

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. No. 2198/90

New Delhi dated the 22nd of December, 95.

Hon'ble Shri N.V. Krishnan, Acting Chairman.

Hon'ble Dr. A. Vedavalli, Member(J).

Nanak Dev Sharma,
S/o late Shri Ramia Ram,
R/o F/13, Green Park,
New Delhi-16. ... Applicant.

By Adv. Shri D.C. Vohra.

Versus

Union of India through
The Foreign Secretary,
Ministry of External Affairs,
South Block,
New Delhi. ... Respondent.

By Advocate Sh. N.S. Mehta, Sr. Standing Counsel.

O R D E R

Hon'ble Shri N.V. Krishnan, Acting Chairman

The applicant has retired from service after having been absorbed in the Group 'IV' cadre of the respondents, i.e. Ministry of External Affairs. His claim is that he is a beneficiary of the judgement of the Supreme Court in the case of Karam Singh and Ors. Vs. Union of India (JT 1988(1)SC1), in terms of which he was to be given notional promotion from the date his junior was promoted, based on the earlier judgement of this Tribunal in P.N. Tandon & Ors. Vs. Union of India (TA-129/85), decided on 21.11.1986.



2. The undisputed facts are that the applicant joined the respondent as an Assistant in Grade-IV in the general cadre of the Indian Foreign Service 'B' on 3.10.1955. In the seniority list issued on 18.10.1987 Annexure A-1 showing the position on 1.8.1977, the applicant's name is shown at Serial No. 227.

3. Civil Writ Petition No. 2635/80 was filed in the Supreme Court of India by Shri Karam Singh, also an Assistant, in the same Ministry. A copy of the writ petition is at Annexure-VIII. The grievance of the petitioner was that the ad hoc service rendered by the petitioner as Assistant was not reckoned after he was promoted regularly to the post of Assistant. The petitioner had been confirmed after regular appointment dated 19.9.1986. As a result of ignoring the ad hoc service, the petitioner was placed junior to direct recruits who were appointed much later on. Accordingly, he prayed that the seniority list issued on 18.10.1977 be quashed and the seniority of the petitioner and other similarly placed persons vis-a-vis direct recruits be fixed on the basis of their length of service in Grade-IV of the Indian Foreign Service, Branch 'B'.

4. Before this petition was disposed of by the Supreme Court, a similar matter had come up before the Principal Bench of the Tribunal. That was a Civil Writ Petition No. 565/74 filed by PN. Tandon & Others in the High Court of Delhi. That writ petition was transferred to this Tribunal and registered as TA 129/85. The petitioners therein were given ad hoc promotion to Grade-IV w.e.f. 29.5.1975. They were thereafter regularised w.e.f.

1.10.1983. In the meanwhile, direct recruitment to the cadre took place between 6.8.75 and 11.2.84 and all the direct recruits were placed in the seniority list above the applicants. The applicants prayed that their ad hoc service should be counted and they should be given due seniority.

5. After having considered the relevant rules and various decisions of the Supreme Court, the Tribunal in the case of TA 129/95 held in para 8 as follows:

"8. There is very little scope of ambiguity in the aforesaid rulings of the Supreme Court. In accordance with these clear rulings the petitioners, on their regular appointment to Grade-IV of IFS(B), are entitled to count their seniority from the date of their continuous officiation in Grade IV, even though that officiation has been on an ad hoc basis or in excess of the promotion quota. With the application of this principle to the petitioners there will be no need for them to seek regular appointment with retrospective effect by retrospective relaxation of the quotas prescribed in the IFS(B) Rules, since for the purposes of seniority they will be considered as if they had been regularly appointed from the date of commencement of their continuous officiation. Since the respondents have already amended the IFS(B) Rules providing for 50% promotion quota from 1979, the relief of 50% promotion quota has already been received by them. With the counting of their entire past officiation as if they were regularly promoted to Grade IV for the purposes of seniority, the need to give retrospective effect to the increased promotion quota has disappeared. As regards importing outsiders like Cypher Assistants we accept the contention of the respondents that

this is permissible under the statutory rules and since it has been stated to have been done in the public interest we do not wish to question the merits of the administrative decision taken by them".

This is followed by the following directions:

"9. In the facts and circumstances of the case, we allow the petition in part on the lines indicated in the proceeding para 8 above directing that the seniority of the petitioners on their regular appointment to the IFS(B) should be determined on the basis of the total length of their continuous in Grade IV even though it might have been ad hoc or temporary. Their seniority should be fixed on the basis of the rulings of the Supreme Court as cited above in the cases of G.S. Lamba and Narendra Chadha. There will be no order as to costs".

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When/ Writ Petition No. 2635/80 filed by Karam Singh came for final hearing before the Supreme Court along with other Writ Petitions 16950-53/84, their attention was drawn to the decision of the Tribunal in TA 129/85. The Supreme Court held as follows:

"...By judgement dated 21.11.86, the Delhi Bench of the Tribunal has set aside the impugned seniority list and has directed that it should be re-drawn up on the basis of seniority based upon total ~~length~~ of service including continuous officiation, irrespective of whether the service was ad hoc or temporary. Counsel appearing/^{for} the appellant says that the decision was accepted and has been implemented. In that view of the matter no direction in the writ petition for quashing of the seniority list or for the redrawing of the seniority is necessary to be given".

