

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. Nos. 995, 995A and 1061 of 1992

New Delhi this the 14th day of December, 1993

Mr. Justice S.K. Dhaon, Vice-Chairman
Mr. B.N. Dhoundiyal, Member (A)

O.A. No. 995 and 995A of 1992

1. Shri D.S. Dahiyar
R/o 24/496, Dev Nagar,
Sonepat, Haryana.
2. Shri Madan Gopal
R/o YZ-52, Sarojani Nagar,
New Delhi.
3. Shri S.I. Mehra
R/o 26/98 Shakti Nagar,
Delhi.Petitioners

O.A. No. 1061 of 1992

1. Shri D.J. Andrew,
R/o K-207, Sarojini
Nagar, New Delhi.
2. Shri M.C. Scaria
R/o A-002, Pragati Vihar Hostel,
New Delhi-110003.Petitioners

By Advocate Shri A.K. Behera in OA Nos. 995 and 995A/1992

By Advocate Shri G.K. Aggarwal in OA 1061 of 1992

Versus

1. Union of India through
Secretary to the Govt. of India,
Ministry of Defence,
South Block,
New Delhi-110011.
2. Joint Secretary(Ad) & Chief
Administrative Officer, Ministry of
Defence, C-II Hutsments,
Dalhousie Road,
New Delhi-110011.Respondents

By Shri George Parcken, proxy counsel for Shri P.P.
Khurana, Counsel for the respondents.

ORDER (ORAL)

Mr. Justice S.K. Dhaon, Vice-Chairman

The controversy raised in these Original Applications is similar. They have been heard together and, therefore, they are being disposed of by a common judgment.

2. There was a certain seniority list on the basis of which the petitioners in these applications who were working as Assistants were promoted as Assistant Civilian

they were promoted as Staff Officers later on Civilian Staff Officers. The said list was subjected to a challenge in the High Court of Delhi. The High Court, relying upon a decision of the Supreme Court, quashed the said seniority list. Thereafter, the matter was taken up in this Tribunal. This Tribunal directed that a seniority list shall be strictly prepared in accordance with the directions given by the Supreme Court and the High Court. Accordingly, a list was prepared. The matter again came to this Tribunal wherein the list so prepared was challenged. On the basis of the list last prepared, the petitioners were retained as Civilian Staff Officers. However, on 13.03.1992 the Up Mukhya Prashasan Adhikari (Karmik) issued a communication on behalf of the Ministry of Defence stating therein that the petitioners' services during the intervening period, i.e., the period when they were promoted/and the date on which they were allowed to continue as Civilian Staff Officers on the basis of the review panel which met to consider the matters on the basis of the revised seniority list "will be treated as officiating on ad hoc basis". This treatment on ad hoc basis has given rise to the present applications.

2A. Learned Counsel for / have stated at the Bar that they are giving up all other submissions relating to the seniority of the petitioners. They urged that this Tribunal may clarify that the petitioners would be treated to be holding their jobs as Civilian Staff Officers on regular basis for all other purposes except for the purpose of determining their seniority.

3. We may immediately turn to the judgment of the Supreme Court, referred to above. Before the Supreme Court a challenge had been made to the seniority list dated August 10, 1984. This was in Writ Petition Nos. 15846-49 of 1984 (Mr. N.K. Dhawan & Others Vs. U.O.I. & Others decided on 25.04.1985). The relevant portion of the order

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of the Supreme Court may be extracted:

"....The impugned seniority list will not be enforced or given effect to till fresh seniority list according to the relevant rules and valid principles is drawn up. Rule is made absolute to that effect with no order as to costs.

Panel of promotion will have to be redrawn in the light of the revised seniority list. We order accordingly. All promotions till now made and till new seniority list is drawn up will be subject to the fresh seniority list which should be drawn up within 4 months from today. Parties are left to bear their own costs".

Much argument has been advanced as to what really the Supreme Court intended to direct. We, therefore, proceed to give our understanding/ aforequoted directions. It may be noted that the said directions were made as a result of the statement made by the counsel appearing for the Government that the Government had decided to review the seniority list which was impugned before the Supreme Court/ was in the light of the principles enunciated in the earlier judgment given by that Court.

The Supreme Court clearly intended that all promotions made on the basis of the old seniority list would stand annulled. It, however, avoided a hiatus and, therefore, their Lordships directed that all promotions made till then and till new seniority list is drawn up will be subject to the fresh seniority list.

4. The position is clarified by the order passed by the High Court of Delhi in Civil Writ Petition No.2 of 1988. There the seniority lists dated 4.6.77 and 28.10.77 had been impugned. In the ultimate paragraph it was held: "In the result, the Writ Petition is allowed with all consequential benefits and the seniority list

(5)

dated 4.6.1977 and 28.10.1977 are quashed. Respondent No.1 is directed to prepare fresh seniority list within 4 months from the date of the Supreme Court passes final order. There will be no order as to costs".

