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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

Senave
DATE OF DECISION: 18.7.1990
18.7.90

REGN. NO. RA 28/89 in
OA 1323/88

Din Dayal

.... Applicant.

Versus

Union of India & Ors.

.... Respondents.

REGN. NO. RA 99/89 in
OA 1537/88

Balbir Singh

.... Applicant.

Versus

Union of India & Ors.

.... Respondents

CORAM: Hon'ble Mr. Justice Amitav Banerji, Chairman.
Hon'ble Mr. B.C. Mathur, Vice-Chairman.

For the Applicants.

.... Shri S.C. Luthra, Counsel

For the Respondents.

.... Shri P.P. Khurana,
Counsel.

(Judgement of the Bench delivered by
Hon'ble Mr. Justice Amitav Banerji,
Chairman)

The identical questions have been raised in both the Review Petitions and, therefore, these petitions are being disposed of by a common order.

While disposing of four O.As 975/88 (Onkar Chand Vs. Union of India & Ors), 1219/88 (Shiv Narain & Ors Vs. Union of India & anr.), 1537/88 (Balbir Singh Vs. Union of India & Ors.) and 1323/88 (Din Dayal Vs. Union of India and Ors.), the Division Bench considered the question of seniority of the applicants in the cadre of ACIO-II and ACIO-I in the Intelligence Bureau (IB). The applicants had contended that their seniority should be counted from the date of continuous service in that grade. The Division

Bench observed that there was no serious dispute in regard to the facts of the case and the only question involved was a question of law. The question was what is the relevant date for the purpose of determining seniority in the Intelligence Bureau.

The Bench referred to the cases of NARENDER CHADHA AND OTHERS VS. UNION OF INDIA & OTHERS (ATR 1986 SC 49), LAXMAN NARAYAN NAIK, ACIO-II VS. DEPUTY DIRECTOR(E), I.B. and BALDEV SINGH & OTHERS VS. UNION OF INDIA & ORS. and held that the principles laid down in NAIK's case (Supra) were fully applicable to the cases before the Division Bench. The Bench thereafter laid down that-

"the relevant date is not the date when the applicant was regularised in the I.B. but the date on which he was absorbed in the I.B. (i.e. 1.8.1971) and was also in the cadre of ACIO-II. Although, he was promoted to the rank of ACIO-II on 30.11.1968, yet as he had not been absorbed in the I.B. that would not be the material date. He would be in the same cadre as of the direct recruits only when he was absorbed in the I.B. The date when his services were regularised i.e. on 14.5.1979 is not the relevant or material date. We are, therefore, firmly of the view that in the case of the applicant, the relevant date for the purpose of calculating his seniority would be 1.8.1971 in the cadre of ACIO-II. We would, therefore, direct the respondents to calculate his seniority from the above date. The first prayer is answered accordingly".

This principle was made applicable to all the four O.A.s and to all the six applicants and the relief was accordingly granted.

The second relief was that the applicant be considered as eligible for promotion as and when due. The Bench held as under:-

"We do not give any direction to promote the applicant in the next cadre from any particular date. If he is eligible for promotion in accordance with the Rules Applicable, his case will be considered and appropriate orders passed. With these observations, the second prayer is accordingly answered".

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Four of the six applicants were satisfied with our orders. But the two applicants, Balbir Singh and Din Dayal, were aggrieved by our orders and had filed the Review Applications. Their cases are slightly different on question of facts from the other four applicants. In the case of the other four applicants, they had reached in the rank of ACIO-II, but not the rank of ACIO-I. Balbir Singh was promoted to the rank of ACIO-I on 25.7.1978 and Din Dayal on 14.11.1977. The relief that had been asked in the case of Balbir Singh was that his seniority in the cadre of ACIO-I in the Intelligence Bureau (I.B.) be determined as from 25.7.1978 and that in the case of Din Dayal from 14.11.1977. The relief granted by the Division Bench in both cases Balbir Singh and Din Dayal was that their seniority in the cadre of ACIO-II be considered with effect from 1.8.1971. They have stated that they had been absorbed as JIO-I w.e.f. 1.8.1971 and they had been promoted as ACIO-II before the date of their absorption. Consequently, their lien in Delhi Police stood terminated w.e.f. 1.8.1971. The applicants Balbir Singh and Din Dayal were promoted as ACIO-I w.e.f. 25.7.1978 and 14.11.1977 respectively.

They have claimed that they have been given different relief than what is given in the case of other four applicants. It was urged that in the case of the second applicant Sudershan Lal in O.A. 1537/88, he was absorbed AS JIO-II w.e.f. 1.8.1971. While working as JIO-I, he was later promoted as ACIO-II w.e.f. 20.6.1973. By the order of the Bench of the Tribunal, he had been assigned in the grade of ACIO-II w.e.f. 20.6.1973 whereas Balbir Singh, who had also been absorbed w.e.f. 1.8.1971 and had become ACIO-I on 25.7.1978, was also granted seniority w.e.f. 1.8.1971.

