

Central Administrative Tribunal
Principal Bench

O.A.No.1389/92
with
O.A.No.993/92

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Hon'ble Shri R.K.Ahooja, Member(A)
Hon'ble Shri S.L.Jain, Member(J)

New Delhi, this the 27th day of April, 1999

Shri Sudhir Kumar Nagpal
s/o Shri Som Nath Nagpal
R/o D-9, Delhi Administration Flats
Near Alpana Cinema
Model Town - I
Delhi - 110 009. ... Applicant

(By Shri A.K.Bhera, Advocate)

Vs.

1. Lt. Governor of Delhi
Raj Niwas
Delhi.
2. Chief Secretary
Delhi Administration
Sham Nath Marg
Delhi.
3. The Director
Department of Prevention of Food
Adultration
Delhi Administration
A-20, Lawrence Road Indl. Area
Delhi - 110 035.
4. Shri Satish Kumar Nanda
Food Inspector
Department of Prevention of Food
Adultration
Delhi Administration
Lawrence Road Indl. Area
Delhi - 110 035.
5. Shri Rajender Kumar Ahuja
Food Inspector
Department of Prevention of Food
Adultration
Delhi Administration
A-20, Lawrence Road Indl. Area
Delhi - 110 035. .. Respondents

(By Shri Ajesh Luthra, Advocate for the official
respondents and Shri V.S.R.Krishna, Advocate for the
private respondents).

with

O.A.No.993/92:

Shri Baljit Singh
s/o Shri Tara Singh
r/o 59/2, Sector-I

Pushp Vihar
Saket
New Delhi - 110 017.

... Applicant

(By None)

Vs.

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1. Lt. Governor of Delhi
Raj Niwas
Delhi.
2. Chief Secretary
Delhi Administration
Sham Nath Marg
Delhi.
3. The Director
Department of Prevention of Food
Adultration
Delhi Administration
A-20, Lawrence Road Indl. Area
Delhi - 110 035.
4. Shri Sanjiv Kumar Gupta
Food Inspector
Department of Prevention of Food
Adultration
Delhi Administration
A-20, Lawrence Road Indl. Area
Delhi - 110 035.
5. Shri Prem Nath Khatri
Food Inspector
Department of Prevention of Food
Adultration
Delhi Administration
A-20, Lawrence Road Indl. Area
Delhi - 110 035.
6. Shri Arun Kumar
Food Inspector
Department of Prevention of Food
Adultration
Delhi Administration
A-20, Lawrence Road Indl. Area
Delhi - 110 035.
7. Shri Surender Kumar Sharma
Food Inspector
Department of Prevention of Food
Adultration
Delhi Administration
A-20, Lawrence Road Indl. Area
Delhi - 110 035.
8. Shri Prem Chand Tewari
Food Inspector
Department of Prevention of Food
Adultration
Delhi Administration
A-20, Lawrence Road Indl. Area
Delhi - 110 035. .. Respondents
(By Shri Ajesh Luthra, Advocate for the official
respondents and Shri V.S.R.Krishna, Advocate for the
private respondents).

O R D E R

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

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The issues involved in both the cases being the same, they are being disposed of by this common order.

2. The applicant in OA No.1389/92, Shri Sudhir Kumar Nagpal, was appointed as Food Inspector under the Delhi Administration on the basis of a written test and interview conducted by the Staff Selection Board by an order dated 14.9.1977. In that Office Order No.1623, copy at Annexure-A1, the name of Shri Sudhir Kumar Nagpal appeared at Serial No.1 and his date of joining was shown as 3.8.1977(FN). The applicant in OA No.993/92, Shri Baljeet Singh, appeared at Serial No.8 and his date of joining was shown as 20.8.1977(FN). Since the recruitment rules for the post of Food Inspector, at that stage, had not been notified their regular appointments came to be made by an Office Order dated 28.6.1980 w.e.f. 4.5.1978. In this Office Order the name of Shri Sudhir Kumar Nagpal appeared at Serial No.3 and Shri Baljeet Singh appeared at Serial No.13. The applicants in both the OAs claim that the Annexure-A1 Office Order No.1623 dated 14.9.1977 correctly showed their names as per their positions in the merit list. Their grievance is that the respondents issued a tentative seniority list dated 26.7.1991, Annexure-A2 in which Shri S.K.Nagpal's name was shown at Serial No.3 and Shri Baljeet Singh's name was shown at Serial No.13. Both made representations but the respondents issued a final seniority list dated 4.11.1991, Annexure-A7 stating that officials who had filed objections did not file any documentary evidence in support of their claim. The case of the applicants in

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both the OAs is that the final seniority list is illegal, arbitrary and untenable inasmuch as it over looks the orders dated 14.9.1977.

