

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./XXX. No. 930 of 1992

Decided on: 24.2.92

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Shri B.L. Jain & OthersApplicant(s)

(By Shri Applicants in person Advocate)

Versus

U.O.I. & OthersRespondent(s)

(By Shri Manoj Chatterjee Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

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

1. Whether to be referred to the Reporter or not?
2. Whether to be circulated to the other Benches of the Tribunal?

(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 930 of 1992

New Delhi this 24th day of ^{February} January 1998

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

1. Shri B.L. Jain
S/o Shri H.C. Jain
R/o B-314, Ashok Naagar,
Delhi-93.
2. Shri N.K. Jain
S/O Shri Jai Paul Jain
R/o Krishan Kunj,
New Delhi-110 012.
3. Shri Rohtas
S/o Shri M.C. Sharma,
R/o Krishan Kunj,
New Delhi-110 012.Applicants

Applicants in person.

Versus

1. The Union of India through
The Secretary,
Department of Agriculture
and Research Education,
Ministry of Agriculture,
Government of India,
Krishi Bhawan,
New Delhi-110 001.
2. The Director General,
I.C.A.R.,
Krishi Bhawan,
New Delhi-110 001.
3. The Director,
I.A.R.I.,
Pusa Institute,
New Delhi-110 001.Respondents

By Advocate Shri Manoj Chatterjee.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

Certain employees under the respondents filed, OA No. 1683 of 1987 in which the applicants in the present application were respondents. In the aforesaid OA 1683 of 1987, the

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promotion/appointment orders of the respondents in that OA was challenged and it was prayed that because the promotions were made without holding a Departmental Competitive Examination as provided under the rules, these promotion orders dated 21.3.1987 and 29.10.1987 should be set aside and quashed. The OA was disposed of by the order dated 3.7.1989 with the following directions:-

"In view of the above, we set aside the appointment orders dated 23.1.1987 and 29.10.1987 but direct the respondents 1, 2 and 3 to treat the appointments of the respondents 4 to 6 as ad hoc and continue till the vacancies by Examinations in the years 1985, 1986, 1987 and 1988 are filled in. If they get selected, their services as Superintendents would be regularised but in case any one of them fails to qualify in the Examination he would have to be reverted. Such a situation may not arise if he is selected in the 66.2/3% quota of promotion on the basis of seniority/fitness. We further direct the respondents 1, 2 and 3 to hold Examination for the vacancies to be filled for the years 1985, 1986, 1987 and 1988 separately after a gap of two months each beginning from August, 1989. All the eligible candidates who have completed 3 years service as Stenographers/Assistants on 1st of January, 1985 would be eligible to sit in the Limited Departmental Competitive Examination for the year 1985 and similarly for the years 1986, 1987 and 1988. There will be no order as to costs.

We order accordingly".

2. On a Review Application filed by one of the applicants in that OA the applicant raised a point that by the issue of the aforesaid directions to conduct the yearwise examination, the intention of the Tribunal was that seniority to the selected candidates would be given to the year to which the vacancy related but that would place him in an adverse position even after qualifying such competition as he might not be considered for promotion to the next higher post for want of

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qualifying service in the cadre of Superintendents despite his being senior in the cadre as his qualifying service would be counted only from the date of physically joining the grade and his juniors who were appointed during the years 1985 to 1988 would be considered and promoted since they have joined the post of Superintendent earlier to him and similarly the respondent No.4 to 9 would be in a better position even after they qualified the competition in a later year. The Review Application was, however, not allowed. In the order on Review Application it was stated as follows:-

"The power of review may be exercised on the discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the person seeking review or could not be produced by him at the time which the order was made; it may be exercised where some mistake or error apparent on the face of the record is found. But there is no such reason for allowing the Review Application. The applicant has to first pass the qualifying departmental test and if he has any grievance about his seniority or further promotion, he could represent before the appropriate forum. As such, the Review Application is dismissed."

3. The applicants in the present application who were respondents in the aforesaid OA have stated that they are aggrieved that the respondents have not implemented the judgment of this Tribunal in the aforesaid OA and pass the impugned orders dated 19.9.1990 followed by the impugned seniority list of June, 1991 and consequent promotion orders based on the seniority list vide orders dated 9.11.1991 and 14.1.1992. They have prayed that a direction should be given for proper implementation of the judgment in the aforesaid OA

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and the impugned orders on the seniority list should be quashed. They have also prayed that they should be regularised as Superintendents from a particular year relating to the Departmental Competitive Examination which were held subsequently on the basis of the directions of the Tribunal in the aforesaid OA and in which they had qualified, their names should be suitably incorporated in the impugned seniority list according to the seniority norms as per the directions of the Tribunal.

