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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No./ T.A. No. 1927 of 1993 Decided on: 30th JUNE 1997

Uma Kant Poddar & Ors. Applicant(s)

By Shri G.D. Gupta, Advocate

VERSUS

U.O.I. & Ors. Respondents

By Shri N.S. Mehta, Advocate
Shri K.K. Rai, Advocate for Respondent No.4

CORAM

HON'BLE MR. S.R. ADIGE, MEMBER (A)

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

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

2. Whether to be circulated to other Benches
of the Tribunal? NO

mf. h
(S.R. ADIGE)

Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No.1927 of 1993

New Delhi, dated this the 30th JUNE
1997

HON'BLE MR. S.R. Adige, Member (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

1. Shri Uma Kant Poddar,
S/o Shri Medini Poddar,
R/o C-201, Albert Square,
Gole Market,
New Delhi-110001.
2. Shri A.K. Sharma,
S/o Shri Kirshan Lal Sharma,
R/o C-29, Surya Apartment,
Sector-13, Rohini,
New Delhi-110085.
3. Mrs. Santosh Sharma,
W/o late Shri R.K. Sharma,
R/o 9/828, R.K. Puram,
New Delhi-110022.
4. Mrs. Kusum Bahuguna,
W/o Shri Y.P. Bahuguna,
R/o RZ-267/397, Lane No.3, Shivpuri,
West Sagarpur,
New Delhi.
5. Shri P.P. Gupta,
S/o Shri S.P. Gupta,
R/o C-2, Hutmeyts,
New Delhi.
6. Mrs. Lovlin Kohli,
W/o Shri I.S. Kohli,
R/o 934, BKS Marg,
New Delhi-110001.
7. Shri Madan Lal,
S/o Shri Jaswant Rai,
R/o 256, Garhi Ghasita,
Sonepat (Haryana).
8. Shri S.M. Chatterjee,
S/o late Shri N.M. Chatterjee,
R/o 190-M, Aram Bagh,
New Delhi-110055.
9. Mrs. Pawan Kumari Passi,
W/o Shri Govind Parkash Passi,
R/o KG-2/73, Viakas Puri,
New Delhi-110018.
10. Shri Satish Kumar,
S/o Shri Lal Chand,
R/o 1/45, Sadar Bazar,
Delhi Cantt.,
New Delhi-110010.

11. Shri Gian Chand,
S/o late Shri Girdhari Lal,
R/o H. No. T/650-H/5-A.I, Baljeet Nagar,
Marg No.21, Near Janta Flats,
New Delhi-110015.

12. Shri M.L. Kakkar,
S/o late Shri Yad Ram Kakkar,
R/o B-I/155, Moti Nagar,
New Delhi-110015.

13. Shri G.S. Patial,
S/o Shri R.L. Patial,
R/o Sector V/1242, R.K. Puram,
New Delhi-110022.

14. Shri Manbar Singh,
S/o late Shri G.S. Rawat,
R/o B-48, Mandawali (Uncha),
Delhi-110092.

15. Shri Randhir Grover,
S/o Shri B.D. Grover,
R/o RU-418, Pitampura,
New Delhi-110034.

16. Ms. Kanta Khurana,
D/o Shri Ram Parkash Khurana,
R/o 372/B, R.K. Puram,
New Delhi-110022.

17. Shri D.K. Kaistha,
S/o late Shri R.C. Kaistha,
R/o H-121, Sarojini Nagar,
New Delhi-110023.

18. Shri S.K. Sood,
S/o Shri Sham Lal Sood,
R/o 77, Sidartha Apartment,
Plot No. 10,
Rohtak Road, Near JwalaPuri,
New Delhi-110041.

19. Shri B.B. Yadav,
S/o Shri B.R. Yadav,
R/o 58/9, M.B.Road, Sector-1,
New Delhi-110017.

20. Shri S.K. Sharma,
S/o Shri Hari Ram Sharma,
R/o A-128, Kidwai Nagar,
New Delhi-110023.

21. Kendriya Sachivalaya Karamchari Parishad
through its General Secretary,
Dr. B.P.Sharma,
S/o late Shri R.K. Sharma,
R/o B-2716, Netaji Nagar,
New Delhi-110023.

... Applicants

By Advocate: Shri G.D. Gupta

Versus

1. Union of India through the Secretary, Dept. of Personnel & Trg., Ministry of Personnel, Public Grievances & Pensions, North Block, New Delhi-110001.
2. The Secretary, Ministry of Information & Broadcasting, Shastri Bhawan, New Delhi-110001.
3. U.P.S.C. through the Chairman, Dholpur House, Shahjahan Road, New Delhi-110011.
4. C.S.S. Direct Recruits Assistants Association through its President Shri V.K. Sinha, Dept. of Supply, Nirman Bhawan, New Delhi-110011. ... Respondents

By Advocates: Shri N.S. Mehta for R-1 to 3
Shri K.K. Rai for R-4

JUDGMENT

HON'BLE MR.S.R. ADIGE, MEMBER (A)

The main relief prayed for by the applicants is the treatment of their ad hoc service as Assistants as regular service, for all purposes including eligibility for promotion to higher grade with other consequential benefits. Specifically it has been prayed that applicants be allowed to appear in the Section Officers Grade LDCE, 1993 on the basis that they have rendered 5 years approved service on 1.7.1993.