5. The Learned Judges of the Delhi High Court used the expression "quashed". The said expression in law means effaced meaning thereby ceased to have any legal assistance with retrospective operation. Admittedly, the petitioners in these applications were promoted as Assistant Civilian Staff Officers between the years 1977 to 1979. Admittedly, they had been promoted on the basis of the seniority list prepared on 04.06.1977 and 28.10.1977. The normal rule is that the promotions of the petitioners automatically fell through as a result of the quashing of the seniority list aforementioned.

6. A dispute arose between the direct recruits and the promotees before the Tribunal in the cases of Shri K.N. Mishra & Others Vs. Union of India & Others and Shri N.K. Dhawan & Others Vs. Union of India & Others (ATR 1986(2) CAT 270). The Tribunal held that when the Supreme Court had, by its judgment dated 25.04.1985, directed the Central Government to prepare a fresh seniority list of Assistants according to the relevant rules and valid principles and to revise the panel of promotion in the light of the revised seniority list, the seniority list cannot be confined to only some members of that grade. The seniority list so drawn up must include all members of that grade occupying substantive vacancies irrespective of whether the vacancies were in temporary or permanent posts and the seniority must be reckoned giving the benefit of continuous officiation. The Tribunal emphasised that it is pertinent to note that the Supreme Court did not consider the case of any individual promotee or direct recruit. In fact the dispute before the Supreme Court was between the entire category of promotee Assistants

and directly recruited Assistants. Ultimately, the Tribunal directed the respondents before it to draw up a complete seniority list in the light of the judgment including therein all the temporary, permanent and officiating Assistants working in substantive vacancies giving them the benefit of continuous officiation and also to frame a fresh panel of promotion based on that seniority list within three months. As already indicated, that was done.

7. The petitioners in O.A. No.1061 of 1992, namely, S/Shri D.J. Andrew and M.C. Scaria came to this Tribunal by means of OA 1787 of 1987 which was decided on 21.2.91. The first paragraph of the judgment of the Tribunal indicates that the issue for decision before the Tribunal was whether inspite of the judgments delivered by the Supreme Court, the Delhi High Court and the Principal Bench of this Tribunal quashing the seniority list of Assistants and directing the respondents to redraw the seniority of Assistants on the principle of 'length of service' with consequential benefits, the status and the position of the existing Assistant Civilian Staff Officers(ACSOs) and Civilian Staff Officers (CSOs) who were promoted on the basis of quashed seniority list can be protected. It appears to us that the argument which is sought to be advanced now in the present O.As. could really be advanced by S/Shri Andrew and Scaria in O.A. No.1787 of 1987. Apart from the view, which we are going to take presently, the said two petitioners are not entitled to raise the plea sought to be raised now as the principles of constructive resjudicata will come in their way.

8. Shri Behera has strenuously urged that the recital in the aforementioned communication of the Up Mukhya Prashasan Adhikari (Karmik) dated 13.03.1992 that the services of the petitioners during, the

intervening period will be treated as officiating on ad hoc basis is really an administrative direction. It is contended that such a direction does not flow directly from the judgments of the Supreme Court, High Court or the Tribunal. We are unable to appreciate this submission. In our opinion, the department has given a concession to the petitioners by saying that their services shall be treated as officiating on ad hoc basis during the intervening period. Really such a direction is incidental to the direction given by the Supreme Court, High Court or the Tribunal. It is a fall out of the directions given by the Supreme Court, High Court and the Tribunal. We, however, make it clear that whatever benefit the petitioners are entitled in law on account of their services being treated as ad hoc during the intervening period be given to them.

9. Shri Behera has next contended that earlier when his clients were promoted as Civilian Staff Officers there was a requirement of 8 years of service as Assistant Civilian Staff Officers. This condition had been relaxed in their cases and 4 years' service was taken into account. This has not been done by the review panel while acting on the revised seniority list prepared on the basis of the aforementioned directions.

10. In the counter-affidavit filed, the stand taken is that the UPSC disagreed with the proposals of the Government that such a relaxation be given. The matter is governed by the Rules framed under the proviso to Article 309 of the Constitution. The said rules are nomenclatured as Armed Forces Headquarters Civil Service Rules, 1968. Rule 22 talks of power to relax. It states that where the Government is of opinion that it is necessary or expedient to do so, it may, for reasons to be recorded in writing, in consultation with the

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Commission, relax any of the provisions of these rules.

The requirement of the rules is that whenever the Government decides to make any relaxation it has to record its reasons for doing so and the same will be effective only after consultation with the Commission has taken place. It is not the requirement of the Rule that the Government should record reasons for not exercising the power of relaxation. It is presumed that the Commission must have given some reasons to the Government. It is noteworthy that inspite of the categorical stand taken in the counter-affidavit that the Commission has not acceded to the recommendation of the Government that there should be a relaxation, no attempt has been made to implead the Commission as one of the respondents in the O.As. or to make a prayer that the record of the Commission may be summoned so as to find out what was the basis of the Commission's stand.

11. Having given a thoughtful consideration to the matter, we are of the opinion that the petitioners cannot get any relief. These petitions fail and are dismissed but without any order as to costs.

(B.N. DHUNDIYAL)
MEMBER (A)
14.12.1993

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(S.K. DHAON)
VICE CHAIRMAN
14.12.1993

Attested true Copy

Abdulmalik

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