

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

T.A.No. 1071/85
C.W.No. 2679/84

17 Date of decision 4/1/93

Shri J.P. Sharma & Another ... Applicants
V/s
Union of India & Ors. ... Respondents

D.A. No. 1894/90

Shri R.D. Masiwal ... Applicant
V/s
Union of India & Ors. ... Respondents

D.A. No. 1978/90

Shri Raj Kishore ... Applicant
V/s
Union of India & Ors. ... Respondents

CORAM:

The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J)

The Hon'ble Member Mr. I.P. Gupta, Member (A)

For the Applicants ... Shri G.D. Gupta with
Mrs. Meera Chibber, counsel

For the Respondents ... Mrs. Raj Kumari Chopra, counsel

✓ (1) Whether Reporters of local papers may be allowed to see the Judgement? Yes.

✓ (2) To be referred to the Reporter or not? Yes.

J _ U _ D _ G _ E _ M _ E _ N _ T

[Delivered by Hon'ble Shri I.P. Gupta, Member (A)]

18 These O.As. raising similar issues, are being dealt with together. The applicants have challenged the Central Secretariat Officers' Language Service (Group 'C' posts) Rules, 1981 and the Central Secretariat Officers Language Service (Groups 'A' & 'B' Posts) Rules, 1983 whereby the respondents have not incorporated the attached offices of the Central Board of Direct Taxes in the initial Constitution of Service in Schedule 1 of 1981 Rules and Schedule 1 & 2 of 1983 Rules for the posts of Hindi Translator and Hindi Officer. They have also challenged the seniority lists dated 28.5.1983 of Group 'C' post and dated 7.2.1984 of Group 'B' posts issued by the Official Language Department. They have further challenged the decision of the respondents dated 20th July, 1984 in refusing to incorporate the attached offices of Central Board of Direct Taxes in the initial Constitution as being arbitrary.

2. The applicants have been working as Hindi Officer and Hindi Translator in the attached offices of the Central Board of Direct Taxes. Some of the applicants were working on regular basis and some were working on ad hoc basis. They have been working as Hindi Officer and Hindi Translator on regular or ad hoc basis

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prior to promulgation of 1981 rules (Group 'C' posts) and 1983 Rules (Group 'A' & 'B' posts).

3. In the year 1975 with a view to bringing about uniformity in the pay scales, service conditions, recruitment procedure etc. of Hindi posts relating to translation work and proper implementation of the Official Language policy of the Union Government in different Ministries/ Departments and their attached offices as also to provide equal and adequate promotional opportunities to the incumbents of these posts, it was decided by the Central Government to constitute a separate department of official language in the Ministry of Home Affairs. The said department was given the responsibility of constituting a separate service called the Central Secretariat Official Language Service (CSOLS).

4. On 30th May 1979, the draft rules for CSOLS (Group 'A' & 'B' Posts) were circulated (Annexure 2). A schedule was attached to the draft rules and the posts of the Central Board of Direct Taxes (Directorate of Inspection) were included therein. All Ministries/Departments were requested to check the schedule and point out errors and omissions.

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It was said in the O.M. that the correct schedule was required for finalising the rules of the service.

Ministries/Departments were to send their replies not later than 10th June 1979, failing which, it was said that it would be presumed that entries relating to that particular Ministry/Department (including attached offices) did not require any change. A similar office memorandum was issued on 17.12.1979 in respect of Group 'C' posts (Annexure III).

5. The CSOLC Service Rules, 1983 dated 9.9.1983 in respect of Groups 'A' & 'B' posts were notified on 24.9.1983. The Ministry of Finance, Department of Revenue furnished to the Official Language Department updated schedule on 20th September, 1981 (Annexure IV). The schedules included posts of the Central Board of Direct Taxes. Particulars of Group 'B' Officers working in the Department were also furnished by letter dated 27th July 1983 (Annexure V). The Directorate did not have any Group 'A' post. The particulars of another Group 'B' Officer were sent on 2nd August, 1983 (Annexure VI). He is one of the applicants. Particulars of Grade 'C' Officers were furnished by the Department of Revenue to the Department of Official Language on 24.8.1983.

6. The CSOLS (Group C Posts) Rules, 1981 dated 9th

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September, 1981 were published in the Gazette of India dated 19th September, 1981. They came into force on the date of publication in the official gazette. The posts of CBDT were not included therein. The CSOLS (Group A and B Posts) Rules, 1983 dated 9th September, 1983 were also published in the Gazette of India later and they came into force on the date of publication in the official gazette. A departmental candidate, according to the said rules, meant a person who had been appointed to and held a post or held a lien on a post specified in the schedules on the 19th September, 1981. Though the applicants' posts were not included in the said schedules of either Group A or Group B posts or Group C posts they held posts similar to those included in the schedules but since their departments were not included they were not scheduled.

