

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2466/92

New Delhi this the 17th day of April 1998. 12

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

V.K. Jain & Others ... Applicants

(By Senior Counsel Mrs. Shyamla Pappu with Mrs. B. Rana,
Counsel)

-Versus-

Union of India & Others ... Respondents

(By Advocate - None)

1. To be referred to the Reporter or not? YES

2. Whether it needs to be circulated to other

BENCHES OF THE TRIBUNAL? No


(Dr. A. Vedavalli)
Member (J)

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(13)

1. V.K. Jain,
R/o A-3/27-A, DDA Flats,
Paschim Vihar,
New Delhi.
2. C.M.P. Sinha,
R/o C-4A/33C, Janak Puri,
New Delhi.
3. S.S. Khosla,
R/o B-58, Pushpanjali,
Pitampura,
Delhi.
4. S.K. Bharij,
R/o 85, Munirka Enclave,
SFS,
New Delhi.Applicants

(By Senior Counsel Mrs. Shyamla Pappu with Mrs. B. Rana,
Counsel).

-Versus-

1. Union of India,
through its Secretary,
Ministry of Industry,
Udyog Bhawan,
New Delhi.
2. The Director General
of Technical Development and
Sect. CTD,
Ministry of Industry,
Udyog Bhawan,
New Delhi.
3. Sh. A.K. Anand,
Addl. Industrial Advisor,
C/o Director General of
Technical Development,
Ministry of Industry,
Udyog Bhawan,
New Delhi.
4. Shri S.C. Nagpal,
Addl. Industrial Advisor,
C/o Director General of
Technical Development,
Ministry of Industry,
Udyog Bhawan,
New Delhi.Respondents

(By Advocate - None)

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O R D E R

HON'BLE DR. A. VEDAVALLI, MEMBER (J):

(V.A)

When this O.A. came up for hearing on 4.12.97 learned counsel for the applicants Mrs. B. Rana alone was present. None was present for the respondents during the hearing in spite of our order dated 19.11.97 giving further opportunity in the interests of justice to respondents No.1-3 who were to appear and were not present that day to appear and make their submissions and making it clear that it will be the last opportunity and if none appears on the next date the matter will be closed for orders. A copy of the said order was given to the Senior Standing Counsel Shri N.S. Mehta. On 4.12.97 Shri N.S. Mehta, Senior Standing Counsel appeared later and submitted that he had already communicated the aforesaid order but none has contacted him. In view of this the case was closed for orders.

2. The four applicants in this O.A. are qualified Engineers working with respondent No.2 for nearly two decades. They are aggrieved by the seniority position assigned to them as Assistant Development Officer (Engg.) and have impugned the seniority list issued on 21.7.89 (Annexure C) and the OM dated 29.5.92 (Annexure D) issued by the respondents rejecting the representations in this regard.

3. The applicants were initially appointed as Assistant Development Officers (Engg.) (ADO in short) in the year 1969 along with several other persons by direct recruitment after selection through the Combined Service

(V.A)

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Examination, 1968 conducted by the Union Public Service Commission (UPSC). They are stated to be working as Development Officer at present. The other source of recruitment of the post of Development Officer is through promotion from the post of Junior Technical Officers (JTOs) and group of seven promotees who were working as JTOs were promoted to the grade of ADO as on 1.12.69 by respondent No.2. Respondents No.3&4 are among those seven promotees and the remaining five promotees have since retired. The date of appointment of respondent No.3 as ADO (Engg.) is 1.12.69. Respondent No.4 was also appointed as ADO on 1.12.69. Recruitment to the post of ADO and other Class I posts at the relevant time was regulated by Director General of Technical Development (Class I Posts) Recruitment Rules made under Article 309 of the Constitution. There were no specific rules regarding seniority with reference to those posts. In partial modification of a circular dated 30.3.89 regarding the seniority list of ADO (Engg.) as on 1.4.84 was issued stating that any objections to the said list may be filed within three weeks as the final list has to be filed before the Hon'ble Supreme Court urgently. The names of the applicants were shown at serial No.16,15,14 and 17 respectively and respondents No.3 and 4 were placed at serial No.22 and 25 of the said draft seniority list. Thereafter the impugned circular dated 21.7.89 was issued circulating the final seniority list of ADOs (Engg.) as on 1.4.84 (Annexure C). The said circular is reproduced below:

"Subject:- Seniority List of Assistant Development Officer (Engg.) as on 1.4.84.

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Reference is invited to this Office Circular of even number dated 30th March, 1989 forwarding therewith provisional Seniority List of Assistant Development Officer (Engg.) as on 1.4.84 as recast in compliance with the Hon'ble Supreme Court's order dated 9.12.88 in Writ Petition (Civil) No.13692-98 of 1984. The objections submitted by some of the officers have been considered and decided in consultation with the Department of Personnel & Training. Accordingly, the final seniority as re-drawn as per the orders of the Hon'ble Supreme Court is circulated herewith.

