

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. NO. 1996/93

New Delhi this the 17<sup>th</sup> day of May, 1995.

Hon'ble Shri N.V. Krishnan, Vice Chairman (A).

Hon'ble Dr. A. Vedavalli, Member(J).

1. Subhash Kumar,  
S/o Late Shri T.S. Sagar.
2. Abinash Kumar,  
S/o Shri Sukhdeo Sinha.
3. Umed Singh,  
S/o late Shri Kanwar Singh.
4. Mrs Sawaran Grover,  
W/o Shri M.K. Grover.
5. Mrs Munjula Parashar,  
W/o Shri Vijay Kumar Parashar.

(All Sr. Investigators, Central Statistical Organisation, M/o Planning Parliament Street, N.Delhi.)

...Applicants.

By Advocate - Shri R.K. Kamal.

Versus

1. The Secretary,  
Deptt. of Statistics,  
M/o Planning, Govt. of India,  
Parliament Street,  
New Delhi.
2. The Director General,  
Central Statistical Organisation,  
Government of India,  
Sardar Patel Bhavan,  
New Delhi.
3. Shri S.S. Jakhar,
4. Shri V.K. Handa,
5. Shri Sudhakar,
6. Shri Islam Elahi,
7. Shri K.L. Buttan,

(All Sr. Investigators,  
Central Statistical Organisation,  
M/o Planning, Govt. of India,  
Sardar Patel Bhavan, Sansad Marg,  
New Delhi).

...Respondents.

By Advocate - Shri P.H. Ramchandani (for Respondents 1 and 2),

By Advocate - Shri S.S. Tiwari (for private respondents).

ORDER

Hon'ble Shri N.V. Krishnan, Vice Chairman(A).

The applicants are seeking a direction to the

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respondents to assign seniority to them from the date on which they began to officiate as Senior Investigators, based on directions issued by this Tribunal in two similar cases in the past.

2. The brief facts of the case may be noted as follows:

The applicants are employed in the Central Statistical Organisation. They joined service initially as Junior Investigators when they were appointed on an ad hoc basis. They were thereafter regularised as Junior Investigators on regular basis. The applicants were also appointed as Senior Investigators on an ad hoc basis, some after being appointed as a Junior Investigator on a regular basis and some even before their regularisation as a Junior Investigator. Subsequently, they were regularised as Senior Investigators on regular basis from prospective dates without giving any consideration for the service rendered by them as Senior Investigators on an ad hoc basis.

3. It is stated that, in similar circumstances, the persons senior to the applicants in the grade of Senior Investigators filed applications before this Tribunal in O.A. 1521/89, Inderjit Luthra and Ors. Vs. Union of India & Ors. and O.A. 1627/89, B.B. Mathur and Ors. Vs. Union of India & Ors. In both these O.As, the applicants prayed for a direction to give them seniority from the date of their ad hoc promotion as Senior Investigators. These were allowed by the Annexure-3 judgement dated 15.5.1992 which has also since been implemented.

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4. Thereupon, the applicants submitted representation on 21.10.1992 (Annexure-4) claiming the benefit of the Annexure-3 judgement and the earlier judgement in the case of Dina Nath Vs. Union of India. As no reply has been given to them, this O.A. has been filed for a direction to the respondents to assign seniority to them from the date of their ad hoc promotion as Senior Investigators and give them consequential benefits.

5. The respondents 1 and 2 (Government, for short) have filed a reply opposing the claims, both on the ground of merit and on the ground of delay. In so far as the delay is concerned, it is stated that if the applicants had a cause of action, they should have filed an O.A. like others who got relief from the Tribunal when they filed their O.A. In so far as the merit is concerned, it is stated that the applicants were promoted on a regular basis from the dates when regular vacancies were available. Therefore, they cannot claim that they should be regularised when ad hoc promotions were given. They also rely on the subsequent judgement (Annexure R-1) of this Tribunal in O.A. 1631/89, H.N. Rai Vs. The Secretary, Department of Statistics and Ors. and another O.A. 2051/89 which distinguished the earlier judgements in Dina Nath's case as also the Annexure-3 judgement relied upon by the applicants. The contesting private respondents filed a separate reply, also raising the same objections.

6. We have heard the learned counsel for the parties. The learned counsel for the applicants submits that the decision of this Tribunal in Dina Nath's case laid down a new principle for reckoning seniority. That principle was followed subsequently in the judgement in the case of Inderjit Luthra and B.B. Mathur and Ors., and the judgement in these two O.As were delivered on 15.5.1992. The applicants made a representation on 21.10.92 and the O.A. ~~its~~ has

been filed on 16.9.1993. Therefore, the question of limitation does not arise. On the contrary, the learned counsel for the Government as well as the private respondents contended that if the applicants had the same grievance as Dina Nath and Ors., they too should have filed the O.A. when their grievance arose and it cannot be reckoned from the date the seniority was revised in the case of Inderjit Luthra and Ors.