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2. Applicants joined CSCS as LDCs on the basis of Clerks Grade Exam. between 1965 and 1973 and in due course they were promoted as UDCs on different dates. Subsequently they were promoted as Assistants on ad hoc basis. A specimen copy of one such ad hoc promotion order, relating to applicant No.3 Mrs. Santosh Sharma is dated 17.3.87 (Ann. A-6) which clearly states that the UDCs presently working in the offices indicated against their names, were promoted as Assistants on ad hoc basis w.e.f. the date they assumed duties in the offices indicated against their names, for a period of three months in the first instance or till such time as the posts are filled on regular basis, whichever is earlier. These ad hoc promotions were extended from time to time. A specimen copy of one such order in respect of applicant No.3 Mrs. Santosh Sharma continuing her ad hoc promotion is dated 30.8.91 (Ann. A/7), which makes it clear that the ad hoc appointment of Assistants was being continued for a further period upto 31.12.91, or until further orders, whichever is earlier, with one day's break on 8.10.91, and her appointment/continuance on ad hoc basis would not confer on her any right to claim regularisation/seniority in the Assistants Grade in the CSS cadre. Subsequently, in the light of DP&T's instructions, applicants were brought on the Select List of Assistants of CSS cadre and were later regularised. For instance applicant No.3 Mrs. Santosh

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Sharma who was brought onto the Select List of Assistants in 1989, was regularised as Assistant vide Office Order dated 22.6.92 (Page 148 of O.A.) w.e.f. 11.6.92.

3. Applicants contend that as on the dates of their ad hoc promotion as Assistants, they were eligible for regular promotion, and their ad hoc promotions as Assistants were made against long term vacancies, in accordance with rules, by following the prescribed procedure, they were entitled to count their seniority as Assistants from the date of their ad hoc promotion. Reliance in this connection has been placed by applicants' counsel Shri G.D. Gupta on various Supreme Court's rulings including Narendra Chadha & Ors. Vs. U.O.I. (1986) ISCR 211; U.O.I. Vs. P. Narain & Ors. Civil Appeal No. 3254/91 and connected cases; and Direct Recruits Class II Engineers' case AIR 1990 (SC) 1607.

4. We have noted that the orders granting applicants ad hoc promotions make it abundantly clear that their promotions were on purely ad hoc basis for a period of three months or till the posts were filled up on regular basis, whichever was earlier. In the orders extending those ad hoc promotions also it was made abundantly clear that they were being extended for a specified period or till further orders whichever was earlier, and it would not confer any right to claim regularisation/seniority in Assistants grade. Later on, applicants were brought onto the Select List of Assistants and eventually regularised in 1992-93. In O.A. No. 727/87 I.K. Sukhija & Anr. and

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connected cases decided by C.A.T., P.B. on 13/14.9.93 in which one of us {Hon'ble Mr. S.R. Adige, Member (A)} was a party, after harmoniously interpreting the Hon'ble Supreme Court's rulings in Narendra Chadha's case (Supra), Direct Recruits' case (Supra) as well as other rulings including V.C. Joshi & Ors. Vs. U.O.I. & Ors. AIR 1991 SC 284 and State of West Bengal Vs. Aghore Nath Dey JT 1993 (2) SC 598 the Bench adumbrated the ratio that the initial promotion would count towards seniority only if it was made in accordance with rules, and not on ad hoc basis as a stop gap arrangement. Ad hoc service would count towards seniority only where it was made dehors or in disregard of the rules and the incumbents were allowed to continue on the posts for 15-20 years without reversion, till the date of regularisation of service in accordance with the rules, there being power to relax the rules. No materials, have been shown to us to suggest that the said judgment in Sukhija's case (Supra) has not become final.

5. In the instant case as quite evidently the initial promotions by the very wording of the relevant orders noticed above, were made on ad hoc basis, and were thereafter continued from time to time as a stop gap arrangement, till the posts were filled on regular basis, and the period of such ad hoc service is nowhere near the 15-20 years referred to above, the ratio of Sukhija's judgment (Supra) is squarely applicable to the present case, and we find ourselves unable to grant the applicants' prayer for counting of their ad hoc service as Assistants towards seniority as such.

