

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

C.A./T.A. No. 2409/91 /19 Decided on: 16.2.96

Ashutosh Goyal & Ors. APPLICANT(S)
(By Shri D. Ramakirshna Reddy Advocate)

VERSUS

U.O.I. RESPONDENTS
(By Shri Advocate)

DRAM

THE HON'BLE SHRI S.R. ADIGE, MEMBER (A)

THE HON'BLE ~~SARVAKAR~~ DR. A. VEDAVALLI)

1. To be referred to the Reporter or not? yes
2. Whether to be circulated to other Benches of the Tribunal ? no

Adige
(S.R. ADIGE)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A. No. 2409/91

New Delhi: this the 16th February, 1996.

HON'BLE MR.S.R.ADIGE, MEMBER (A)

HON'BLE DR.A.VEDA VALLI, MEMBER (J)

Ashutosh Goyal, Superintendent,
NSSO (National Sample Survey Organisation),
Field Operations Dvn.,
Faridabad.

2. S.Jesuraj, Superintendent,
NSSO (FOD)
18, GST Road,
Pasumalai,
Madurai - 625004.

3. D.B.Reddy, Superintendent,
NSSO (FOD)
293/7, Saifabad
Lines, Hyderabad - 500004.

4. J.S.Bisht, Superintendent,
NSSO (FOD)
Jakhnadevi,
Almora (UP)Applicants.
By Advocate Shri D.Ramakrishna Reddy.
Versus

Union of India through
The Secretary, Ministry of
Planning, Department of Statistics,
Sardar Patel Bhawan, Sansad Marg,
New DelhiRespondents.

(None for the respondents)

JUDGMENT

By Hon'ble Mr.S.R.Adige, Member (A).

In this application, Shri Ashutosh Goel and three others all employees of National Sample Survey Organisation (Field Operation Division) Department of Statistics, GOI have prayed for modification of the ^{eff} order dated 28.9.90 (Annexure A-1) to the effect that the applicants are governed by the Directorate of NSS (Superintendent Recruitment Rules, 1970 for the purpose of filling up of vacancies that arose prior to

the Directorate of NSS (Superintendent) Recruitment Rules, 1983 coming into effect on 3.9.83, and their promotion from the grade of Superintendent to that of Asstt. Director be made with effect from the date their juniors were so promoted.

2. From the materials on record it appears that as per the Recruitment Rules for the post of Superintendent, Field Operation Division, NSSO notified on 17.7.64 and superseded by notification dated 5.1.70, 10% of the posts of Superintendent were to be filled by direct recruitment and 90% by promotion from amongst Asstt. Superintendents (Socio-Economic); Asstt. Superintendent (Ind. Statistics) and Asstt. Superintendent (Ag. Statistics) belonging to the 3 divisions in the Directorate, NSSO in the ratio of 2:2:1. It further appears that w.e.f. 16.4.74 a fourth category, called "unlabelled" was introduced but the Rules themselves were not amended. Shri N.C. Nalinakshan and one other, both Asstt. Superintendents (unlabelled) approached the Kerala High Court in OP No.1494/79 G alleging that they had been overlooked for promotion to the higher posts of Superintendents. This case was disposed of by judgment dated 31.5.82 in which it was inter alia observed as follows:

"It would, however, suggest that differences, if any, between the unlabelled category and the others do not seem to be sufficiently striking as to permit adverse unequal treatment in so far as the unlabelled category is concerned. In the absence of any specific averment, I will take it that the unlabelled category is not liable in law to be treated unequally for the purpose of promotion. When a group of people are classified (labelled or otherwise)

as a category of Assistant Superintendents, there would be no justification in ignoring them for promotion while other categories of Assistant Superintendents are considered for promotion, unless the respondents are in a position to show that by the nature of their work and responsibility they are not equal to the others and, therefore, not entitled to be considered along with the others for the purpose of promotion. This is a burden which squarely fails upon the respondents and they have not discharged it. The averments in the counter affidavit do not support any unequal treatment for the purpose of promotion in so far as persons like the second petitioner is concerned. It is, however, stated in the counter affidavit that all persons in the labelled categories are seniors to the petitioner. That may be so; but no details are given. But the real objection to the petitioner's claim for promotion seems to be that the unlabelled category to which he belongs is not a feeder category. No reason is given to support that contention. *Prima facie* such contention is unsustainable. There are matters which have to be considered by the respondents according to the relevant principles of law."