7. On 6th October, 1983 Department of Revenue wrote to the Department of Official Language saying that attached offices under the CBDT have not been included in the schedule and they should be so included. On 5.5.1984 the Department of Official Language informed the Ministry of Finance that the departmental candidates working in the attached offices of the CBDT could not be considered for inclusion in the

service at its initial constitution as their service particulars could not be made available. CSOLS (Group A & Group B Posts) Rules, 1983 were published in the Gazette of India on 24th September, 1983 and since their service particulars were not available at the initial constitution of the service the post would be considered for inclusion only after the initial constitution in accordance with the provisions contained in the service rules under Rule 2(C)(II) and 4(4) of CSOLS (Group C Posts) Rules, 1981 and CSOLS (Group 'A' & Group 'B' posts) Rules, 1983 and the seniority of departmental candidates will be determined as provided under rule 4(5) of the Rules. The Department of Revenue again wrote to the Official Language Department saying that the details of Hindi Posts in the Attached Offices of CBDT were first furnished by the Department in O.M. dated 20th October, 1981 (should be 20th September 1981) for inclusion of Hindi posts in the CBDT and the service particulars of Group C employees were furnished on 24.8.1983. Service particulars of Group 'B' employees were furnished on 27.7.1983 and 2.8.1983. Therefore the service particulars, so far as Group 'A' and Group 'B' officers were concerned were available with the Official Language Department before

the publication of the rules on 24.9.1983 and there was no reason for not including them. The Department of Revenue, therefore, prayed for inclusion of Group 'A' and Group 'B' posts of CBDT at the initial constitution of the service.

8. The Learned Counsel for the respondents furnished detailed written arguments copy of which was also given to the Learned Counsels for the applicants. It has been contended that after the publication of the service rules of Group 'C' posts, various offices were requested to send service particulars and CR dossiers etc. On 17.5.1982 the Department of Revenue sent a proposal regarding formation of a separate cadre for Hindi posts in the attached and subordinate offices under that department including CBDT. This proposal was not acceptable to the department of Official Language. After a lot of correspondence and meetings, the decision of the CBDT to include the Hindi posts of their attached offices in CSOLS was intimated to the department of Official Language on 15.10.1983. In the mean time, the initial constitution of CSOLS (Group 'C' Posts) was finalised and the orders in this regard were issued on 28.5.1983. Service rules for Group 'A' and Group 'B' posts were published on 24.9.1983 but

24 the crucial date from which initial constitution

was to be made was 19.8.1981 for the purpose of these

rules because Group 'C' posts were notified on 19.9.1981

and initial constitution had been completed in accordance

with those rules for Group 'C' posts. The initial

constitution for Group 'A' and Group 'B' posts had been

completed in two phases on 30.12.1985 and 8.6.1987.

9. The written submission also invite attention

to the rule position. Rule 6(3) and Rule 6(4) of the

CSOLS (Group 'A' and Group 'B' posts) Rules, 1983 are

reproduced below :-

" 6(3) The Selection Committee constituted under sub-rule (1) above shall hold selection for determining the suitability of the departmental candidates holding posts being included in Grade-III of the Service on regular basis as well those holding these posts on ad-hoc or deputation basis from the date the last departmental candidate was appointed on regular basis and prepare a list, arranged in the order of merit, of officers considered suitable for appointment to Grade-III of the Service at its initial constitution. These officers shall be placed senior to those selected in the manner specified in sub-rule (4).

" 6(4) For making appointment against the remaining vacancies if any, in Grade-III at its initial constitution, the commission shall hold selection for determining the suitability of departmental candidates holding posts being

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included in Grade-III of the Service, other than those mentioned in Sub-rule(3) above and also those holding posts in Grade-IV of Central Secretariat Official Language Service (Group 'C' Posts) who have put in a minimum of 3 years' regular service in the scale of Rs 550-800-(900) and prepare a list, arranged in the order of merit, of officers considered suitable for appointment to Grade-III of the Service at its initial constitution. These officers shall be placed on bloc junior to those selected under sub-rule (3).

