

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

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(8)

O.A.No. 415/91,

&

O.A.No. 404/91.

Date of decision: 28.3.95

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

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

OA No. 415/91.

Shri Y.P. Bhatia

S/o Shri C.L. Bhatia,

Assistant, IARI,  
New Delhi.

Residential Address:

Y.P. Bhatia,

C-101, Prashant Vihar,

Delhi-110 035.

(Shri G.D. Bhandari, Advocate)

.. Applicant

versus:

1. Union of India through

Secretary,

DARE, Ministry of Agriculture,

Krishhi Bhawan,

New Delhi-110 001.

2. Secretary,

ICAR, Krishhi Bhawan,

New Delhi-110 001.

3. Director,

IARI,

New Delhi-110 012.

.. Respondents

( By Advocate Shri R.S. Dalal)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

NEW DELHI

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O.A. No. 404/1991

Date of decision 28-3-95

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

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Shri V.P. Singh,  
son of Shri Harbans Singh,  
Sanguana Bhawan,  
Azad Nagar, Baraut, Distt. Meerut (UP) .. Applicant.

(By Advocate Shri G.D. Bhandari)

Vs

1. Union of India through  
Secretary,  
DARE,  
Ministry of Agriculture, Krishi Bhawan,  
New Delhi-110001

2. The Secretary, ICAR,  
Krishi Bhawan, New Delhi-110001

3. Director, IARI,  
New Delhi-110012

.. Respondents

(By Advocate Shri R.S. Dalal)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The relevant facts in O.A. No. 404/91 and  
O.A. No. 415/91 are similar and these applications have,  
therefore, been taken up together. For the sake  
of convenience, the facts given in O.A. No. 404/91  
have been referred to in the case of the applicant,  
Shri V.P. Singh. The applicant's request for assign-  
ing them seniority from the date of their appoint-  
ment as Assistant i.e. 18.6.1979 in the case of the  
applicant, Shri V.P. Singh, and 11.6.1979 in the case

of Shri Y.P. Bhatia (O.A.No. 415/91) have been rejected by the respondents (Annexures A-11 and A-13 respectively). The applicants have, therefore, sought directions from the Tribunal to set aside the impugned orders dated 4th/5th May, 1989 and 22nd July, 1989, and the order dated 27th October, 1982 passed by the respondents (Annexure A-4) whereby they were transferred from the post of Assistant/Receptionist/Caretaker to the post of Caretaker/Receptionist as being mala fide, arbitrary and vitiated.

2. The brief facts of the case as given by the applicant in Annexure A-8 of the Paper Book are that they were offered the post of Assistant/Receptionist-cum-Caretaker vide Memo. No. 2-1/79-PII, dated 14.6.1979 and 11.6.1979 respectively and asked to work in the V.S. Hostel and International Home. By Office Order dated 10th July, 1979, the applicants were posted as Assistant/Receptionist-cum-Caretaker in the scale of Rs. 425-700 on the establishment of the Director's Office in a temporary capacity w.e.f. 18.6.1979 and 11.6.1979 respectively.

Both the applicants completed the probation period of 2 years satisfactorily as Assistant/Receptionist-cum-Caretaker on 17.6.1981 and 11.6.1981 vide Office Order dated 22.10.1982. By Office Order dated 27.10.1982 (Annexure A-4), they were transferred to the post of Caretaker/Receptionist sanctioned in the Sixth Plan of the Respondent No. 3 i.e. Indian Agricultural Research Institute (IARI) with immediate effect. The

applicants contention is that after an expiry of 3½ years of working as Assistant/Receptionist-cum-caretaker, these two posts have been de-cadred without getting their consent which has left them with no

future avenues. On the representation made by them dated 3.7.1984, they were informed by Memo. dated

1.5.1985 (Annexure A-6) that they cannot be treated

at par with Assistants as they have not been appointed

as per the recruitment rules of Assistants prescribed

by the Council. The Memo. also mentioned that a

proposal for creation of post of Senior Receptionist-

cum-Caretaker in the payscale of Rs. 550-900 in the

Seventh Plan was under consideration.

3. The applicants have made representation (Annexures A-7 and A-8), against what they call their de-cadrement

by Order dated 27.10.1982. Subsequently, by Office

Order dated 21.1.1989, the applicants were informed

that they had been included in the cadre of Assistant

and given seniority w.s.f. 13.9.1988 (Annexure A-9).

The applicants are aggrieved by this order, since

according to them, their previous service as Assistant/Receptionist-cum-Caretaker) from 18.6.1979 and 12.6.1979

respectively, have been ignored. When their representation against the seniority assigned to them was

rejected by impugned order dated 22.7-1989 and 4/5-5-1989

(Annexure A-11 and A-13) respectively, they had filed

appeal to the Secretary, ICAR on 2.9.1989 and 12.6.1989,

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which, according to them, are still pending. Subsequently, they have filed the application in the Tribunal on 11.2.1991 for setting aside and quashing the impugned order.