4. Facts that are relevant for a proper understanding of this case are as follows:-

Applicants who were Assistants were eligible for promotion to the post of Superintendents against 33 1/3% quota for promotion by way of Limited Competitive Departmental Examination. The said examination was held according the Recruitment Rules to fill up 5 vacancies of the year 1984. After this, no examinations were held for the years 1985, 1986 and 1987 and against in July, 1987. However, applicants were invited to fill up the vacancies from this Limited Departmental Competitive Examination. However, in March, 1987 and October, 1987 on the basis of the exams held in 1984, these Assistants were appointed as Superintendents. Aggrieved by these promotions, the aforesaid OA 1683 of 1987 was filed in which the present applicants were impleaded as respondents.

5. In pursuance of the directions of the Tribunal in the aforesaid OA, the respondents conducted the departmental competitive examinations as per the schedule prescribed by the

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Tribunal and the applicants qualified in the aforesaid examinations. While the applicants 1 and 2 passed the examination relating to 1985, the third applicant passed the examination relating to 1986 as may be evident from the order passed in the aforesaid OA, the applicants had already been working as Superintendents in an ad hoc capacity. The question of their appointment as regular Superintendents was considered and by the impugned order dated 19.9.1990, the respondents notified that applicants 1 and 2 were regularised as Superintendents with effect from 25.11.1991 while the applicant No.3 was notified to have been regularised with effect from 31.1.1990. The grievance of the applicants is that they should have been regularised from the year 1985 [for applicant Nos. 1 and 2) and 1986 (for applicant No.3) respectively against those years' vacancies. The main contention of the applicants is that the vacancies against the examination quota were definitely available during the years 1985, 1986 and 1987 and, therefore, they are entitled to be regularised against those vacancies and their inter-se seniority should be arranged accordingly. They, therefore, contend that the date of regularisation of their appointment as Superintendents as shown in the impugned order was totally arbitrary and, therefore, the said order deserved to be quashed and they should have been declared to have been regularised from a particular year of the examination in which they had subsequently qualified.

6. The respondents in their averments have raised preliminary objection that the applicants were seeking to raise the same issue as was raised by one of the applicants in O.A

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1683 of 1987 and in RA 151 of 1989 and the applicants here are trying to reagitate the same issue. They have maintained that the impugned order regularising the appointment of the applicants as Superintendents were done in accordance with the directions of the Tribunal under the relevant orders of the Government regarding assigning of seniority. They have averred that the question involved in OA No.1683 of 1987 was whether the Limited Departmental Competitive Examination was to be held annually for filling up 1/3rd of the competitive examination quota and secondly if a panel of the names proposed which was in excess of the vacancies of that year and whether the candidate of that panel could be appointed as Superintendent in the subsequent year without holding test for the subsequent year. All that was decided by the Tribunal in its order was that while the applicants were allowed to continue their ad hoc appointments, they were required to qualify in the departmental examination for the subsequent years in the 1985, 1986 or 1987, as the case may be, and on their qualifying in the said examination, they will become eligible for regularisation as Superintendents. They contend that it was wrong on the part of the applicants to presume that the vacancies which were available during 1985-86 were to be kept as such vacant slots should be made available to the applicants once they pass the examination. The respondents submit that their regularisation had to be done on their qualifying the departmental examination. Taking into account the seniority with reference to the relevant O.M. dated 7.2.1986 which came into effect from 1.3.1986, they also contend that the rules of seniority prevailing before 1.3.1986 cannot be applied in the case of the

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applicants in 1989 and 1990 when they qualified in the examination. The seniority list of 1991 was also accordingly issued strictly in accordance with the directions of the Tribunal and on the basis of the regularisation granted to the applicants and, therefore, there was nothing illegal or wrong in the impugned order as well as in the seniority list.