10. Rule 6 of the CSOLS (Group 'C' posts) Rules, 1981 is also extracted below:-

" 6(1)(i). For the purpose of appointment to Grade IV, the Controlling Authority shall constitute a Selection Committee with Joint Secretary to the Government of India, Department of Official Language, as Chairman, and not more than two representatives, not below the rank of Deputy Secretary to the Government of India, to be nominated by the Department of Official Language, as Members.

(ii) The Selection Committee shall determine the suitability of departmental candidates, holding posts in the scales of pay of Rs 550-900 and Rs 550-800 on a regular basis, for appointment to Grade-IV and prepare a list, containing names of officers arranged in the descending order according to the length of their regular service, considered suitable for appointment to

Grade -IV at its initial constitution and these officers shall be placed senior to those selected in the manner specified in clause (iii).

(iii) For making appointment against the remaining vacancies, if any, in Grade-IV at its initial constitution, the selection committee constituted under clause (i) determine the suitability of departmental candidates holding posts in the scales of pay of Rs 550-900 and Rs 550-800 who are not covered by clause (ii) and prepare a list in order of preference of candidates considered suitable for appointment to Grade-IV at its initial constitution and such officers shall be placed senior junior to those selected under clause(ii).

6(2)(i). For the purpose of appointment to Grade V, the Controlling Authority shall constitute a Selection Committee with the Joint Secretary to the Government of India, Department of Official Language, as Chairman, and not more than two representatives, not below the rank of Deputy Secretary to the Government of India, to be nominated by the Department of Official Language, as Members.

(ii) The Selection Committee shall determine the suitability of departmental candidates, holding posts in the scale

of pay of Rs 425-800, Rs 425-700 and Rs 425-640 on a regular basis, as well as those holding posts in the pay-scales of Rs 550-900 and Rs 550-800 on a regular basis who are not considered suitable by the Selection Committee for appointment to Grade IV at its initial constitution, for appointment to Grade V, and prepare a list, containing names of officers arranged in the descending order according to the length of their regular service, considered suitable for appointment to the Service at its initial constitution and these officers shall be placed senior to those selected in the manner specified in clause (iii).

(iii) For making appointment against the remaining vacancies, if any, in Grade V, at its initial constitution, the Selection Committee constituted under clause (i) shall determine the suitability of departmental candidates holding posts in the scales of Rs 425-800, Rs 425-700 and Rs 425-640 who are not covered by clause (ii) as well as those who holding posts in the pay scales of Rs 550-900 and Rs 550-800 otherwise than on regular basis who are not considered suitable by the Selection Committee for appointment to Grade-IV, and prepare a list, in order of preference, of candidates considered suitable for appointment to Grade-V at its initial constitution and such

officers shall be placed enbloc junior to those selected under clause (ii)."

28 11. The procedure for inclusion of the posts after the initial constitution has been given in Rule 4(4) of CSOLS (Group 'A' and Group 'B' Posts) Rules, 1983 and similar provision exists in regard to Group 'C' posts.

12. The Learned Counsel for the applicants had quoted the case of Ram Dutt v/s Union of India [O.A.No. 1035/86 decided on 12.4.1987]. That case related to a Group 'C' employee. It was held therein that as the applicant has been denied the opportunity, due to no fault of his, but solely on account of indifference on the part of the respondents, he could not be made to suffer. The applicant was eligible to be considered for appointment to Grade IV of the Official Language Service on its initial constitution and the respondents were directed to constitute a selection committee as prescribed under the rules to determine his suitability for such appointment and in case he was found suitable he should be appointed.

12. The Learned Counsel for the respondents in this case submitted in the written arguments that Shri Ram Dutt was a deputationist to CBDT and his case was not similar. In our view this does not differentiate the case of Ram Dutt because if he was a deputationist his case was no better than that of an employee appointed to an attached office of CBDT. It has

also been contended that the decision in Ram Dutt case was not based on any provision of law made in the rule but on humanitarian ground. This contention also does not come to the rescue of the respondents. Unless the direction given by the Tribunal in Ram Dutt's case is set aside that direction forms a good precedent.

