actual dates of promotion/appointment. In promotion/
 appointment made after the notification of the Rules,
 the quota 1 : 9 will apply.

2. ~~The~~ The applicant has sought the reliefs that
 the impugned seniority list dated 16.7.86 and 9.10.86
 be quashed and that 1979 seniority list be restored.
^{been}

3. This matter has ~~gone~~ into in detail by the
 Hon'ble High Court of Delhi in Civil Writ No.329 of
 1978 - Shrimati Saroj Jain & others Vs. Union of India
 and Others in which the Hon'ble High Court of Delhi
 decided on 23.6.1983 that the seniority lists of 1973,

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1974 and 1978 be quashed and fresh seniority list prepared on the basis of the list of 1972. in the light of the observations made by the Hon'ble High Court, after giving an opportunity to the Direct recruits as also promotees of being heard.

4. A further short question arose whether the final seniority list drawn up in pursuance to the judgment dated 23.6.1983 of the Hon'ble High Court in Shrimati Saroj Jain & Others Vs. Union of India and Others was in accordance with the rule and conformity with the said judgment. The Central Administrative Tribunal, Delhi, (Principal Bench of the C.A.T., Delhi) observed as follows in OA-23/85 - Shri H.P.Sinha and Smt. Saroj Jain Vs. Union of India and Central Hindi Directorate:-

"4. Both the parties to this petition were present in person. They were also represented by their learned counsel Shri Madan Lokur. It was stated by the parties in person that their entire service has been taken into account in assigning them their rank in the seniority list. Their only grievance is that the ratio of 9 : 1 was adhered to. According to them, the High Court, while disposing of the earlier writ petition directed that in determining the seniority for the period prior to 24.6.1963 i.e., for the period when the draft Recruitment Rules were in force, the ratio of 3 : 1 should have been followed. It is urged that in paragraphs 14 and 15, the High Court had so directed.

5. We have carefully gone through the entire judgment and in particular paragraphs 14 and 15 and we do not think that there is any such finding or direction. What is held therein is that although the rules were not finalised and only draft rules were being followed under which the ratio of 3 : 1 was envisaged, the promotions made thereunder could not be taken as non-est for the purpose of assigning the promotees appropriate seniority after giving credit for that period of service. In the judgment it was not held

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that the ratio of 3 : 1 envisaged under the draft rules was binding and could not be altered when the draft Rules were finalised. In paragraph 14, only the question whether the promotions could be treated as non-est and whether the service rendered when the draft rules were in force was to be counted or not was considered and held in favour of the promotees. The question whether the ratio envisaged in the draft rules could be altered under the Recruitment Rules enforced on 24.6.63 was specifically discussed in the subsequent paragraphs and in paragraph 17, the Court clearly held that in reducing the ratio of the promotees from 3 : 1 to 9 : 1 "the Government appear to have struck a reasonable balance between the conflicting claims". No portion of the judgment can be read in isolation. What emerges from reading of the entire judgment is while the promotees will get the benefit of their entire period of service irrespective of whether it was rendered prior to 24.6.1963 or thereafter and irrespective of whether it was ad-hoc, officiating or temporary, the ratio of 9 : 1 as enforced by the 1963 Recruitment Rules will have to be adhered to in drawing up the seniority lists. As these two directions of the Delhi High Court have been fully complied with, we find no ground to disturb the seniority list. This petition, therefore, fails and is accordingly dismissed, but, in the circumstances, without costs."

5. In the light of the aforesaid facts it is clear that the seniority list should be on the basis of the list of 1972 and not 1979 as requested for by the applicant. The impugned seniority lists dated 16.7.1986 and 9.10.86 which were based on the seniority list of 1972 should not therefore, be invalid as such. The respondents are, however, directed to give a hearing to the applicant for correction of any factual mistake. Further in list of 16.7.86 prepared on the basis of list of 1972, the ratio ^{should} ~~shall~~ have been taken as 9 : 1 (DR : DP) and not 1 : 9 (DP : DR) in the light of the Recruitment Rules of 1963 as finalised. This is being mentioned since both in the judgment of the Hon'ble Delhi High Court and that of the Tribunal ^{also} the ratio 9 : 1 was mentioned, whereas the seniority list circulated in order dated 16.7.1986 and 9.10.86 referred to the ratio 1 : 9.

¶ This is relevant in the sense that this will determine whether DP is to be placed first or DR I

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6.

6. With the aforesaid directions
the application is dismissed with no order as to
costs.

I. P. Gupta
(I. P. GUPTA)
Member (Administrative)

U.C. Srivastava
(Justice U.C. Srivastava)
Vice-Chairman (J)

*Approved by me today in
open court.*

Jomany
24.9.92