

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(8)

D.A.No. 415/91,
&

✓ D.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)

DA 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. .. Applicant
(Shri G.D. Bhanderi, Advocate)

versus:

1. Union of India through
Secretary,
DARE, Ministry of Agriculture,
Krishi Bhawan,
New Delhi-110 001.

2. Secretary,
ICAR, Krishi 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

Q.A. No. 404/1991

Date of decision 28.3.95.

Subject matter CO. RAM

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

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

and before the Hon'ble Shri V.P. Singh, Member (A)

and before the Hon'ble Shri Harbans Singh,
Sangwan Bhawan,
Sector 4, Chandigarh-Azad Nagar, Baraut, Distt. Meerut (UP) .. Appellant.

(By Advocate Shri G.D. Bhandari)

Vs

1. Union of India through
Secretary, I.C.A.R.

DARE,
Ministry of Agriculture, Krishi Bhawan,
New Delhi-110001

2. The Secretary, I.C.A.R.,
Krishi Bhawan, New Delhi-110001

3. Director, IARI,
New Delhi-110012

.. Respondents

(Proceedings on O.A. No. 404/91)

No. 404/91 is to place out of consideration ORDER.

Reported on 20.3.95 by Hon'ble Smt. Lakshmi Swaminathan, Member (J)

After consideration of the facts in O.A. No. 404/91 and

the hearing in 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,

the facts referred to in the case of the applicant, Shri V.P. Singh. The applicant's request for assignment of marks and retaining them seniority from the date of their appoint-

ment as Assistant on 18.6.1979 in the case of the

and 13.6.1979 in the case of the applicant, Shri V.P. Singh, and 13.6.1979 in the case

(b)

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 malafide, 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 U.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

11
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 consulting the applicants and without getting their consent which has left them with no future avenues. On the representation made by them

to the Office of the Secretary, dated 13.7.1984, they were informed by Memo. dated 1.5.1985 (Annexure A-6) that they cannot be treated

as Assistants and accordingly not ~~at par with Assistants as they have not been appointed~~ according to ~~the recruitment rules of Assistants prescribed~~ ~~as per the recruitment rules of Assistants prescribed~~

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 pay scale of Rs. 550-900 in the

7th five year plan was under consideration.

That, however, nothing has happened.

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

based on the following facts:—
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 to the Director, Economic Services, dated 13.9.1988 (Annexure A-9), and given seniority w.e.f. 13.9.1988 (Annexure A-9).

The above development has caused apprehension in the applicants.

The applicants are aggrieved by this order, since according to them, their previous service as Assistant/Receptionist-cum-Caretaker is ending with 18.6.1979 and 12.6.1979 respectively, have been ignored. When their representation against the seniority assigned to them was

rejection of their representation dated 22.7.1989 and 4/5-5-1989 (Annexure A-11 and A-13) respectively, they had filed

of their case before the Secretary, ICAR on 2.9.1989 and 12.6.1989, appeal to the Secretary, ICAR on 2.9.1989 and 12.6.1989,

which was rejected on 12.6.1989.

19
and subsequently on 12.6.1989, the applicants

had approached the Central Public Service Commission for a review of the order dated 21.1.1989.

12

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 Assistant/Receptionists-cum-

Caretaker were filled only on the basis of interview

and not on the basis of written test and the reserv-

ation 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

13



to the post of Assistants 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 appointed at Delhi 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, who was transferred to the post of Receptionist/Caretaker, 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

and subsequent to the transfer of Shri Marwah to 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

post of Receptionist/Caretaker in accordance with the rules.

(A)

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 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 date of appointment u.e.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. Rathor 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

V.P.S. 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 Recruitment 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.

Om Prakash Devi
(Smt.)
District Court Officey
Central Administrative Tribunal
C.P.O. 17, New Delhi
Delhi Branch, Post Office House
New Delhi-110001

(Smt. Lakshmi Swaminathan)
Member (J)

My today.
(S.R. Adige)
Member (A)