

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.
~~TAX NO.~~

33

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DATE OF DECISION 28.5.1987

Shri Ram Viswanathan and others

Petitioner^s

Smt. Subhadra

Advocate for the Petitioner(s)

Versus

Union of India and others

Respondent^s

Mr. P.H. Ramchandani, Mr. N.S. Mahta,

Advocate for the Respondent(s)

Mr. G.P. Saxena, Mr. M.S. Ganesh, Mr. A. Benadikar

CORAM :

The Hon'ble Mr.

B.C. Mathur, Vice-Chairman

The Hon'ble Mr.

G. Sreedharan Nair, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether to be circulated to all Benches or not? *Yes*

B.C. Mathur
(B.C. Mathur)
Vice-Chairman

G. Sreedharan Nair
(G. Sreedharan Nair)
Judicial Member

28.5.1987

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Original Application No. 33 of 1985

Shri Ram Vishwanathan and others .. Applicants

-Vs.-

Union of India and others .. Respondents

COUNSEL FOR Applicants .. Smt. Subhadra, Advocate

Counsel for respondents .. Mr. P.H. Ramchandani
Mr. N.S. Mehta,
Mr. C.P. Saxena
Mr. M.S. Ganesh,
Mr. A. Benadikar
Advocates

CORAM: Hon'ble Mr. B.C. Mathur, Vice-Chairman
and

Hon'ble Mr. G. Sreedharan Nair, Judicial Member

ORDER OF THE TRIBUNAL DELIVERED BY HON'BLE

Mr. G. SREEDHARAN NAIR, JUDICIAL MEMBER

on 28.5.1987

When recruitment to a post is to be had
by promotion as well as by direct recruitment,
definite quota being prescribed for the two categories,
how is the seniority among ^{recruits} ~~them~~ to be determined, is
the question that is posed in this application by ^{filed}
three Assistant Naval Stores Officers in a representative

capacity on behalf of the promotee Assistant Naval Store Officers. They have impleaded the fourth respondent, who is a direct recruit as Asst. Naval Store Officer, as representing the direct recruits. While ^{according to} the applicant, the seniority is to be determined on the basis of continuous officiation in the post, the fourth respondent maintains that the seniority is to be fixed by rotating the vacancies, or in other words, adopting the familiar parlance, by the rota rule. In taking this stand, the fourth respondent is supported by respondents 1 to 3. Actually the third respondent has published a seniority list in February 1985 (copy of which is at Annexure - P 3) adopting the rota rule. The applicants have prayed for quashing the said list and ^{the} confirmation of permanency based on the same.

Recruitment to the post of Asst. Naval Store Officer is governed by ^{the Navy} ~~the~~ (Civilian - Gazetted Stores Officers' Posts) Recruitment Rules 1979. According to the rules, the post is to be filled up by promotion to the extent of 50 per cent and by direct recruitment to the extent of 50 per cent. The first applicant was appointed to the grade of Asst. Naval Stores Officer on 28.7.1978, the second applicant on 31.5.1980 and the third applicant on 4.3.1983, while the fourth respondent was appointed on 9.6.1979. The plea of the

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applicants is that in the impugned seniority list the direct recruits who have been appointed to the post after the promotees joined the post are shown as senior. It is also contended that the appointment has not been made on the basis of the roster to be maintained allotting the first place to the promotee and the second place to the direct recruit, the third place to the promotee and the fourth to the direct recruit and so on. The seniority list is attacked as violative of Art.14 and 16 of the Constitution on the ground that the direct recruits have been given undue benefit. In support of this averment, stress has been made in the application on the decision of the Supreme Court in A.Janardhana's case(1983(2)SLR -Page 113).