13. The Learned Counsel for the respondents further contended that Ram Dutt's case was of a Group 'C' employee, and any direction for inclusion of posts of CBDT at Group 'A' and Group 'B' level will completely upset the long settled issues of selection and seniority in so far Group 'B' posts are concerned in view of the provisions of Rule 6(3) and Rule 6(4) quoted above. According to Rule 6(3), the departmental candidates holding posts on a regular basis were to be considered along with persons holding posts on ad hoc/deputation basis who were holding their posts ^{regular basis; This meant that persons appointed on} on the date the last departmental candidate was appointed on ad hoc/deputation basis till the date when the last departmental candidate was appointed on regular basis were to be considered along with regular persons under rule 6(3) and were to be placed by the selection committee on the basis of merit. But the remaining persons who were holding Grade III posts

on ad hoc/deputation basis from a later date were to be

considered along with Grade IV officials who had com-

pleted three years of service as on 9.8.1981. These

persons were also to be placed by the selection committee

on the basis of merit. The persons appointed before

2.3.1978 (the date on which the last regular person was

appointed) were to be considered under rule 6(3) along

with persons in the first list. The rest of the persons

were to be considered under rule 6(4) along with persons

in the third list. The third list contained the names of

Senior Translators who had completed three years of

regular service as on 19.9.1981. The first list contained

the names of persons appointed on regular basis, the last

candidate being one appointed on regular basis on 2.3.1978.

The second list contained the names of persons holding

Grade III posts on ad hoc/deputation basis. If the appli-

cants were allowed to be included in the CSOLS at its

initial constitution, the first and the second lists would

get altered and the entire selection process would get

upset.

14. Analysing the facts and arguments in this case,

we find that the main contention of the Learned Counsel

for the respondents is that the particulars of posts of

Group 'A', Group 'B' and Group 'C' were furnished by the

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Department of Revenue late and any direction for inclusion

of their posts at the initial constitution would upset

the whole process of selection carried out about more

than 8 years back. However, we find that the draft rules

for the CSOLS circulated by the Department of Official

Language on 30th May, 1979 included the posts of CSDT.

On finalisation of rules, the schedule did not include the

posts. The applicants were thus affected adversely. It has

already been held in the case of Ram Dutt (Supra) that

solely on account of indifference on the part of the res-

pondents the applicant should not be made to suffer. If

the Department of Revenue did not submit the particulars

in time, the applicants in these cases should not be made to

suffer. In any case so far as Group 'A' and Group 'B' posts

are concerned, the schedules of posts and the particulars

of officials were available to the Department of Official

Language by 2.8.1983 and the Rule 3 notified only on 24.9.1983

and the Department of Official Language could have considered

the posts of Group 'A' and Group 'B' for inclusion in the

schedules. The arguments of the respondents that the Depart-

ment of Revenue wanted to form a separate cadre and not be

a part of CSOLS would also be no good ground for exclusion

of the posts since it has been admitted by the letter of the

Department of Official Language dated 31st July, 1982

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(Annexure XIII) that the CBI had already agreed to include the Hindi posts in their attached offices in the service and have furnished particulars of Hindi Posts in these offices. However, there is force in the arguments of Learned Counsel for the respondents that so far as Group 'A' and Group 'B' posts are concerned, keeping in view the provisions of rule 6(3) and rule 6(4) the entire process of selection by the Selection Committee would get upset and would have to be redone if regular candidates of a date later on that of 2.3.1978 were to be considered for inclusion at the initial constitution. Therefore, the selection made more than 8 years back and consequential benefits given to officials consequent upon that selection would all get unsettled at this late stage and with the lapse of time the officials selected had acquired vested rights and for no fault of theirs they should be allowed to suffer by carrying out a fresh selection as if it was done in 1983 or so.

15. In the conspectus of aforesaid facts and the analysis, we direct that the applicants should be considered for appointments to their appropriate grades of the Official Language Service on its initial constitution and to constitute a selection committee as prescribed under the rules to determine

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their suitability for such appointments and in case they are considered suitable they should be included in the CSOLS at its initial constitution and interpolated at the appropriate places in the seniority list without adversely affecting otherwise the selections made by the Selection Committee under rule 6(3) and rule 6(4) of the CSOLS (Group 'A' and Group 'B' Posts) Rules, 1983; in view of the important consideration that settled issues should not be unsettled after a long lapse of time since a person who has got a rank or post by the selection, which was then done according to Rules, is entitled to sit back and feel secure therein after a lapse of long time (8 years or so in this case). So far as applicants in Grade III of the Service are concerned, they may be considered for purposes of interpolation at the initial constitution under Rule 6(3) or 6(4) depending on the fact whether their juniors have been considered under Rule 6(3) or Rule 6(4) on the basis of their dates of holding posts on regular or ad hoc basis.

16. The applications are disposed of with the aforesaid directions with no order as to costs.

I.P. Gupta
Member (A)

PRITAM SINGH

Central Administrative Tribunal
Pandit House, New Delhi

Ram Pal Singh
Vice-Chairman (J)

4/1/93