7. We have heard the learned counsel for the parties and have perused the relevant record.

8. The learned counsel for the applicant, who appeared at the earlier stages of hearing argued on the pleadings and maintained that the applicants were entitled to be regularised with reference to the vacancies for which the concerned departmental examinations were held. If this was not so, he submitted that there was no need to refer to the year of examination in the impugned order. He argued that all along the intention of the Tribunal in its direction was that while taking into account ad hoc appointments of the applicants all that the Tribunal held was that they could not be regularised without their qualifying in the Departmental Competitive Examination. The applicants were eligible and, in fact, had applied for such examination as and when notified. It was not their fault that they could not qualify on an earlier date because the respondents did not hold the examination in the years 1985, 1986 and 1987. It was only at the instance of the Tribunal, the earlier years examinations were held according to the time schedule prescribed. He also argued that it is an admitted position that the vacancies were in existence and,

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therefore, it was only fair and just that the applicants should have been reckoned against those vacancies although they might have qualified in the examinations all the relevant year though conducted at a later date. Later on the applicants filed written arguments also which have been taken into account in this order.

9. The counsel for the applicant has also referred to the objection taken by the respondents for non-joinder of parties and relied on the decision in V.P. Shrivastava & Others Vs. The State of M.P. & Others, JT 1996 (2) SC 374 to contend that the non-impleadment of the other respondents would not be fatal to the case of the appellants.

10. Shri Manoj Chatterjee, the learned counsel appearing for the respondents argued at length that the applicants are reagitating the issue which has been already settled by the order on the Review Application seeking clarification on the issue now raised. He maintained that Bar of res judicata extend, not only to the point raised in the earlier decided case but also on the points that could have been raised in the decided case. The observation of the Tribunal in the Review Application filed by one of the applicants, make this clear.

11. We have seen the order on the Review Application. We are unable to accept the contention of the learned counsel for the respondent. In the order passed on the Review Application, the apprehension of the applicant in the Review Application with regard to the better position that is likely to be enjoyed

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by respondent Nos.4 to 9 after they qualify in the departmental examination in 1985/1986/1987 as the case may be, was not specifically considered. All that the Tribunal said in the R.A. was that the applicant therein had to first pass the qualifying departmental examination and if he had any grievance about the seniority and further promotion, he could represent before the appropriate forum. Consequent on the passing of the impugned order which did not give the applicants in the present O.A. the date of regularisation with reference to the year to which the departmental examination related and to the vacancies which existed then, the applicants have raised the present issue. We are, therefore, of the considered view that there can be no objection on ground of res judicata in this case. Shri Chatterjee then referred to the effect of the claim of the applicants and pointed out that the applicants cannot claim accelerated seniority and cited that even in case of reserved candidate in the light of the Supreme Court in Veer Pal Singh Chauhan's case such accelerated seniority was not granted and, therefore, such a question should not arise in respect of general candidates and he reminded that the applicants' claim directly injures the interest of such of those Assistants who have been promoted earlier against the then existing vacancies. We do not consider it necessary to devote our attention on this aspect as there is no averments that the examination quota vacancies have been filled up by other candidates under the promotion quota. The claim of the applicants is that they should be given their seniority taking them to have been regularised with reference to the vacancies for 1985-1986 departmental competitive exams. We have noted that the

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Tribunal, in OA 1683 of 1987, instead of reverting the applicants who had got ad hoc promotions in 1987 for Superintendents allowed them to sit for the Limited Departmental Competitive Examination which was to be held for the years 1985, 1986, 1987 and 1988 so as to get their appointments regularised. The regularisation from a particular date has also the effect on the seniority of the applicants that is to be assigned. It is seen that the exam for the years 1985 and 1986 were held subsequently on the basis of the direction of the Tribunal and the said examinations were held in September, 1989 for 1985 and October, 1989 for 1986 and the applicants qualified in the said examinations. The crucial point here is that the applicants who had originally qualified in 1984 examination were placed in the panel but could not be accommodated as there were only 5 vacancies in 1984 and 5 had been appointed out of the panel. The applicants remained in the panel and they were issued appointment orders of Superintendents in the year 1987. The Tribunal held that this could not be done and concluded that the names were held over from the panel of 1984 examination of which results were declared in 1987 could be awarded promotional posts without their qualifying the annual examination of 1985 or for subsequent years and could not be promoted in 1987 itself. Therefore, it became necessary for the respondents to hold separate departmental competitive examination for those relevant years, namely, 1985, 1986 and 1987. Subsequently, as pointed out above on the basis of the directions of the Tribunal and the applicants again qualified in the aforesaid examinations on September, 1989 and October, 1989 respectively.

