

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

OA NO.127/90

DATE OF DECISION: 30 MARCH, 1990

SHRI R.S. SOMWANSHY & OTHERS

APPLICANT

SHRI B.S. MAINEE

ADVOCATE FOR THE APPLICANTS

VERSUS

UNION OF INDIA & OTHERS

RESPONDENTS

MRS. RAJ KUMARI CHOPRA

ADVOCATE FOR THE RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

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*
4. To be circulated to all Benches of the Tribunal *No*

JUDGEMENT

(Of the Bench delivered by the Hon'ble Mr. I.K. Rasgotra, Member (A)

Shri R.S. Somwanshy and 11 others working as adhoc Assistant Directors (OL) have filed this OA under Section 19 of the Administrative Tribunals Act, against the impugned order No. 5/7/89-OL (P) dated 9th January, 1990 reverting them to the post of Sr. Hindi Translators in the various Departments, shown against their names.

2.1 The facts of the case are that the Central Secretariat

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Official Language Service (Group 'A' and Group 'B') posts was constituted vide Recruitment Rules notified on 9th September, 1983 by the Ministry of Home Affairs, New Delhi (pp 47-52 of the paper book). The provisional seniority list as on 1.7.1989 of Senior Translators was issued by the Department of Official Language, MHA on 4.8.1989 (page 17 of the paper book). The applicants are placed at Sno. 36, 37, 40-45 (6 applicants), 47, 49, 50 and 55. According to the Recruitment Rules 'A' & 'B' the recruitment to the post of Assistant Director (OL) Grade III in the pay scale of Rs. 2000-3500/-, is to be made 50% by promotion failing which by direct recruitment with 3 years regular service in the grade and 50% by direct recruitment. The applicants' contention is that all the post but one, including those earmarked for direct recruitment through UPSC, after the constitution of the service, were filled by promoting the departmental candidates by the respondents. It has been further submitted that in the provisional seniority list as on 1.7.1989 of senior Translators issued by Department of Official Language, MHA on 4.8.1989 (page 17 of the paper book) the applicants are figuring at Snos. 36, 37, 40-45 (6 applicants). The applicants submit that most of the senior Translators promoted as Assistant Directors (OL), Grade-III of the Central Secretariat Official Language Service on adhoc basis have been regularised as indicated against serial Nos. 48-109 of the seniority list of officers holding the posts of Assistant Directors as on 1.8.1989. The applicants therefore claim that they should also be regularised against the regular and substantive vacancies against which they were promoted.

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2.2 They are aggrieved of the decision of the respondents asking the UPSC for recruitment of 23 direct recruits for appointment as Assistant Directors (OL) for which an advertisement was issued in January, 1988. The UPSC, however, prepared a select list of 37 candidates on the basis of selection held in August/1989. The selection held by the UPSC has already been challenged in OA No. 2038/89 and 1964/89. It has been further submitted that in OA No. 2038/89 another Bench of this Tribunal has passed interim orders directing the respondents not to make any regular appointment to the post of Assistant Directors. They further submitted that consequent to the receipt of select list from UPSC 17 Assistant Directors including the applicants are now facing illegal reversion. They have made representations to the Department of Official Language on 10.3.1989, 19.6.1989 and 14.8.1989 but have not received any reply.

2.3 The Ld. Counsel for the applicants submitted that the respondents did not make any direct recruitment after the constitution of the service in 1983 for five years. Only one person was recruited in 1984 through the UPSC. It was therefore submitted that since the quota had not been operated the rota rule cannot be applied. Further the respondents cannot bunch the vacancies for several years together to the detriment of departmental candidates. The Ld. Counsel cited the judicial pronouncements listed below\* in support of his arguments.

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\* ATR-1986 (II)-270 - K.N. Mishra & Others Vs. UOI

1(1987) ATLT 385 -A.N. Pathak & Others Vs. UOI & Another

2.4 By way of relief the applicants have prayed:

- (a) to quash, the impugned order at Annexure A-1, posting them as senior Translators but actually reverting them from the post of Assistant Directors;
- (b) to direct the respondents to make appointments of the direct recruits against the future vacancies arising for direct recruitment;
- (c) to restrain the respondents from reverting the applicants who are working satisfactorily as Assistant Directors; and
- (d) to regularise their service from the date from which they have been promoted allegedly on adhoc basis.

