

22

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. Nos. 1394/91, 863/91, and 883/91
New Delhi this the 16 Day of July, 1996

Hon'ble Shri A.V. Haridasan, Vice Chairman (J)

Hon'ble Shri R.K. Ahooja, Member (A)

O.A. No. 1394/1991

1. Ms. Chandrika Vyas,
Asstt. News Editor,
Doordarshan Kendra,
Worli,
Bombay-400 015.
2. Mr. Anil Patel,
Asstt. News Kendra
Ahmedabad-380 054.
3. Ms. Anjani Bhushan,
Asstt. Editor,
Collected Works of Mahatma Gandhi,
East Block IV,
Level 5,
New Delhi-110 066.
4. Shri Nafe Singh Mood,
Inspector of Exhibition,
Directorate of Advertising and
Visual Publicity,
"B" Block,
Kasturba Gandhi Marg,
New Delhi-110 001.
5. Mr. J.P. Bhardwaj,
Asstt. Editor,
Publications Division
Ministry of Information
and Broadcasting,
Patiala House,
New Delhi-110 001.

6. Dr. Prem Prakash Bhatia
Asstt. Editor,
News Service Division,
All India Radio,
New Delhi-110 001.
7. Ms. Lalita Zackariah,
Asstt. Editor,
Collected Works of Mahatma Gandhi
East Block IV,
Level 5,
R.K. Puram,
New Delhi-110 066.
8. Ms. Nandita Mishra,
Asstt. News Editor,
News Service Division,
All India Radio,
New Delhi-110 001.
9. Ms. Usha Kiran Goel,
Asstt. News Editor,
Collected Works of Mahatma Gandhi,
East Block IV,
Level 5,
R.K. Puram,
New Delhi-110 060.
10. Mr. V.G. Mathur,
Asstt. Editor,
Collected Works of Mahatma Gandhi,
East Block IV,
Level 5,
R.K. Puram,
New Delhi-110 060.
11. Mr. Anthony Toppo,
Asstt. News Editor (Gr. II),
News Service Division,
All India Radio,
New Delhi-110 001.

.... Applicants

(By Advocate: Mr. Lily Thomas) *Sr. K. E. Sharma*

Vs

Union of India through its
Secretary,
Ministry of Information and Broadcasting,
Shastri Bhawan,
New Delhi-110 001.

.... Respondents

(By Advocate: Mrs. Raj Kumari Chopra) *Sr. M. K. Gupta*

O.A.No. 863/1991

Shri Bharti Narsimhan,
Assistant Editor,
Publications Division,
Patiala House,
New Delhi.

Applicant

(By Sh.K.C.Sharma, advocate)

VS

1. Union of India,
represented by Secretary,
M/o Information & Broadcasting,
Shastri Bhawan,
New Delhi,
2. Union Public Service Commission,
represented by its Secretary,
Shahjahan Road,
New Delhi.
3. Shri Rajendra Roy,
Inspector of Exhibitions,
DAVP, Ministry of Information &
Broadcasting,
Exhibition Division, Block 'B',
Kasturba Gandhi Marg,
New Delhi.
4. Shri P.N. Dwivedi,
Information Officer,
Press Information Bureau,
Shastri Bhawan,
New Delhi.

(By Sh. M.K.Gupta, advocate)

O.A.No. 883/1991

Shri B.K.Ahluwallia,
Asstt. Information Officer,
Press Information Bureau,
Shastri Bhavan,
New Delhi

Applicant

(By Sh.K.C.Sharma, advocate)
Vs.

1. Union of India
represented by Secretary,
M/o Information & Broadcasting,
Shastri Bhawan,
New Delhi.

-: 4 :-

2. Union Public Service Commission,
represented by its Secretary,
Shahjahan Road,
New Delhi.
3. Shri Rajendra Roy,
Inspector of Exhibitions,
DAVP, M/o Information & Broadcasting,
Exhibition Division, Block 'B',
Kasturba Gandhi Marg,
New Delhi
4. Shri P.N. Dwivedi,
Information Officer,
Press Information Bureau,
Shatri Bhawan,
New Delhi.

(By Sh. M.K.Gupta, advocate)

.....5.