The applicant Din Dayal's case is that even on the date of filing of the O.A. i.e. 18.7.1988, he had not been assigned seniority in the grade of ACIO-I w.e.f. 14.11.1977, the date on which he was promoted to that post. He pointed out that he was promoted as ACIO-II on 30.11.1968 and as ACIO-I on 14.11.1977 respectively. Similarly, in the case of Balbir Singh,

the applicant had sought the relief "to assign the seniority to the applicant in the grade of ACIO-I w.e.f. 25.7.78, the date on which he was promoted to the rank of ACIO-I and was holding the same since then". The Division Bench held that there was no need to issue a direction (in the case of Balbir Singh) to calculate his seniority w.e.f. 1.8.1971.

We have considered the Review Applications as well as heard the learned counsel for the parties. We find that the cases of these two applicants Balbir Singh and Din Dayal stood on a different plane than that of the other applicants. What was considered was the seniority of all the applicants in the cadre of ACIO-II whereas in the case of Balbir Singh and Din Dayal what was necessary to be considered was the seniority in ACIO-I. It is apparent that this was not duly considered. Their case was different than in the cases of other applicants. It appears that this question was decided erroneously by considering their cases also for seniority as ACIO-II. It is, therefore, apparent to us that there is a mistake.

We feel that once the error is pointed out and noticed, the court should correct the same. We are supported in this view of ours by the observations of Ranganath Misra, J. in the case of SHRI A.R. ANTWULAY VS. SHRI R.S. NAYAK & ANR (1988(2) JT (362)):-

"Once judicial satisfaction is reached that the direction was not open to be made and it is accepted as a mistake of the court, it is not only appropriate but also the duty of the court to rectify the mistake by exercising inherent powers. Judicial opinion heavily leans in favour of this view that a mistake of the Court can be corrected by the Court itself without any fetters. This is on the principles as indicated in Alexaner Rodger's case (supra). I am of the view that in the present situation, the Court's inherent power can be exercised to remedy the mistake. Mahajan, J. speaking for a four Judge Bench in KISHAN DEO VS. RADHA KISEN (1953 SCR 136), at page 151 stated:-

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"The judge had jurisdiction to correct his own error without entering into a discussion of the grounds taken by the decree-holder or the objections raised by the judgement-debtors".

It was further observed by Hon'ble Ranganath Misra, J.

in the case of SHRI A.R. ANTULAY (Supra) that-

"To err is human, is the oft quoted saying. Courts including the apex one are no exception. To own up the mistake when judicial satisfaction is reached does not militate against its status or authority. Perhaps it would enhance both".

In view of the above, it will be just and proper that the Review Applications in the case of Balbir Singh (R.A.99/89 in O.A. 1537/88) and Din Dayal (R.A. 28/89 in O.A. 1323/88) be allowed and the judgements in both cases dated 2.2.1989 be corrected.

We are of the view that in the case of Balbir Singh the question is about his seniority in ACIO-I and not in ACIO-II. Therefore, since he had already been absorbed on 1.8.1971 in the I.B., the date of his promotion as ACIO-I on 25.7.1978 would be the material date and he would be entitled to his seniority as ACIO-I from 25.7.1978. The date of confirmation as ACIO-I is not the material date. The date of promotion even if it be ad hoc be counted towards his seniority.

We would, therefore, modify our earlier judgement dated 2.2.1989 (in the case of Balbir Singh) opening with the sentence "As far as the Applicant No.1 Shri Balbir Singh is concerned....." This now reads as under:-

"As far as the Applicant No.1, Shri Balbir Singh is concerned, he was absorbed in the I.B. on 1.8.1971 when he was ACIO-II. Although he was promoted in the rank of ACIO-II on 30.11.68, yet as he had not been absorbed in the I.B., the above date would not be the material date. He would be in the same cadre as of the direct recruits of ACIO-I on 25.7.1978 when he was promoted as ACIO-I".

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Similar is the position in the case of Din Dayal except that the date of promotion as ACIO-I is 14.11.1977. He would also likewise be entitled to his seniority in ACIO-I from 14.11.1977. The judgement dated 2.2.1989 in the paragraph opening with the sentence "The relevant date is not the date when the applicant was regularised in the I.B." now reads as under:-

"As far as the applicant Shri Din Dayal is concerned, he was absorbed in the I.B. on 1.8.1971 when he was ACIO-II. Although he was promoted in the rank of ACIO-II on 30.11.68, yet as he had not been absorbed in the I.B., the above date would not be the material date. He would be in the same cadre as of the direct recruits of ACIO-I on 14.11.1977 when he was promoted as ACIO-I".

In the result, therefore, we direct the respondents to calculate the seniority of the applicant Shri Balbir Singh in the cadre of ACIO-I from 25.7.1978 and that of Din Dayal from 14.11.1977. We order accordingly.

The Review Applications are accordingly disposed of. There will be no order as to costs.

B.C. Mathur
18.7.90
(B.C. MATHUR)
VICE-CHAIRMAN (A)

Amitav Banerji
(AMITAV BANERJI)
CHAIRMAN

"SRD"

Remanded by me in open Court.

B.C. Mathur
18.7.90