Encl: As above.

sd/-
(CHITRA GOSWAMI)
DY. DIRECTOR(ADMINISTRATION)"

4. Respondents No.3&4 have been shown at serial No.14 and 17 of the final seniority list enclosed with the aforesaid impugned circular dated 21.7.89 whereas the applicants were shown at serial Nos.23,22,21 and 24 respectively.

5. Aggrieved by the seniority so fixed by respondent No.2, the applicants have sought the quashing of the aforesaid impugned circular along with the enclosed final seniority list and also the impugned OM dated 29.5.92 (Annexure D) rejecting the representation of one of the applicants (S.S. Khosla) dated 12.12.91.

6. The impugned circular and the final seniority list dated 21.7.89 (Annexure C) has been challenged on the main ground that though there are no specific statutory rules governing fixation of seniority with reference to the incumbents to the aforesaid post of ADO (Engg.) the guidelines issued by the Ministry of Personnel dated 7.2.86 (Annexure A) and the Ministry of Home Affairs OM dated 22.12.59 (Annexure B) regarding general principles for determining the seniority



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of various categories of persons employed in Central Services, certain rulings of the Hon'ble Supreme Court and the C.A.T. have been violated by the official respondents in fixing the seniority of the private respondents (Nos.3&4) above that of the applicants.

7. The impugned OM dated 29.5.92 (Annexure D) has been challenged on the ground that it is a non-speaking order and is thus arbitrary and violative of Article 14 of the Constitution.

8. The respondents have contested the OA and have filed their counter-reply praying for dismissal of the same with costs on several grounds. A rejoinder to the short reply filed by private respondent No.4 only has been filed by the applicants. No rejoinder to the counter reply has been filed by the applicants.

9. The respondents have raised a preliminary objection as to limitation in the counter reply. However, it is noticed that when this OA came up for hearing regarding admission, learned counsel for all the parties were present and another Bench of this Tribunal consisting of Hon'ble Mr. N.V. Krishnan, Vice-Chairman (A) and Hon'ble Mr. B.S. Hegde, Member (J) by order dated 20.5.93 held that the arguments as to limitation raised by the counsel for respondent No.4 has no foundation and filed the same. The OA was admitted. In the circumstances, we are proceeding to dispose of the OA on merits.

A.

10. The respondents in their counter reply have submitted that the applicants are direct recruits. There were nine direct recruits including the applicants, who were appointed on the basis of the examination conducted by the UPSC in 1965. The inter-se-seniority of the said 9 candidates on the basis of the merit has been fixed in the impugned seniority list at Annexure 'C' as per the relevant office memorandum referred to by them. The applicants were confirmed as ADO (Engg.) in 1972-73 and were given seniority above the private respondents No.3 & 4 who were, inter alia, confirmed subsequently in 1972-73. This was because earlier all the applicants who are direct recruits and respondents No.3&4 who are departmental candidates who have been promoted had been fixed on the basis of rotation of vacancies between direct recruits and promotees in the seniority list of ADOs (Engg.) as on 1.4.84 (Annexure B). In the said seniority list promoted respondents ranked below the direct recruit applicants.

11. The respondents further submitted that the private respondents and five other promotees had filed a Writ Petition No.13692-13698 (B.S. Narula and Ors. vs. Union of India & ors.) challenging their placement in the seniority list on the basis of the rotation of vacancies. The petitioners in the said Writ Petition were JTOS/JFOs earlier and were promoted on ad hoc basis before their promotion as ADOs (Engg.) on regular basis from the date the vacancies in the quota reserved for promotees became available. They prayed for seniority on the basis of their continuous date of appointment in the grade of ADO (Engg.). The Hon'ble Supreme Court in their order dated 9.12.86 in the aforesaid cases



quashed the seniority list of ADos (Engg.) issued in 1984 on the basis of rotation of vacancies and directed the redrawing of seniority in accordance with the directions given therein.

12. The seniority list of ADos (Engg.) according the official respondents was redrawn as per the order of the Hon'ble Supreme Court and was finally issued on 21.7.89. The said list, inter alia, included the applicant as well as the respondents. The benefit of continuous length of service was extended to all similarly listed promoted officers in consultation with the Department of Personnel.

13. The respondents in their counter reply have given the list containing the names and dates of joining of the said nine direct recruits as well as the list of names of the seven promotee officers who were given the seniority from the date of their continuous officiation in the grade of ADO (Engg.) viz. 1.12.69 as a result of aforesaid order of the Hon'ble Supreme Court in B.S. Narula's case (supra). The original date of seniority in the quashed seniority list have also been given. Serial No.3 to 7 were petitioners before the Hon'ble Supreme Court. Respondents No.3&4 in the present OA were among those writ petitioners. Those petitioners filed contempt petition also before the Hon'ble Supreme Court and as per the advice of the Department of Personnel, which is binding, the entire 1968 batch of direct recruits had to be pushed below that of the petitioners to preserve the inter-se-seniority of direct recruits as per the relevant rules. The applicants in para 3 of the present OA have themselves admitted that their inter-se-seniority should be maintained in the order of merit. The respondents prayed that

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in the facts and circumstances of the case the OA is liable to be rejected as the applicants do not deserve the reliefs prayed for.