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12. The Tribunal referred to the rules which laid down the quota procedure for 33.1/3% of vacancies in any one year had to be filled by Limited Departmental Examination which was open to the candidates who had completed 3 years of service as Stenographers/Assistants. The Tribunal came to the conclusion that an annual examination was imperative if there were 3 or more vacancies in the posts of Superintendents in a year and the successful candidates would be only those who qualified against the number of vacancies and not of other candidates who had qualified and got included in the panel in excess of the number of vacancies and this Tribunal had also rejected the position that persons waiting in the earlier panel could fill up the vacancies occurring in the subsequent years. However, in the case of the applicants, the Tribunal was conscious of the fact that the applicants were working as Superintendents by the order dated 31.3.1987 and 29.10.1987 without again qualifying in the departmental examination relevant for the particular years vacancies and, therefore, they were required to take the examination of the 1985-86, 1987 and 1988 as the case may be treating their appointments as ad hoc and they would be continued as such till that year's examinations were held and if they succeeded, their appointments had to be regularised accordingly. In other words, although they could not enjoy the benefits of being in the panel set up on the basis of the 1984 examination because of the limited number of vacancies attributable to that particular year, their appointments could be regularised on the basis of their qualifying in the subsequent years provided the vacancies

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attributable to 1985/1986/ 1987 existed at the time when they qualified in the relevant years examination. Further any redetermination of their regularisation and seniority inter-se is likely to prejudice such of those who have been appointed on Department Exam. quota/promotion quota, as these parties are not before us.

13. In the affidavit filed by the respondents on 23.9.1997, the respondents have clarified the competitive examination quota in 1985, 1986 and 1987 as follows:

1985 - 2

1986 - 5

1987 - 2

14. It is also seen in the affidavit as follows:-

"When a candidate who has been given ad hoc promotion as per the directions of the Tribunal and who appeared, as further directed in the departmental examinations including for the year 1986, has failed to qualify in the examination pertaining to 1986 but only qualified to the exam. pertaining to 1988, cannot therefore be regularised from the year 1986. The vacancy position as contained in the Annexure as for all the years 1984 to 1988 prepared on the basis of the record available in the recruitment year. It is evident from there that there were 5 vacancies pertaining to the year 1986 limited departmental examination and all the 5 vacancies were filled by those who have qualified for the examination held in late 1989 as per the order passed by the Tribunal".

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15. But as far as applicant Nos. 1 and 2 are concerned, they have passed the 1985 examination conducted in September, 1989 and results of the same have been declared in November, 1989 and similarly in respect of applicant No.3, the 1986 examination was held in December, 1989 and he was stated to have qualified by the results of January, 1990.

16. From the averments made in the additional affidavit filed by the respondents in September, 1987, it appears to us that all the 5 vacancies for departmental quota were to be filled by those who had qualified for the examination held on 8.8.1989 as per the orders passed by the Tribunal. The applicants 1 and 2 had passed 1985 examinations conducted in September, 1989. Apparently, the two vacancies for 1985 competitive exam quota could have also been filled up by the candidates who had qualified in the examination held in late 1989 as per the orders of the Tribunal. Since no exams were held in 1985, 1986 and 1987 and all were held in September and October, 1989, it appears that the applicants' regularisation and their seniority will have to be reckoned with reference to those vacancies. If those vacancies, had already been filled up, the respondents should reexamine and consider their deemed date of regularisation and their seniority after notifying other persons likely to be affected by such determination. The O.M. dated 7.2.1986 referred to by the respondents is in regard to the determination of the seniority of direct recruit and promotees on 1:1 basis. Whether the case of the applicants

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can also be considered on the above analogy for determining the seniority that is to be assigned between the promotees and the persons promoted under the competitive exam quota is a matter that has to be considered by the respondents separately.

17. In the result, and in the conspectus of the above discussion, we dispose of this application with the direction to the respondents to re-examine the matter and consider the date of regularisation/deemed date of regularisation/seniority of the applicants with reference to the relevant rules/orders, after notifying other persons likely to be affected by such determination and after considering their objections, if any, and then pass a speaking and reasoned order in this behalf within 3 months from the date of receipt of a copy of this order.

No costs.

A. Vedavalli

(DR. A. VEDAVALLI)
MEMBER (J)

Rakesh



(K. MUTHUKUMAR)
MEMBER (A)