The respondents contend that the rules as laid down in the Recruitment Rules of 1979 have been followed in fixing the seniority and that confirmation is being done on the basis of the instructions contained in the office memoranda issued by the Department of Personnel and Administrative Reforms. For

For appreciating the controversy, an understanding of the exact scope of the law laid down by the Supreme Court in Janardhana's case is essential.

ratio of 1:2
The decision as to the ratio is that once the quota rule was wholly relaxed to suit the

requirements of service and recruitment was made in relaxation of the quota rule, no effect can be given to the rule of relative seniority of promotees and direct recruits prescribed under the relevant rules, as it was wholly interlinked with the quota rule and cannot exist, apart from it on its own strength. It was held that once the quota rule was relaxed the rota for confirmation disappears. The seniority list that was the subject matter of the case was quashed on the ground that there was complete relaxation of the quota rule between 1959 and 1969, holding that where the quota rule is linked with the seniority rule, if the first breaks out or is illegally not adhered to, giving effect to the second would be unjust, inequitable and improper. In the subsequent decision of the Supreme Court in P.S. Mahal's case (AIR 1984-SC - 1291), the Supreme Court had occasion to consider this question, and the aforesaid principle laid down in Janardhana's case was followed. It is pertinent to refer to para 32 of the judgement in that case, which is extracted hereunder:-

"We have already pointed out that there is no inherent vice in the quota rule being operated through the rotational rule of seniority. Where the rotational rule of seniority is adopted, the relative seniority of promotees from different sources has to be determined on the basis of a roster maintained in accordance with the

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quota rule so that when promotion of an officer is regularly made within his quota, he is fitted into the vacancy reserved for ~~for~~ promotees from his source and his seniority is reckoned from the date when such vacancy arose. But this rotational rule of seniority can work only if the quota rule is strictly implemented from year to year. Some slight deviations from the quota rule may not be material but as pointed out by Palekar, J. in ~~the~~ Bishan Swarup Gupta's case, "if there is enormous deviation, other considerations may arise". If the rotational rule of seniority is to be applied for determinigg seniority amongst officers promoted from different sources, the quota rule must be observed. The application of the rotational rule of seniority when there is large deviation from the quota rule in making promotions is bound to create hardship and injustice and result in impermissible discrimination. That is why this Court pointed out in A.K.Subraman's case that "when recruitment is from twdor several sources, it should be observed that there is no inherent invalidity in introduction of quota system and to work it out by a rule of rotation. The existence of a quota and rotational rule, by itself, will not violate Art.14 or Art.16 of the Constitution "It is the unreasonable implementation of the same which may, in a given case attract the frown of the equality clause". The rotational rule of seniority is inextricably linked up with the quota rule and if the quota rule is not strictly implemented and there is large ~~large~~ deviation from it regularly from year to year, it would be grossly discriminatory and unjust to give effect to the rotational rule of seniority. We agree wholly with the observation of D.A.Desai, J. in A.Janardhan - Vs.- Union of India, C.A.No.360 of 1980, decided on 26th April 1983 (reported in AIR 1983 SC 7769) that "the quota rule is linked with the seniority rule; if the first breaks down or is ~~xxxxxxx~~ illegally not adhered to, giving effect to the second would be unjust, inequitious and improper". This was precisely the reason why the Court in the first

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Bishen Swarup Gupta's case held that with the collapse of the quota rule, the rule of seniority set out in Rule 1(f)(iii) also went".

On the facts, as it was found that there was enormous deviation from the quota rule and such deviation had continued from year to year over a period of almost 25 years, it was held that the rotational rule of seniority must obviously break down when there is such massive departure from the quota rule regularly from year to year.

In the decision in G.S.Lamba's case(AIR 1985-SC-1019) the Supreme Court was again concerned with this question. It was held that if the rule of seniority is inextricably intertwined with the quota rule and there is an enormous deviation from the quota rule it would be unjust, inequitable and unfair to give effect to the rota rule, as giving effect to the rota rule after noticing the enormous departure from the quota rule would be violative of Art.14 and 16. In that case, promotions had been made in excess of the quota for years and the promotees had been holding the posts for over six to eight years. Direct recruitment was not made for years. Hence the Court held that it is a case, either of non-implementation of the quota rule or mal-functioning of the quota rule and yet the rota rule was being adhered to, which was struck down as unjust, unfair and inequitable and as such

violative of Art.14 and 16 of the Constitution. In the recent decision of the Supreme Court in A.L.Pathak's case(1987(1)-SCALE-307), it was held that inordinate delay in making direct recruitment should not visit the promotees with adverse consequences, denying them the benefit ^{of} their service. There again, stress was laid by the Court on the inordinate delay in making direct recruitment.