3. The respondents in their counter have stated that the applicants were appointed purely on adhoc basis for a specific period or till the regular incumbents become available, whichever is earlier. Now that the direct recruits have become available, the applicants have been reverted vide order dated 9.1.1990. The applicants are also too junior to come up for regular promotion against the promotion quota as there are more than 30 persons senior to them in the seniority list of senior translators who have not been promoted on regular basis.

4. It has further been stated that in a similar case in OA No.44/90 Shri R.K. Singh working as adhoc Assistant Director - reverted vide impugned order dated 9.1.90 - the Tribunal has upheld the order of reversion issued by the Department of

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Official Language, Ministry of Home Affairs. The applicant's case that the vacancies of direct recruitment quota may be appropriated for promotion quota is neither reasonable nor justifiable. The respondents have referred to paragraph 2.4.2 of the Ministry of Personnel, Public Grievances & Pensions OM dated 3rd July, 1987 Annexure R 5 (page 187 of the paper book) which indicates as to how the seniority of the direct recruits vis-a-vis the promotees is to be determined when the vacancies for direct recruitment quota are carried forward from one year to the subsequent year. It has been further brought out that the Recruitment Rules were published on 9.9.1983 and thereafter the process of initial constitution of service in accordance with Rule 6 of the Service Rules was started. This involved collection of service particulars of persons holding the posts to be included in the service collected from various Ministries/Attached Offices etc. participating in the services. Initial constitution of the service of Group 'B' posts (Assistant Director Grade-III) was completed in two phases and the orders were issued on 17.12.1985 and 8.6.1987. The requisition was sent to the UPSC for filling up 23 posts on 26.6.1987 vide Department of Official Language OM No.5/10/87-OL(S). The UPSC finally selected 36 persons in August, 1989. In the meantime the vacancies of Direct recruitment quota pertaining to year 1988 & 1989 were also assessed and intimated to the UPSC. The total number of vacancies has gone up to 49 (upto 1987, 1988 & 1989 total 49). Nine more vacancies have arisen for 1989. The total number of direct recruitment quota works out to 54 upto end of 1989. After filling up one vacancy in 1984 & 36 in August 1989,

17 more direct recruitment quota vacancies would require to be filled up.

5. To fill up the promotion quota after holding DPC, 9 employees were promoted as Assistant Director (OL) on 20.9.1987 and 15 on 30.3.1988, which cleared the vacancies in promotion quota upto year 1987. Twenty one more promotion quota vacancies of the year 1988 were filled up on 19.12.1988. Process for filling up 9 more vacancies pertaining to the 1989 is expected to be completed shortly. Thus there will be 54 officers working as Assistant Director(OL) against the promotion quota vacancies. The respondents have further stated that adhoc promotions were necessitated as the positions could not be kept vacant in view of the limited number of posts and the need to fill them up for attending to work relating to implementation of Official Language Policy and Parliament work etc. It has further been contended that persons listed up to srl. No.65 of the seniority list of the Assistant Director at R-4 (page 168 to 172 of the paper book) were inducted at the initial constitution stage. Person at srl. No.66 was appointed by direct recruitment in 1984 and persons at srl. No. 67 onwards were promoted on reglar basis after initial constitution against the vacancies of promotion quota. Appointments at srl. No.51 to 65 of Annexure A-4 (page 53-71 of the paper book) were made on various dates on adhoc basis between the year 1978 to 1981. Therefore, the contention of the applicant that all promotion on adhoc basis were made after 1983, i.e. the date of initial constitution of the service is not correct.

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6. It was further submitted that adhoc appointments to the post of Assistant Directors were first made between 24.9.1983 (the date on which the service rules were published) and 8.6.1987 (the date on which the initial constitution of the service was completed) in accordance with Rule 7(1) as the maintenance stage was to start only after initial constitution of the service. For the same reason first regular promotions were made against the promotion quota vacancies only on 29.10.1987. Thus some adhoc promotions against direct recruit quota continued upto 3-4 years and quota-rota is not relevant in this case. The question of assigning the seniority between the promotees on regular basis and direct recruits is not involved on account of system of quota-rota breaking down. OA No. 1965/89 relates to the grievances of the applicants for having not been called for interview by the UPSC. The Tribunal has already passed orders in this case to the effect that appointments will be made subject to the outcome of the final decision in the said OA.