26

O R D E R

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)

Since the facts, the circumstances and the question of law involved in all these three cases are similar, these cases are being heard and disposed of by this common order.

2. The grievance of the applicants in all these applications is that the respondent in spite of repeated requests made by them has refused to extend to them the benefit of judgement of the Hon'ble Supreme Court in Civil Appeal No.3930/86 passed in favour of Sh. R.P.Dhasmana, a person identically situated like them.

3. The facts of the cases necessary for understanding the dispute involved in all these three cases are as follows:

OA No.1394/91

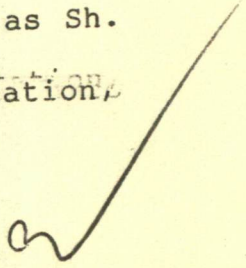
4. The applicants were appointed on temporary basis on the post of Sub Editor/Reference Assistant in a project on Collected Works of Mahatma Gandhi (CWMG) which was launched in the year 1956 by the Ministry of Information & Broadcasting on different dates ranging from 1966 to 1972. The project of CWMG was made an integral part of the Publication Division of the Ministry of Information & Broadcasting by the Ministry's order dated 19th January 1977 (Annexure P-2).

m.2 ✓

5. The applicants 1, 4 to 7 & 10 in course of time were promoted to the temporary post of Research Assistant in the pay scale of Rs. 550-900 w.e.f. different dates with prior approval of the UPSC. All the applicants were declared quasi-permanent. The posts of Sub-Editor/Research Assistants/Assistant Examiner (Proof) in CWMG were Class III Non-Gazetted posts with pay scale of Rs. 270-485/290-425/325-430 respectively, whereas the posts of Sub-Editors/Information Assistants/Reference Assistants in the Central Information Service (CIS) were Class II Non-Gazetted posts with uniform pay scale of Rs. 275-585. In the CWMG, there was another Class II non-gazetted post, namely Research Assistant in the pay scale of Rs. 370-575. The Central Information Service was constituted on 1.3.1960 under Rule 3 of the CIS Rules 1959. These rules have since been repealed by the Indian Information Service Grade B Rules 1989. The Ministry converted all the posts of Sub-Editors/Reference Assistants and Assistant Examiners (Proofs) into Grade IV of the CIS and consequently the posts of Research Assistants were merged with the posts of Sub-Editors (CIS) by Adesh No. 97/1978 CIS dated 10.7.78 w.e.f. 3.6.78. However, the post of Sub-Editor was not included in the Schedule to the Central Information Service Rules

1959 and the same was included only by a notification No.A-42012/2/72-CIS dated 17.8.78. In the CIS, with the approval of the Union Public Service Commission accorded in the year 1977, the applicants alongwith others were inducted as Sub-Editors Grade IV with pay scales of Rs. 470-15-530-EB-25-750 with effect from 3.6.78 by Adesh no.97/1978-CIS dated 10th July 1978 (Annexure P-III). As the post of Research Assistant had been merged with that of Sub-Editor, the applicants 1, 4 to 7 and 10 who were working as Research Assistants on the date of merger carried the pay scale with them and their basic pay was fixed at Rs. 750 at the maximum of the scale. However, in the seniority list of all the officers of the CWMG included in the CIS, circulated vide Adesh No. 56/1979-CIS dated 10.5.79, the applicants were assigned seniority only with effect from 3.6.78 without taking into account the long service rendered by them in the

equivalent grade in the CWMG. The applicants were promoted thereafter as Assistant Editors/Assistant News Editors, a Class II Gazetted post (Grade III of CIS), in the scale of Rs.650-1200. Aggrieved by the fact that the service rendered prior to 3.6.78 had not been taken into account in fixing their seniority on the ground that the posts which the applicants were holding were not included in the Schedule to the Central Information Service, 1959 and was later included only by an amendment dated 3rd June 1978, one Shri R.P.Dhasmana, identically placed as the applicants, filed a writ petition before the High Court of Delhi praying that his seniority should be fixed in the grade of Assistant Editor w.e.f. the date on which he was promoted to that post in the CWMG and not w.e.f. 3.6.78. The High Court turned down his claim but in a civil appeal No.2939/86 the Hon'ble Supreme Court by its order dated 15th July 1988 allowed Sh. Dhasman's claim and directed the respondents to re-fix Dhasmana's seniority w.e.f. 25th August 1973 the date on which he was promoted to the post of Assistant Editor, and to place him above the names of officials who had joined Class II Grade III posts in the CIS after 25th August 1973. This direction was complied with by the respondents. The applicants represented to the respondents requesting them to re-fix their seniority also, extending to them the benefits conferred on Sh. Dhasmana by the judgement of the Hon'ble Supreme Court, stating that they were also identically situated as Sh. R.P.Dhasmana. Finding no response to the representation,



