

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2375/90
T.A. No.

1990

8

DATE OF DECISION 31/10/97

Suri Balram

Petitioner

Suri S.S. Luthra

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Shri M.K. Gupta

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Dr. Jose P. Verghese, VC (J)

The Hon'ble Mr. S.P. Biswas

1. To be referred to the Reporter or not?

2. Whether it needs to be circulated to other Benches of the Tribunal?

✓
(Dr. Jose P. Verghese,
VC (J))

Central Administrative Tribunal
Principal Bench: New Delhi

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OA No. 2375/90

New Delhi, this the 3rd day of October, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman (J)
Hon'ble Shri S.P. Biswas, Member (A)

1. Balram Sahu s/o Pitam Sahu,
r/o SIV/68, R.K. Puram,
New Delhi.
2. Amarchand Sharma s/o Avadh Narain,
r/o S.VIII/685, R.K. Puram,
New Delhi. ... Applicants

(By Advocate: Shri S.C. Luthra)

Versus

1. Union of India through
Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. Director,
Intelligence Bureau,
(Ministry of Home Affairs),
North Block, New Delhi. Respondents

(By Advocate: Shri M.K. Gupta)

O R D E R

[Hon'ble Dr. Jose P. Verghese, Vice-Chairman (J)]

The two applicants in this case were originally belonging to Madhya Pradesh Police and came on deputation to Intelligence Bureau (Ministry of Home Affairs) as Head Constables. The post of Head Constable has been now re-designated as Junior Intelligence Officer Gr.II (JO Gr.II for short). The petitioners came to hold this post on 30.5.1967 and 13.3.1967 respectively. It was stated that both the applicants before joining the respondents' organisation were working in the equivalent post of Head Constable in the State Police since 10.11.1961 and 1.12.1961 respectively. Petitioners were then after promoted as JO Gr.I (equivalent to SO) on 25.7.1969

and thereafter both were permanently absorbed as Security Assistants w.e.f. 1.4.1975 though there were working on higher rank.

Thus the applicants became permanent members of Intelligence Bureau on 1.4.1975 even though absorption was against one grade below that of the one they were holding at the time of absorption. Thereafter the petitioners were promoted to the next grade of Assistant Central Intelligence Officer Grade-II (ACIO Gr.II for short) by an order dated 6.4.1979 and applicants took charge of the post on 6.4.1979 and 7.4.1979 respectively but since the applicants were absorbed in the lower post, the promotion to the present post of ACIO Gr.II was on an officiating basis. The respondents subsequently regularised the petitioners by an order dated 25.9.1986 and the seniority was fixed accordingly but only w.e.f. the said date of 25.9.1986 and not from the date of promotion on an officiating basis to the grade of ACIO Gr. II.

The short question involved to be decided in this case is whether the petitioners are entitled to count their services in the rank of ACIO Gr. II, initially held on an officiating basis and subsequently regularised, between 6.4.1979 to 25.9.1986, for the purpose of seniority and next promotion and other consequential benefits or not.

The petitioners made representations to this effect stating that in the meantime the Bombay Bench of this Tribunal in the case of Laxman Narain Naik and the Principal Bench in the case of Baldev Singh & Ors. had already decided that the absorbed officers who are officiating in a higher rank but absorbed in a lower rank,

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(11)

could count their seniority in the higher rank at least from the date of permanent absorption or the date on which the petitioners joined the post on an officiating basis. It was on this basis, the petitioners were claiming the period of officiation for the purpose of seniority, promotion and other consequential benefits. The said representations were rejected by an order dated 7.11.1990 and 30.9.1990 respectively stating that the cases relied upon by the petitioners and the benefits given to the petitioners like Omkar and Shiv Narain are applicable to the respective cases and the reliefs are limited to the said cases only and in view of this, the representations of the petitioners were rejected.