3. The official respondents on the other hand, submit that order dated 14.9.1977 was in the nature of a posting order and not the seniority list as is claimed by the applicants. Their stand is that it is the final seniority list issued on 4.11.1991 which reflects the order of merit determined by the Staff Selection Board. The stand of the private respondents is also in substance the same.

4. When both the OAs came up for hearing, we heard Shri A.K.Behera, learned counsel for the applicant in OA No.1389/92. None however appeared on behalf of the applicant in OA No.993/92. Shri Ajesh Luthra and Shri V.S.R.Krishna appeared for the official respondents and private respondents respectively in both the cases.

5. The whole issue revolves upon whether the order dated 14.9.1977 reflects the order of merit determined by the Staff Selection Board. Shri A.K.Behera, learned counsel for the applicant pointed out that had the respondents meant this order to be only a posting order, then the same would have been in order of the date of joining by the respective appointees. On the other hand, while Shri S.K.Nagpal joined on 3.8.1977 and was shown at S1.No.1 and Shri R.K.Ahuja, one of the private respondents at S1. No.4 his date of joining being 9.8.1977(FN), one Shri Kaushal Kumar Mittal, who joined on 5.8.1977(FN) was placed at S1. No.5. It was also contended by Shri A.K.Behera, learned counsel for the

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applicant that the normal administrative practice is to show the names of the appointees in the order of merit recommended by the selection authority. He pointed out that but for the non availability of the recruitment rules, this would have constituted the order of merit for regular appointment. It was also pointed out by the learned counsel for the applicant that despite instructions from the Bench the respondents have not been able to produce the recommendations of the Staff Selection Board and hence an inference must be drawn against their version.

6. We have carefully perused the Office Order No.1623 dated 14.9.1977. All that this order shows is that the officials listed therein were being appointed on ad-hoc basis on the post of Food Inspector "w.e.f. the date shown against their names". We are unable to read in this order any indication that the officials were listed in the order of merit recommended by the Staff Selection Board. On the other hand, the minutes of the selection Board which examined the cases of these ad-hoc appointees for regular appointment clearly show that "their inter-se seniority will be remained the same as determined by the Staff Selection Board at the time of their initial appointment as given below" (emphasis supplied). It is clear that the Selection Board which had interviewed all the ad hoc appointees for considering them for regularisation had determined the inter-se seniority also and the same was on the basis of the recommendations of the Staff Selection Board which had made the original selection for appointment on ad-hoc basis. In view of this clear documentary proof, we cannot hold that the action of the official respondents

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in issuing the tentative and final seniority list, as illegal or arbitrary. It was contended by Shri A.K.Behera that it was not part of the pleadings of the official respondents that the recommendations of the 1980 Board had been made on the basis of the merit list prepared by the 1977 Staff Selection Board and that this plea cannot now be taken at the time of arguments. We do not see any merit in this contention. The 1980 Board had determined the seniority but we find that it was on the basis of the recommendations of the 1977 Board. The latter is implied in the first assertion regarding the preparation of the inter-se seniority. Shri A.K.Behera also contended that when appointments are made even on ad hoc basis but are intended to be regular appointment and are in fact ultimately made regular appointments, the inter-se seniority will have to be determined on the basis of comparative length of service. He pointed out that Shri Nagpal having joined on 3.8.1977, was the first to do so and was thus the senior most amongst all the Food Inspectors. In support he relied on the case of Direct Recruit Class-II Engineering Officers' Association Vs. State of Maharashtra and Others, (1990) 2 SCC 715. It was held in this case that if the appointment is made after considering the claims of all eligible candidates, and the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority and same will be the position if the initial appointment itself is made in accordance with the Rules, applicable to substantive appointments. We however find that Direct Recruit Class-II Engineering Officers' Association's case (Supra) was in the context

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of inter-se seniority between direct recruits and promotees and the question was not inter-se seniority intra the same class of appointees. Therefore the ratio of this case will not apply to a situation where both for ad hoc as well as for regular appointment the order of merit is determined by the selection authority. The argument of the learned counsel for the applicant that since official respondents have failed to produce the original record, relating to the recommendations of the Staff Selection Board, an adverse inference must be drawn against the contention of the official respondents, is also in our view without force. The official respondents have filed an affidavit that the relevant records are not available and could not be found despite efforts made by them. The selections were made way back in 1977 while the OA came to be filed only in 1992. The Staff Selection Board constituted by the Delhi Administration was not a statutory or a permanent authority, like the Staff Selection Commission. It is possible therefore that the records of proceedings of selection committee or Board may not be available. At the same time, we do not find any reason to doubt the veracity of the minutes of the Staff Selection Board held on 28.6.1980 for the regularisation of services of Food Inspectors working on ad hoc basis.

7. In the light of the above discussion, we find no merit in the case of the applicants in either OA. Both the OAs are accordingly dismissed. No costs.

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Jain
(S.L.Jain)
Member(J)

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