14. Private respondent No.4 who has filed the short reply submitted that the matter pertaining to the seniority of promotees vis-a-vis the direct recruits has already been decided by the Hon'ble Supreme Court in B.S. Narula's case (supra) and the impugned seniority list published in July 1988 is the outcome of the implementation of that judgement. Moreover, one of the applicants in the present OA Sh. Khosla was a petitioner in the said B.S. Narula's case (supra). Further, the impugned seniority list was recast in compliance with the Hon'ble Supreme Court's directions in the contempt petition No.14273 and IA No.189/89 in the said writ petition (B.S. Narula's case) before the Hon'ble Supreme Court and at that stage the applicants did not raise any objection as to their seniority. Even the seniority list of Development Officers have been prepared to comply with the said judgement of the Hon'ble Supreme Court. Even a review DPC for the higher post based upon the aforesaid list has been held in October, 1991.

15. Respondent No.4 contended that the grounds as averred by the applicants are not tenable in law since in the said contempt case the Hon'ble Supreme Court has accepted the compliance and hence the list is as per the Court's directions and no other Court can look into the matter and the OA should, therefore, be dismissed with heavy costs.

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16. We have heard the learned counsel for the applicants and have perused the pleadings and material papers and documents placed on record and have considered the matter carefully.

17. It is seen from the judgement of the Hon'ble Supreme Court in B.S. Narula's case (Annexure A to counter reply of respondents) the petitioners therein challenged the validity of seniority list of ADOs. The main contention of the petitioners is that although they have been holding the post earlier to direct recruits and also confirmed earlier to their appointment, they have been down graded and put below the direct recruits without any rhyme and reasons.

18. It was held by the Apex Court thus:-

"We have heard counsel on both sides and perused the seniority list. We have also perused the dates of respective appointments and the petitioners' dates of regularisation. Their services have been regularised in some cases after a longe lapse of officiation.

In the counter affidavit filed on behalf of the respondents the seniority list was sought to be justified on the ground that it was prepared in accordance with the circulars of the Government but not a word has been stated as to how a person who was appointed later could be placed above the person whose services were regularised earlier. In view of this apparent infirmity learned counsel for the respondents also vary fairly could not give any explanation for the haphazard way in which the seniority list was prepared. The question regarding the inter-se-seniority as between direct recruits and promotees has been considered by a number of authorities of this Court. See: the decisions in 1985 (1) (Supp.) SCR p.818 D.K. Mitra & Ors. vs. Union of India; 1987 (Supp.) SCC p.763, A.N. Pathak & Ors. vs. Secretary to the Govt. Ministry of Defence & Anr. and 1988 (2) SCALE 1390, Delhi Water Supply vs. R.K. Kashyap.

In the light of the principles laid down by this Court we do not think that we could accept the submission made on behalf of the respondents.

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In the result the Writ Petition allowed. The impugned seniority list is quashed with a direction to the respondents 1 and 2 to re-do the seniority list in accordance with the law and in the light of the principles laid down by this Court in the aforesaid decisions. Upon re-doing the seniority list, if the petitioners or any one of them is entitled to higher ranking they shall be given the consequential benefits flowing therefrom.

Seniority list shall be prepared within four months from today.

In the circumstances we make no order as to costs."

19. The submissions of the respondents, including the 4th respondent in the OA that the impugned seniority list was prepared in compliance of the Apex Court directions quoted above, and that the said list was accepted by the Court to be in compliance of their directions while disposing of the above contempt petition is not disputed by the applicants. The other submissions and averments made by respondent No.4 in the short reply also has not been rebutted specifically and clearly by the applicants in their rejoinder except stating that the judgement of the Apext Court is not relevant and the other contentions are misconceived/misplaced. As already noted, no rejoinder to the counter reply has been filed by the applicants. There is not even a whisper as to how the applicants jusify their stand taken in the OA in view of the contents of the counter reply of the respondents and also the short reply filed by respondent No. 4 and in view of the aforesaid judgement in B.S. Narula's case (supra).

20. In the facts and circumstances of this case and in view of the foregoing discussion and the judgement in B.S. Narula's case (supra) we are of the considered opinion that

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the applicants have failed to establish their case on the basis of any legally and valid and tenable grounds and the O.A. is devoid of any merit.

21. In the result the O.A. is dismissed. No costs.

A. Vedavalli
(Dr. A. Vedavalli)

Member (J)

'Sanju'

K. Muthukumar
(K. Muthukumar)

Member (A)