7. The Ld. Counsel for the respondents in this connection cited the cases\* listed below in support of her arguments.

8. We have heard the Ld. Counsel of both the parties and gone through the record carefully. The facts of the case are that the Central Secretariat Official Language Service (Group 'A' & 'B' posts) was constituted and rules governing the service published vide Ministry of Home Affairs, Department of Official

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1969(3)SLR-468 SC-Hari Nandan Sharan Bhatnagar Vs. S.N. Dixit and another.

1990(2) CAT 193 - J.K. Joshi Vs. UOI.

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Language, New Delhi, Gazette Notification dated 9.9.1983. The constitution of the service in accordance with Rule 7 was completed after collecting the relevant data on 8.6.1987. The maintenance stage of the service started only from 8.6.1987. Between 9.9.1983 and 8.6.1987 several adhoc promotions were made to meet the urgent and expanding requirement of the service in the various offices of the respondents.

9.1 As per the Rules the vacancies in the rank of Grade-III Assistant Director (OL) are to be filled:

- (i) 50% by promotion failing which by direct recruitment;
- (ii) 50% by direct recruitment.

The promotion quota vacancies are to be filled from among officer of Grade-IV of the Central Secretariat Official Language Service (Group C posts) with three years regular service in the grade.

For direct recruitment vacancies a requisition was placed on the UPSC on 26.6.1987 for filling up 23 posts. The UPSC finally selected 36 persons in August, 1989. The number of vacancies up to the end of 1989, for direct recruitment quota works out to 54. Simultaneously action has been taken to fill up the corresponding number of vacancies in the promotion quota by holding DPC as the post of Assistant Director is a selection post. Upto 30.3.1988, 24 regular promotions were made against vacancies arising upto end of year 1987. 21 more regular promotions were made upto 19.12.1988, while the remaining 9 vacancies in the promotion quota are expected to be filled up shortly. Thus 45 of the 54 promotion quota vacancies are already

filled up on regular basis. The applicants working against the direct recruitment quota vacancies on purely adhoc basis till the direct recruits through UPSC become available are now seeking regularisation against the direct recruit vacancies. Since the promotion quota vacancies have already been filled up /are being filled up on regular basis the applicants cannot be regularised. The applicants in effect are seeking appropriation of the direct recruit vacancies by virtue of having held the posts of direct recruit quota on purely adhoc basis for varying period ranging upto 3-4 years.

9.2 Admittedly, promotions on adhoc basis were made to meet the urgent requirement in excess of the promotion quota as a short term basis, till the direct recruits become available. The promotees can not claim any right to hold the promotional posts unless the vacancies fall within their quota, since the promotees, <sup>any</sup> occupied vacancies which are within the quota of direct recruits, when direct recruitment takes place the direct recruits will occupy the vacancies within their quota. The promotees who are occupying the vacancies within the quota of direct recruits will either be reverted or they will be absorbed in the vacancies within their quota"\*. 2

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- \*1. AIR 1980 Supreme Court 1561 V.B. Badami etc. vs. State of Mysore & Others.
- 2 1980 Supreme Court Cases (L&S) 145 Col. A.S. Ayer and Others Versus V. Balasubramanyam and Others.
- 3 1973 Supreme Court Cases (L&S) 1 Bishan Sarup Gupta Vs. Union of India and Others.
- 4. 1975 Supreme Court Cases (L&S) 36 A.K. Subramand and Others Vs. Union of India and Others.

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There is no rule or authority which permits the appropriation of direct recruit quota for the benefit of promotees on a long-term basis. If enough direct recruits are not available in a particular year these vacancies should rightly be carried forward and filled in the later years by the direct recruits but within a reasonable period. The question of bunching up of vacancies is also not material in the facts and circumstances of the present case.

The applicants can seek regularisation only against the vacancies in the promotion quota after they have gone through process of selection and are placed on the select list by the DPC. In case such vacancies are not available, they will have to revert to their substantive posts and make way for the direct recruits for the direct recruitment quota vacancies.

9.3 In view of the discussions above and in the facts and circumstances of the case, the application fails and is dismissed. There will be no orders as to the costs.

*I.K. Rasgotra*  
(I.K. Rasgotra)  
Member (A) 373/90

*Abey 30.3.90*  
(T.S. Oberoi)  
Member (J)