However, on the request of the parties, the Supreme Court directed that, upon the refixation of seniority in accordance with the direction of the Tribunal referred to above, consequential benefits should be available to the appellant. The Supreme Court was also requested by the respondents to protect the interests of the persons who might be reverted as a consequence. Therefore, the Court suggested to Government that while complying with/directions, the directions given in the similar case of Narender Chadha, (1986 SCR(1) 211) should be kept in view and, if necessary, supernumerary posts be created to avoid reversions.

6. Consequent upon these decisions, the respondents have issued on 18.5.1987 a seniority list of Grade-IV of the general cadre of IFS 'B' as on 1.12.1986. (Annexure 'E'). That seniority list includes the name of Karam Singh, the petitioner before the Supreme Court, at Serial No. 7 but it does not include the name of the applicant. It is stated that the applicant had started ad hoc officiation as Assistant from much earlier date i.e. 31.10.1955 and his name should have been on the top of the list. The seniority list (Annexure 'E') includes the names of number of retired officers, but it does not include the applicant's name, though he has also retired.

7. It is in these circumstances that the O.A. has been filed for a direction to the respondents to include the name of the applicant in the revised seniority list for the purpose of giving him notional promotion as per the judgement of the Supreme Court in Karam Singh's case and Tondon's case (Supra). This promotion is to be given with

effect from the date his junior was promoted and he should be given all financial benefits.

8. The respondents have filed a reply contesting these claims. The facts stated are generally admitted. It is claimed that in accordance with the decision of the Supreme Court and the Tribunal, the promotions made to the higher grades from 8.8.1980 were reviewed on the basis of the revised seniority list. This date was chosen because Karam Singh had filed the writ petition in the Supreme Court in 1980 and an interim direction was issued on 8.8.1980 by the Supreme Court that any promotions made hereafter would be subject to the final result of the writ petition.

9. The matter was heard at great length. The learned counsel for the applicant contended that as the applicant was admittedly a Grade-IV Assistant, his name ought to have been included in the Annexure 'E' seniority list, for his right cannot be defeated. After such inclusion, his name should be considered along with the juniors who have been promoted earlier.

10. The learned counsel for the respondents, however, contended that this is an application which is futile and no purpose would be served.

11. We have carefully considered these arguments along with the records. We notice that it is only in the writ petition before the Supreme Court by Karam Singh that the Annexure A-1 seniority list dated 18.10.1977 was under challenge. In that seniority list, the

applicant's name appeared at Serial No. 227. If that seniority had been quashed by the Supreme Court and that there was a direction to prepare a fresh seniority list, then, in ^{the} fresh seniority list so prepared, the names of all persons mentioned in the Annexure A-1 seniority list, including that of the applicant, should have found ^{the} place.

12. However, we find from the orders of the Supreme Court, extracted above, that the said seniority list, was not quashed. No direction to quash that seniority list was given because this was not found necessary as the Tribunal has, in TA 129/85, set aside the impugned seniority list and directed that it should be redrawn, based on total length of service including continuous officiation.

13. It is seen from the Annexure 'B' order dated 21.11.1986 in TA 129/85 that the seniority list of Grade-IV Assistants as on 1.8.77 (Annexure A-1) was not in challenge. That T.A. was filed by persons who got ad hoc appointment on 29.5.1975 but were regularised in 1983 and the benefit of ad hoc service was denied for purpose of seniority. Therefore, a direction was given that their ad hoc service should count. It is on that basis that the Annexure 'E' seniority list was prepared on 18.6.1987. That revised seniority list took into account only all the petitioners of TA 129/85 and also the petitioners before the Supreme Court including Karam Chand and Ors.

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14. The applicant was neither an applicant in the TA nor in the writ petition before the Supreme Court. Therefore, there was no question of showing his seniority in the Annexure 'E' seniority list, which was issued only to give effect to the order of the Tribunal in TA 129/85 and to the order of the Supreme Court in Karam Singh's case. Hence, it is not surprising that his name is not mentioned in the Annexure 'E' seniority list, even though he was given ad hoc promotion from 3.10.1955.

15. The learned counsel for the respondents also submits that, in any case, nothing is due to the applicant because the earliest promotion made on the basis of the unrevised seniority list was in 1980, by which time the applicant had already retired. After the seniority list was revised in terms of Annexure 'E', the promotions made were reviewed so that persons now found senior are given promotion from the dates their juniors were promoted. Annexure R-2 order dated 12.5.1988 indicates the particulars of those officers who were given promotions from Grade-IV of the general cadre of IFS 'B' to the integrated Grade-II and Grade-III after such review. The earliest promotion is given to Shri P.C. Sharma from 6.9.1980. Thus, the promotions were made after the applicant had retired from service on 30.4.1979. On this basis also, no relief is due to the applicant.

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16. In the circumstance, we find that this application
has no merit and accordingly, dismissed. No costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member(J)

N.V. Krishnan

(N.V. Krishnan)
Acting Chairman

'SRD'