Meanwhile pursuant to those rules, the applicants, all of whom were Asstt. Superintendents (Ag. Statistics) were promoted as Superintendents on 6.2.82; 5.8.78; 13.9.78 and 20.5.83 respectively but the applicants themselves admit that these promotions were purely on adhoc basis (paragraph 6(a) of OA).

3. After judgment had been pronounced in that case by the Kerala High Court, the respondents amended the R.Rs on 16.8.83 (Annexure-R4 of reply). The 10% direct recruitment quota was done away with and 100% of the posts of Superintendent were to be filled by promotion failing which by direct recruitment. Promotions were to be made from four feeder categories viz. Asstt. Superintendent; Asstt. Superintendent (SE); Asstt. Superintendent (IS) and Asstt. Superintendent (AS) and the earlier ratios of 2:2:1 were given up.

4. Thereupon one Shri P.S. Bhagavanlu filed OA No.252/88 in CAT Hyderabad contending that he had been promoted as Superintendent on adhoc basis on 18.9.78 and had been regularised on 24.7.87, but he had not been allowed to claim regularisation or to count his seniority from the date of his adhoc promotion, although earlier batches of promotees had been allowed to do so. That OA was disposed of by judgment dated 19.3.90 which noted the respondents' contention that

"the applicant cannot compare himself with those whose services were regularised retrospectively from the date of adhoc appointment prior to 1978 as the facts of their case are different. The promotions made between 5.1.71 and June 1978 were on an adhoc basis as writ petitions were filed in Delhi and Calcutta High Courts, regarding the seniority of Asstt. Superintendents. After the disposal of these cases, an administrative order was issued on 28.7.78 stating that all the appointments of Superintendents made from 1971 to June, 1978 will be treated as regular with effect from the date of adhoc appointments. This was possible as there was then an undisputable seniority list. In so far as appointments made after 1978 are concerned, it is stated that there was litigation by one cadre of employees viz. Assistant

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Superintendents (Unlabelled) who claimed that they were also eligible for consideration and promotion from the category of Asstt. Superintendents to Superintendents. According to the Promotional Rules notified in 1970, the feeder categories for filling the post of Superintendents were Assistant Superintendent (Socio-Economic), Asstt. Superintendent (Industrial Statistics) and Asstt. Superintendents (Agrl. Statistics) viz., Asstt. Superintendent (SE, IS & AS), while Asstt. Superintendent (Unlabelled) were not eligible for promotion. This category of Asstt. Superintendent (Unlabelled) filed a writ petition before the Kerala High Court in the year 1979 claiming their right for consideration and promotion. The writ petition was allowed in 1982 and consequently recruitment rules were amended in the year 1983 making all the four categories of Asstt. Superintendents viz., Asstt. Superintendent (SE, IS, AS&UL) eligible for promotion. Revised rules were also challenged in the year 1984 both before the Kerala High Court and UP High Court. These matters were finally disposed of after they were transferred to Central Administrative Tribunal, Madras and Lucknow Benches respectively. Thereafter, the question of making appointments on regular basis was taken up after preparing a revised seniority list of Assistant Superintendents. This resulted in the impugned order dated 24.7.87 appointing the Asstt. Superintendents on the basis of undisputed seniority list. It is, therefore, contended that no regular appointment in accordance with the revised rules could be made till 24.7.87 and as such the applicant's claim for retrospective promotion is not tenable. For these reasons the respondents oppose this application."

5. That judgment observed that if the main reason for regularisation was the uncertainty in regard to seniority owing to the pending writ petitions, the position got crystallised after disposal of the cases and amendment of the rules. In the meantime the applicants and others who had been promoted on adhoc basis had continued as such. It was not the respondents' case that no vacancies were available prior to 1987 for regularisation of the applicants' services. If that be so, after the seniority issues got resolved, the department

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should have assessed the vacancies for each of the years and considered the Asstt. Superintendent eligible for consideration according to seniority for the respective years and regularised their services in the vacancies available for each of those years. Accordingly the respondents were directed to consider the case of the applicant for regularisation of his services from the date a vacancy became available to him having regard to his seniority in the seniority list.