the applicants caused a lawyer's notice to be issued to the respondents through Sh. Anil Kumar Pathak, their advocate. In reply to the above legal notice, the respondents informed the applicants that the issue whether continuous temporary/ad-hoc service rendered should be counted for the purpose of fixation of seniority before regularisation/absorption in a particular trade in the Central Information Service was yet to be settled and finally, / as the same was pending before the Constitution Bench of the Hon'ble Supreme Court, it was not possible to extend to them the benefit of the judgement in Dhasmana's case and that a decision in that behalf would be taken after the decision on the issue by the Constitution Bench of the Hon'ble Supreme Court.

5. Aggrieved by the action on the part of the respondents in not extending to the applicants the benefit of their services in the CWMG, the applicants approached the Hon'ble Supreme Court of India in writ petition No. 960/90. When the said writ petition came up for hearing on 7.1.91, it was observed by the Court that the applicants should move Central Administrative Tribunal for redressal of their grievances. The writ petition was withdrawn with liberty to move this Tribunal. It is thus the applicants filed this application under Section 19 of the AT Act for following reliefs:

- (i) directing and/or commanding the respondents to follow, apply and implement the judgement dated 15.7.88 passed by Hon'ble Supreme Court of India in Civil Appeal No.3930 of 1986, in the case of the applicants also and to grant the applicants all the consequential reliefs, and/or benefits and/or;
- (ii) direct the respondents to treat the applicants as having been included in CIS from the date of their appointment to the post they were holding in CWMG at the time of their induction in the CIS (Now IIS) and to grant all consequential reliefs (monetary or otherwise) accrued to them and/or;
- (iii) direct the respondents to take into account the service rendered by the applicants in CWMG as Sub-Editors while fixing the seniority in the CIS to place the applicants in the seniority list of respective grades according to the seniority that would emerge after counting their services as aforesaid and to grant all consequential reliefs (monetary or otherwise) accrued to them;
- (iv) direct the respondents to promote the applicants in the higher grade on the basis of their seniority with all consequential benefits.

OA No. 863/91

6. The applicant Mrs Bharti Narasimhan joined CWMG initially as a Reference Assistant on 18.4.1962. She was promoted as Research Assistant on 27th July 1964 with the approval of the UPSC. Thereafter, she was promoted as Assistant Editor on 6.9.69 again with the approval of the UPSC, second respondent in this case. The post of Assistant Editor was Class II Grade III post in the Publication Division of the Ministry of Information & Broadcasting. Vice Notification dated 10.7.78, the applicant alongwith 13 others who

✓

were working as Assistant Editors were included in the Central Information Service w.e.f. 3.6.78. In the seniority list of Class II Grade III officers of the Central Information Service, the applicant was given seniority w.e.f. 3/6/78 onwards only because these posts were included in the Central Information Service only with effect from that date. As she had been continuously working in Class II Grade III post w.e.f. 6.9.69, the applicant prays that the respondents be directed to re-fix her seniority in the Class II Grade III posts of CIS w.e.f. 6.9.69 with consequential benefits, extending to her the benefit of the judgement of the Hon'ble Supreme Court in Dhasmana's case.

OA No.883/91

7. The applicant Mr B.K.Ahluwalia who joined CWMG on 18.4.62 as Reference Assistant was promoted as Research Assistant on 27.7.64. He was promoted as Assistant Editor with the approval of the second respondent i.e. UPSC on 2.6.71 on inclusion of his name alongwith 13 others in the Central Information Service w.e.f. 3.6.78 by notification dated 10.7.78. He was granted seniority in the Class II Grade III officers of the CIS only w.e.f. 3.6.78. Claiming that he is also entitled to the benefit of the judgement of the Hon'ble Supreme court in Dhasmana's case and praying that the respondents be directed to re-fix his seniority in the Class II Grade III posts of CIS w.e.f. 2.6.71 with consequential benefits, he has filed this application.