4. The respondents have filed their reply in which they have taken the following objections, namely, -

- (i) That the applications are barred by limitation, and non-joinder of proper parties.
- (ii) That in the year 1979, two posts of Receptionist-cum-Caretaker were required to be filled at the Hostels of the Institute. Since, there were no posts in existence with this designation, the two vacant posts of Assistants were proposed to be utilised for this purpose, which the Director, IARI had approved by ordering the creation of the said 2 posts in lieu of some of the posts of similar category which are lying vacant at present by order dated 19.3.1979 in F.No. 2-1/79-P2, which was submitted by the respondents for our perusal

The Respondents averred that these 2 posts were not filled in accordance with the recruitment rules of

Assistants. The posts of Assistants/Receptionists-cum-

Caretaker were filled only on the basis of interview

and not on the basis of written test and the reservation

quota for Scheduled Caste Candidates was also

not fulfilled. The applicants continued to hold the

posts of Assistant/Receptionist-cum-Caretaker) till

27.10.1982 when they were transferred to the newly

created post of Caretaker/Receptionist in the Sixth

Plan of the IARI (Annexure A-6). The respondents

submit that since the applicants were not recruited

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to the post of Assistant in accordance with the recruitment rules, they have not acquired any right to the cadre post of Assistant or seniority in that cadre as claimed by them. Hence, they pray that the application may be dismissed.

5. We have heard Shri G.D. Bhandari, learned counsel for the applicant and Shri R.S. Dalal, learned counsel for the respondents and perused the records in the case, including the file No. 2/1/79-PII, which deals with the recruitment of Receptionist/Caretaker.

6. Shri G.D. Bhandari had also drawn our attention to the case of one Shri R.K. Marwah, Chief Administrative Officer, who was earlier holding the post of Estate and Protocol Officer, which is an ex-cadre post, but was given the seniority retrospectively from the date of his joining the ex-cadre post. To this the respondents have stated in their reply that in case of Shri Marwah, his appointment was made in accordance with the recruitment rules for the post of Estate and Protocol Officer and it was decided to include the post in the assigned cadre of Administrative Officer with retrospective effect, which is not the case of the applicant, who had not been appointed against the post of Assistant in accordance with the rules.

7. We have carefully considered the pleadings in the case, arguments of the learned counsel and the relevant records. The applicants were transferred to the

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post of Receptionist-cum-Caretaker sanctioned in the Sixth Plan by Office Order as early as 27.10.1982.

From the representation dated 3rd July, 1984 of the applicant, Shri V.P. Singh, it is seen that he was also very much aware that his name did not find place in the seniority <sup>list</sup> of Assistants circulated in September, 1983. According to the applicants, their interest was adversely affected by Office Order dated 27.10.1982 as their chances of promotion were affected and this had been done without giving them a personal hearing.

Therefore, right from 1982-83, the applicants were aware that they were not included in the cadre of Assistants or given seniority in the list of Assistants from the date of their appointment. Their present claim that they should be given seniority in the cadre of Assistants from their dates of appointment u.s.f.

18.6.1979 and 11.6.1979 relates to a cause of action which has arisen more than 3 years prior to the date of institution of this Tribunal i.e. 1.11.1982 and hence this application is barred under Sections 20 and 21 of the Administrative Tribunals Act. The repeated representations made by the applicants will not have the effect of enlarging the period of limitation - S.S. Rather v. State of Madhya Pradesh

(AIR 1990 SC 10). The arguments of the learned counsel for the applicant that the appeal made on 2.9.1989 to the Secretary, ICAR is still pending and hence this application is not barred by limitation will not also help them.

because they have failed to show that this is a statutory appeal addressed to the competent authority from the decision of the Council (ICAR) conveyed to them on 21.1.1989 or that they have taken the action within a reasonable time.

8. Secondly, the applicants have not been appointed to the post of Assistants in accordance with the rules but were initially appointed as Assistants (Receptionist-cum-Caretaker). Their case is, therefore, distinguishable on the facts from the case of Shri Marwah who had been appointed to the post of Estate & Protocol Officer in accordance with the rules. Having regard to the observations of the Supreme Court in the Direct Recruits Class II Engineering Officers' Association v. State of Madhya Pradesh (JT 1990 (2) SC 264) followed in Ashok Mehta v. Regional Provident Fund Commissioner & Others (T-43/87(CAT) FB dated 5.2.1993) they cannot now claim seniority to the post of Assistant from the dates of their initial appointments.

9. In the facts and circumstances of the case, we see no good grounds to interfere with the impugned orders and the application is dismissed. There will be no order as to costs.

10. A copy of this order shall also be placed in D.A.No. 415/91.

(Smt. Lakshmi Swaminathan)

Member (J)

(Smt. Lakshmi Swaminathan)  
Member (J)

(S.R. Adiga)  
Member (A)

Administrative Tribunal

Room No. 10001

Branch: New Delhi House

New Delhi-110001