6. Accordingly the respondents have issued impugned office order dated 28.9.90 which after reviewing the earlier orders dated 24.7.87 and 20.9.90 with reference to the date of availability of vacancies, have appointed Asstt. Superintendents to the posts of Superintendents from the dates shown against their names, as given below:

Applicant-	Date of adhoc promotion.	Date of deemed promotion as per O/O dated 28.9.90.	Date of vacancy becoming available to the applicant having regard to their seniority in adhoc seniority list as per their contention.
1	2	3	4
1.A.Goyal.	6.2.82	6.2.82	13.9.78
2.S.Jesuraj	5.8.78	6.2.82	5.8.78.
3.D.B.Reddy	13.9.78	13.9.78	5.8.78.
4.J.S.Bisht	20.5.83	31.12.84	30.1.81.

7. We have heard Shri D.Ramakrishna Reddy for the applicants. None appeared for the respondents although we waited for a considerable length of time. As this is an old case, we decided to dispose it of after hearing the applicants' counsel and perusing the materials on record.

8. We note from Column 4 of the table in paragraph 6 that the applicants are claiming regularisation from a date which in at least 2 out of the 4 cases is prior to the date of their adhoc promotion. This claim is based on their basic contention that the vacancies in the post of Superintendent should have been filled up as per the old(unamended) Recruitment Rules of 1970, whereby promotions were to have been made from amongst Assistant Superintendents (SE,IS,AS) belonging to the three divisions in the Directorate, NSSO in the ratio of 2:2:1. We further note that w.e.f 16.4.74 a fourth category of Asstt. Superintendent (unlabelled) was introduced but the rules themselves were not amended. We have quoted relevant extracts from the judgment in Nalinakshan's case (Supra), wherein the Kerala High Court had held that constituting the unlabelled category of Asstt. Superintendent as a fourth category, and yet not including them in feeder category for promotion as Superintendent along with other three mentioned above, was unsustainable in law and would be violative of Articles 14 and 16 of the Constitution. The applicants have not produced any material to establish that the said judgment in Nalinakshan's case has not become final,

and it is indeed on that basis that the RRs were amended in 1983 making all four categories of Asstt. Superintendents viz. Asstt. Superintendent (SE, IS, AS and UL) eligible for promotion. In fact, making regular promotions on the basis of the Recruitment Rules of 1970 (which recognised only 3 categories of Asstt. Superintendents) after 16.4.74 when a fourth (unlabelled) category was introduced, without amending those Rules and including the later also as a feeder category, would be committing a serious irregularity. It is in this background that the applicants' promotion as Superintendents were initially made on a purely adhoc basis, a fact which they themselves do not deny, and in view of the above legal position neither the ruling in Y.V.Rangaiah Vs. J.Sreenivas Rao-1983(3) SCC 284 nor in N.T.Devik Katti & others Vs. Karnataka Public Service Commission & others-1990(3)SCC 157relied upon by Shri Reddy helps the applicants.

9. Furthermore, it is clear from the judgment dated 19.3.90 in Bhagavanlu's case (Supra) that the CAT Hyderabad Bench noted that the seniority list could not be finalised till the writ petitions were disposed of, and the position got crystallised only after the disposal of the various pending cases and the amendment of the rules. It is in that background that the Tribunal in the said judgment had directed the respondents to assess the vacancies available for each year and consider the Asstt. Superintendents eligible for regularisation according to their seniority for the respective years and regularise them against the vacancies available for each of those years.

This the respondents have done vide order dated 28.9.90, which in the light of the forgoing analysis requires no interference.

10. We may also mention that the claim of the applicants, if allowed, would involve their being made senior to a number of their colleagues in the impugned office order dated 28.8.90. None of ~~them~~ have been impleaded in this case, and therefore ~~they~~ ^{them} have not, giving an opportunity of being heard. Hence this OA also suffers from a serious infirmity for lack of impleadment of proper and necessary parties.

11. For the above reasons, this OA fails and is dismissed. No costs.

A. Vedavalli

(DR.A.VEDAVALLI)
MEMBER (J).

S.R. Adige
(S.R. ADIGE)
MEMBER (A).

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