8. The respondents have raised a preliminary objection that the applications are not maintainable as this Tribunal would not take into cognizance of any grievance which arose three years prior to the commencement of the Administrative Tribunals Act and that as the claims made in the applications related to the period prior to 1978, the applications are hopelessly barred by limitation. On merits, they contend that seniority of the applicants has been rightly counted w.e.f. 3.6.78 after their appointment to the services and that the services rendered prior to that being ad-hoc in nature, they have no right to claim the benefit of that service for the purpose of seniority. They contend that though the judgement of the Hon'ble Supreme Court in Dhasmana's case was implemented in respect of Shri R.P.Dhasmana, the applicants have no right to get the benefit of the said judgement as they were not parties to the judgement and as Hon'ble Supreme Court has

in T.Kannan & Others Vs. UOI & Others in OA No. 232/85 and A.K.Bhatnagar & Others Vs. UOI (WP No.12874/85) held that ad-hoc temporary service cannot be counted for seniority against cadre post prior to their regular appointment in accordance with Recruitment Rules. They further contend that as application similar in nature claiming extension of the benefit in Dhasmana's case filed by Sh. A. A. Shiromani & Others (OA 552/87) and WPs 2268 & 1818/89 were disposed of with direction that the issue of counting of seniority should await the disposal of by the Constitution Bench of the Hon'ble Supreme Court in the cases of T. Kannan and A.K.Bhatnagar, and that the notification indicating the applicants' entry into the Central Information Service should be given effect from 11th May 1977 retrospectively instead of 3rd June 1978. As the applicants have been inducted into the Central Information Service on 11.5.77, according to the said directions, there is no legitimate grievance subsisting for the applicants requiring redressal, according to the respondents.

9. We shall first deal with preliminary objection regarding lack of jurisdiction as cause of action having arisen more than 3 years beyond the commencement of the Administrative Tribunals Act and the claim being barred by limitation. The application was admitted by order 8.12.92 leaving the issue of limitation open to contest. The grievance of the applicants in this case is that the respondent is unjustifiably refusing to extend to the applicants the benefit conferred on Sh. R.P. Dhasmana in the judgement of the Hon'ble Supreme Court though they are also identically situated like R.P. Dhasmana. In reply to the legal notice issued on behalf of the applicants ^{in OA 1394/91} the respondent has sent a reply, copy of which ^{is} annexed as Annexure P-6. What was stated in the reply was that as the issue involved in granting them the benefit of the judgement in Dhasmana's case had to be decided after a decision by the Constitution Bench of the Hon'ble Supreme Court on an identical question, it was not possible to extend to the applicants the benefits in Dhasman's case for the time being and the matter would be duly considered depending on the outcome of the decision of the Constitution Bench of the Hon'ble Supreme Court. This reply shows that the respondent had not treated the issue raised by the applicants as closed and they were yet to take a final decision. Therefore, it cannot be said that

the relief claimed by the applicants ^{in all three cases} /is barred by limitation or that their grievances had arisen more than three years prior to the commencement of the Administrative Tribunals Act. Viewed in this light, the preliminary objection raised by the respondent has no merit at all.

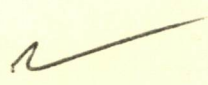
10. Having found that the preliminary objection is not tenable, we shall now consider whether the applicants are entitled to the relief claimed by them. In almost an identical case like the present one i.e. OA 1324/91 titled Ms. Rajni Singh V. UOI before a Division Bench of which both of us were parties, the identical contention raised in the case had been rejected and allowing the claim of Ms Rajni Singh, the respondents were directed to re-fix the seniority of Ms. Rajni Singh in the CIS (Placing her name in the seniority list above the names of those who had joined Class II Grade III posts in the CIS subsequent to 1.12.73) with all consequential benefits. The contention of the respondent that an identical question as involved in this case was subject matter before the Constitution Bench in A.K.Bhatnagar & Others Vs. UOI, and the Constitution Bench has dismissed the plea for grantingseniority for ad-hoc/temporary service against cadre post prior to their regular appointment in accordance with Recruitment Rules and for this reason the applicants are not entitled to the relief prayed for has also no force at all. The issue ~~is involved~~ before the Constitution Bench in Bhatnagar's case was whether