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6. In so far as applicants' claim to possess the required length of approved service for participation in the LDCE for promotion as S.O. as on 1.7.93 is concerned, the relevant notice issued by U.P.S.C. (Page 178 of O.A.) dated 17.7.93 required not less than five years of approved and continuous service in Assistants Grade. The CCS Rules defines approved service in relation to any grade to mean the period or periods of service in that grade rendered after selection according to prescribed procedure. These Rules prescribe the procedure by which UDCs after selection are brought onto the Select List of Assistants Grade. Admittedly applicants after selection, were brought onto the Select List of Assistants only in 1989, and under the circumstances as they did not have 5 years approved service as Assistants on 1.7.93 they are not eligible for LDCE, 1993 for promotion as S.Os.

7. In this connection applicants have also impugned Regulation 4(1) Central Secretariat Service Section Officers Grade (LDCE) Regulation, 1964 as illegal and discriminatory on the ground that while direct recruit Assistants are allowed to compete in the LDCE after four years approved service, for promotee Assistants the eligibility condition is five years approved service. Respondents No.1 (DP&T) point out in reply that the time gap between the holding/declaration of results for departmental examination and direct recruitment is approximately 1 1/2 years as the appointment formalities take considerable time. In case of promotee Assistants,

immediately after inclusion of their names in the Select List they are placed as Assistants and not much time is taken in pre-appointment formalities. Therefore in order to compensate the Direct Recruits Assistants for the time gap there is a differential of one year in the eligibility service for appearing in the SOs/Steno. Grade Exam. Also they are entitled for this benefit only if the exam, on the basis of which they have been appointed was held not less than 5 years before the crucial date, and therefore these provisions are neither discriminatory or violative of Articles 14 & 16 of the Constitution. There is no specific denial by applicants to respondents assertion that in the above circumstances the period of approved service of five years tends to be equal for both direct recruits Assistants as well as promotee Assistants. Hence Regulation 4(1) does not warrant any judicial intervention.

8. Another relief prayed for is a direction to treat applicants as Assistants in Select List, 1986 instead of SL 1989. Respondents No.1 (DP&T) point out that inclusion in Select List of Assistants for a particular year is regulated in accordance with relevant rules which depend upon the number of vacancies occurring in Assistants Grade in CSS cadre from time to time, and "the range of seniority" specified by DP&T for the selection through seniority quota. It is averred that applicants were not senior enough as UDCs to be covered in the range of seniority specified for selection through seniority quota in 1986, 1987 and 1988 with reference to the number of substantive vacancies arising during the said years in CSS

cadre, and hence they could not be included in Select List for those years. (Suppl. Affidavit dated 27.11.96 of Respondent no.1).

9. Admittedly by Respondents No.1's circular dated 12.10.88 the policy of making long term appointments/promotions was given up from 1988 onwards, and it was made clear that while for the Select List for 1988 vacancies already reported would be taken into consideration, from 1989 onwards a new formula would be adopted. Thus upto and including 1988, the Select List was to be prepared on the basis of the CSS Rules, 1962 as in force at that point of time whereby only substantive vacancies in the grade of Assistants were to be taken into account for preparation of Select List. It is only by Respondent No.1's order dated 12.11.91 (Page 141-142 of O.A.) that in relaxation of the rules it was decided to regularise all Long Term Appointees by including them in the Select List for 1989.

10. Applicants assert (Page 6.7 of Reply to Respondent No.1's suppl. affidavit dated 27.1.97) that

"..... had the long term promotion not been dispensed with , effect from Select List, 1986 all remaining UDCs ... (including) applicants would have been eligible for appointment as Assistants ... against ... the temporary/long term vacancies of Select List 1986. And had Respondent No.1 declared substitute policy of recruitment consequently, while dispensing with long term promotions on 12.10.88 which actually dispensed with since

Select List 1986 onwards. the applicants would have been absorbed in Select List 1986 instead of Select List 1989".

11. The above contentions on which applicants base their claims for inclusion in the 1986 Select List ^{^15} flawed because Respondent No.1's O.M. dated 12.10.88 by which the policy of making long term appointments/promotions was dispensed with was effective from the Select List of 1989 onwards and not in respect of the Select List of earlier years. Secondly the question of appointment as Assistants against temporary/long term vacancies of Select List, 1986 does not arise because upto and including 1988 it was only the substantive vacancies in the grade of Assistants which was taken into account for preparation of the Select List, in accordance with CSS Rules, 1962. A departure was made only in respect of Select List of 1989 in relaxation of Rules.

12. Under the circumstances we are unable to grant applicants prayer for treating them as Assistants in Select List of 1986 instead of Select List of 1989.

13. In so far as applicants' plea for increasing seniority quota to 75% from Select List, 1986 onwards and for extending the zone for additions in the Select list of Assistants for 1991 and 1992 early and for issue of Select List on 1st July of vacancy year (beginning of Select list Year) is concerned, these are matters of administration and policy which are wholly within executive competence and

warrant no judicial intervention unless the same are found to be illegal, arbitrary or violative of Articles 14 and 16 of the Constitution.

14. In the result the O.A. fails, and is dismissed.

No costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member (J)

Anjali
(S.R. Adige)
Member (A)

/GK/