Respondents in their counter affidavit stated that since the petitioners were officiating in the grade of JI Gr. I on the date of their absorption, they were given seniority w.e.f. 1.4.1975 on the date on which they were permanently absorbed. It was also stated that they were not eligible for regular appointment as departmental candidates to the rank of ACIO Gr. II in the year 1975 but the applicants were allowed to continue to officiate on ad hoc basis as ACIO Gr. II against the post meant for deputationist officers w.e.f. 6.4.1975 and 7.4.1975 respectively. As such the respondents have considered the promotion of the petitioners as ACIO Gr. II, as if it is an ad hoc appointment though the appointment order of Annexure-III indicates that the appointments were made on an ad hoc basis but on an officiating basis. The case of the respondents, therefore, is that the ratio of the case of Taxman Narain Naik decided by the Bombay Bench of this Tribunal is applicable to the case of the petitioners only to the extent that they could be considered for the purposes

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of seniority w.e.f. 1.4.1975 the date on which they were permanently absorbed even though the petitioners were holding the higher post w.e.f. 28.5.1969 in SIO Gr. I. The respondents have not stated any substantial objection for considering the ratio of Naik's case as well as the Principal Bench's decision for the purpose of treating the period between 6.4.1979 as well as 225.2.1983 for the purpose of counting the seniority as well as subsequent promotion and other consequential benefits to the petitioners. The representations in this regard were rejected without a speaking order.

We have considered the rival contentions of the parties and we have seen the decision of the Bombay Bench of this Tribunal as well as that of this court dated Feb. 2, 1988 given in OA No. 1219/88 in the matter of Shiv Narain and Anrs. vs. Union of India and Ors. This court by the said order had given the benefit of regularising the services rendered by the petitioners on an officiating basis for the purpose of calculating the seniority, promotion and other consequential benefits and those benefits were granted to the petitioners therein on the basis of the decision in the case of Laxman Narain Naik given by Bombay Bench of the Central Administrative Tribunal and Baldev Singh's case given by this court earlier.

We are also in full agreement with the reasons given by this court by its order dated Feb. 6, 1989 in the case of Shiv Narain and Anrs. vs. Union of India and Ors. and the period between 6.4.1979 to 25.9.1985 can be considered for the purpose of seniority, promotion and other consequential benefits since the initial appointment

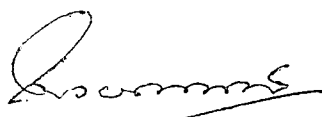
order only indicates that it was an officiating promotion and was subsequently confirmed and since the officiating services, subsequently regularised, for not fault of the petitioners, cannot be discounted for the purpose of seniority, promotion and other consequential benefits.


The contention of the respondents that there was no vacancy available against which the petitioners could have been regularised prior to 25.9.1986, is not supported by any data on the other hand it was stated that there were several DPCs that have been held prior to 25.9.1986; indicating thereby that vacancies were available between 1979 to 1986 as such the benefit of the services rendered by the petitioners on an officiating basis are to be extended to the petitioners herein for the purpose of seniority, promotion and other consequential benefits. We have seen the recruitment rules which was not annexed to the petition at the time of filing but subsequently made available, which indicates that the post of ACIO Gr. II is a Group 'C' non-gazetted non-ministerial post and the said post was to be filled in by selection method from among JIO Gr. I having not less than 5 years of service in the grade. It was noticed that minimum requirement of five years service in the grade has not been referred therein; the experience required is of five years regular service and in the absence of which and in view of the fact that the petitioners have more than five years in the grade i.e. at least ten years of service held in JIO Gr. II when they were promoted in the year 1979 to the post of SIO Gr. II., we find that the promotion given to the petitioners to the Grade. of SIO Gr. II, even though it is shown as officiating basis, is nothing but a substantive appointment. Since the fact of ad hoc

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appointment has not been mentioned on the face of the order it is also apparent from the records produced before us that, want of vacancy for regularisation on a prior date is only an after-thought and the statement of the respondents that the petitioners have not been adjusted against the deputationists' post and no reference to the fact of availability of vacancies during subsequent years between 1975 to 1986, goes to show that the statement regarding the availability of the vacancies is not based on correct facts. In any event the promotion given to the petitioners to the grade of ACIO Gr. II being on officiating basis and in the circumstances of this case, we find that substantive promotion and the benefit of the promotion given in the year 1975, cannot be denied to the petitioners, just because the respondents decided to regularise their services subsequently in the year 1986. For these reasons, respondents are directed to treat the appointment of petitioners to the post of ACIO Gr. II as substantive but officiating and treat the regularisation given in the year 1986, as if the same would be effective from 6.4.1979 and 7.4.1979 respectively. The petitioners will be entitled to all consequential benefits, such as fixation of seniority, promotion and other benefits except the payment of arrears for the said period. It goes without saying that the consequential benefits shall confine only to fixation and the payment of arrears will have to be prospective from the date of this order.

This OA stands allowed to the extent aforesaid and with no order as to costs.


(G. P. Biswas)
Member (A)


(Dr. Jose P. Varghese)
Vice-Chairman (J)