ad-hoc service prior to inclusion in the organised service can be counted for seniority in the CIS. In this case, the service of the applicants in the CWMG was not ad-hoc service and, therefore, the decision of the Constitution Bench of the Hon'ble Supreme Court has no bearing on the issue involved in this case. In Dhasmana's case, Hon'ble Supreme Court has held as follows:

" The question involved in this case related to the seniority of the appellant. It appears that on account of some reason the post which the appellant was holding was not included in the Schedule to the Central Information Service Rules, 1959. It was specifically included by an amendment dated 3rd June 1978. The appellant has been holding the Class II post continuously from 25.8.1973 and even now he is holding the same post. The department appears to have taken the view that since the Rules were amended on 3.8.78 by including the post held by the appellant in the Schedule to the Rules, he should be treated as having entered in Class II Grade III post with effect from 3.6.1978. We find that this view has been approved by the High Court also. We do not agree with the above view. Since the appellant has been continuously working in Class II Grade III post w.e.f. 25.8.73, there was no justification for denying him the benefit of the service which had been put in between 25.8.73 and 3.6.79."

11. On the basis of the above observations of the Hon'ble Supreme Court directed the respondents to place Sh. Dhasmana in the seniority list above the names of officials who had joined Class II Grade III post subsequent to 25.8.73.

8. The principle laid down by the Hon'ble Supreme Court in Dhasmana's case applies equally to the facts of this case also. The applicants are, therefore, entitled to the benefit of the above decision of the Hon'ble Supreme Court.

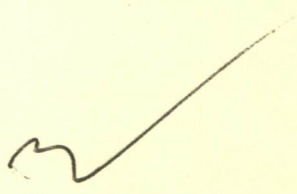


12. The applicant in OA 863/91 was holding the post of Assistant Editor in CWMG w.e.f. 6.9.69 and continued thereafter. Similarly, the applicant in OA 883/91 was holding the post of Assistant Editor in CWMG from 2.6.79 onwards. Therefore, both these applicants were senior to Sh. Dhasmana who was holding the post of Assistant Editor continuously only from 25.7.73. Since Hon'ble Supreme Court held that there was no justification for denying Sh. Dhasmana the benefit of the services which he had put in , in between 25.8.73 and 3.6.78, there is no justification at all in denying the benefit to the applicants in these two cases, who were seniors to Sh. Dhasmana. As far as OA 1394/91 is concerned, they are entitled to revision of their seniority in Grade IV of the CIS w.e.f. the date on which they have been continuously working on the equivalent grade in CWMG.

In the light of what is stated above, the applicants in these applications are bound to succeed. The applications are, therefore, disposed of with following directions:

[a] OA No.1394/91

The respondent is directed to re-fix the seniority of applicants in the CIS (Now IIS) taking into account the services rendered by the applicants in CWMG as Sub-Editors i.e. in Grade IV of CIS and also in the respective grades, and to grant them all consequential benefits including consideration for promotion to higher grades.



[b]

OA No.863/91

The respondent is directed to re-fix the seniority of the applicant in Class II Grade III post w.e.f. 6.9.69 and to grant her the consequential benefits.

[c]

OA No.883/91

The respondents are directed to re-fix the seniority of the applicant in Class II Grade III post w.e.f. 2.6.71 and to grant him the consequential benefits.

[d]

Any arrears of pay and allowances consequent on such re-fixation of seniority/promotion etc. in the case of the applicants in these cases should be paid to them from a date one year prior to the date of filing of these applications *only*

[e]

The aforesaid directions shall be complied by the respondents within a period of 2 months from the date of receipt of this order.

~~(R.K.Ahooja)~~
Member (A)

(A.V.Haridasan)
Vice Chairman (J)

Attested
Haridasan
CO II

A.Ashraf