From the discussion above, the principle involved can be enunciated in a nutshell. When recruitment to a cadre is done, both by promotion as well as by direct recruitment, ^a the quota can be prescribed for each source. In such cases, the inter-se seniority ^{among the recruits} can be determined by the rota rule. It is not mandatory that the principle of continuous officiation in the cadre is to be adopted for this purpose. However, for fixation of seniority by adopting the rota rule there should not be any ^{of, or} relaxation, ^{from} enormous departure or deviation of the quota rule. When there is inordinate delay in making the direct recruitment, there will be an inference of the break down of the quota rule.

It falls to be determined as to whether it can be said on the facts of the instant case that there has been break down ^{of} ~~of the quota rule~~, relaxation, ^{of the same} ~~or~~ enormous departure, ^{of the quota rule} ~~or~~ deviation or flagrant violation, so as to hold that seniority cannot be determined on the rotation of vacancies. On a

careful analysis of the material on record, we are of the view that the applicants are to fail. There is no averment in the application that there was any relaxation of the quota rule; nor is there a plea that for years together steps were not taken for resorting to direct recruitment. From the impugned seniority list it is evident that direct recruitment was held in the year 1978, 1980, 1981 and in 1983. It is needless to highlight that the process of direct recruitment is prolix and time consuming, compared to the process of promotion. As such, when a particular period of a few years is taken into account, merely because during any year or two in that period no direct recruit~~ment~~ was actually appointed, it cannot be said that there is inordinate delay in making the direct recruitment or a break down of the quota rule. ~~As has been emphasised earlier,~~ It was on account of the wholesale relaxation of the quota rule during the period of ten years that in Janardhana's case it was held that there is a ²break down of the quota rule. In P.S. Mahal's case, there was an enormous deviation from the quota rule for ^{about} quarter of a century. In G.S. Lamba's case, there was no direct recruitment from 1965 to 1972 and even for the later years only an indent was placed and no recruitment was done and during all these years a large number of persons were promoted. The

facts are totally different here, and as such the applicants cannot derive assistance from the decisions in the aforesaid cases.

It was submitted by the counsel for the applicants that while according to the rules for preparing the roster the first place is to be allotted to the promotee, the next to the direct recruit and so on, the impugned seniority list shows otherwise and as such it is patently illegal. The list shows the name of the fourth respondent, a direct recruit, at Sl.No.1. At Sl.No.2 and 3 also the direct recruits are included and it is only at Sl.No.4 that a departmental promotee figures. But it has to be remembered that whenever a promotee retires or leaves service, his name is deleted from the roster and is replaced by a person who is immediately below him. It is nowhere enjoined that in such circumstances there should be a rearrangement in the seniority list for the purpose of ensuring the proportion. The impugned seniority list reflects only the seniority position as on the date of its issue and hence this objection of the applicants has no substance. While the impugned seniority list shows the name of the fourth respondent at Sl.No.1, there are other seniority lists of earlier years where the fourth respondent is not shown at Sl.No.1. These are running lists. The names at Sl.No.2 and 3 of the impugned list belong to Scheduled Castes and are therefore listed

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according to different criterion. But by and large the arrangement is one promotee followed by a direct recruit. Some times there are two promotees also, one after the other as the direct recruit in between has left the cadre.

It follows that the impugned seniority list does not require interference.

We dismiss the application.

B.C. Mathur
(B.C. Mathur) 28/5/87
Vice-Chairman

28.5.1987

G. Sreedharan Nair
28-5-1987
(G. Sreedharan Nair)
Judicial Member