7. The learned counsel for the Govt. produced for our information a table summarising the position of the applicants which is reproduced below:

S.No. Name	Appt.as JI on ad hoc basis	Appt.as JI on regular basis	Appt. as SI on ad hoc basis	Appt. as SI on regular basis
1. Sh.Subhash Kumar	25.10.80	05.09.84	18.07.85  (Period of adhoc appt. as SI extended from time to time)	26.11.90
2. Sh.Abinash Kumar	14.05.79	05.09.84	Appt. as adhoc SI 10.01.83. Reverted to JI w.e.f.10.7.83.  Again apptd. as SI on adhoc basis w.e.f. 18.10.84 and period extended from time to time.	14.01.91
3. Sh. Umed Singh	25.10.80	05.09.84	18.10.84.  (Period of ad hoc appt. extended from time to time.)	26.11.90
4. Smt.Manjula Prashar	14.05.79	22.04.87	18.07.85.  (Period of ad hoc appt. as SI exten- ded from time to time)	25.07.91
5. Smt. S.K. Grover	14.05.79	22.04.87	SI on ad hoc basis on 10.1.83. Rever- ted to JI ad hoc on 10.7.83.  Again SI on ad hoc basis w.e.f. 18.7.85 (period extended from time to time)	25.07.91



8. The applicants were regularised as Senior Investigators on various dates from 26.11.1990 to 25.7.1991 by the orders filed by the respondents at Annexure R-3. The date of regularisation did not give them the benefit of the earlier ad hoc appointment as Senior Investigators. Therefore, their grievance arose on the dates these orders were issued. It is, therefore, contended that the applicants should have filed this application much earlier. If this had been the only issue, probably one could have held that the case of the applicants is vitiated by delay in approaching the Tribunal. However, there is one consideration on the basis of which we are of the view that this application has to be disposed of on merits. As mentioned above, this O.A. was filed on 16.9. 1993. Thereafter, a decision has been rendered by this Bench to which one of us (Shri N.V. Krishnan, Vice Chairman(A)) was a party in O.A. 1631/89 and O.A. 2051/89, on 22.11.1993. In other words, that order was delivered after the present O.A. was filed. The order therein is substantially different from the orders passed by this Tribunal in the cases of Inderjit Luthra, Dina Nath and B.B. Mathur. In our view, the applicants are entitled to claim the benefit of this decision in Rai's case and in that view, the question of limitation has no relevance.

9. The learned counsel for the applicants submitted that O.A. 1768/89, W.D. Arya and Ors. Vs. Secretary, Ministry of Labours & Ors. and 4 other O.As have been disposed of by an order dated 1.6.1994 by the Principal Bench. It was submitted that the applicants would be satisfied if the application is disposed of either on the basis of the judgements in O.A.

1631/89, H.N. Rai's case or in O.A. 1768/89, W.D. Arya's case.

10. We have seen the judgement in Arya's case and we are of the view that it has no application, whatsoever, to the facts of the present case.

11. In so far as the application of the judgement in H.N. Rai's case is concerned, we wanted the learned counsel for the respondents to explain why this O.A. should not be disposed of with similar directions. The learned counsel for the Government submitted that it could be seen from the table furnished by him, reproduced in para 7 above, that, in accordance with the recruitment rules, 5 years of regular service as Junior Investigator is needed to regularise a person as Senior Investigator. Three of the applicants have been given such a regularisation, more or less after completion of such qualifying service or within a short time thereafter. Two others were regularised even before their rendering such qualifying service, because, as mentioned in the table, there was a relaxation in their favour that they need have only three years regular service as Junior Investigators. They were regularised when vacancies became available. Hence, they are not entitled to any further relief.

12. We have carefully considered this submission. We notice that in Rai's case, we found that the applicants therein did not have any case for being given the benefit of the ad hoc service as Senior Investigators for the purpose of seniority. Therefore, it was found that the applications were liable to be dismissed on merits. However, there was one

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other consideration which persuaded us to give them partial relief. That has been brought out clearly in para 43 of that judgement which is reproduced below:

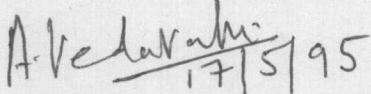
"43. For these reasons, both these O.As are liable to be dismissed on merits. However, there is one point which requires consideration. Admittedly, the applicants in both the O.As have been regularised only by the order issued on 10.9.90 or on subsequent dates. The respondents themselves have conceded that regular vacancies of SIs arose in 1986, consequent upon the implementation of the judgement in Narender Chadha's case. Timely regularisation of the applicants against these posts could not be made because of the pending litigation in Dina Nath's case etc. While that may be true, we are also of the view that by regularising the applicants only from September, 1990 and thereafter, even though vacancies were available from 1986 onwards, an opportunity has been given to direct recruits who might have been recruited between 1986 and 1990 to steal a march over the applicants in the matter of inter se seniority. Such a result cannot be allowed to come about to the detriment of the applicant's interests. Therefore, while we find no merit in the OAs, in so far as the specific prayers made in them are concerned and would have dismissed them, we find it necessary to grant the applicants partial relief by quashing the orders dated 10.9.90 and directing the respondents to consider the cases of the applicants by a Review DPC for regularisation, in accordance with the rules, as and when the regular vacancies arose, i.e. in 1986 and thereafter and regularise them with effect from the date on which the vacancies were available for regularisation of promotees. We do so accordingly. This shall be done within a period of three months from the date of receipt of this order and the applicants shall be intimated".

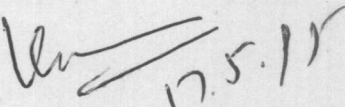
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In the present case also, though the Govt. has stated that the applicants have been regularised from the date the vacancies arose, there is nothing on record to indicate when those vacancies arose. Further, in view of the order passed by us in H.N. Rai's case (Annex. R-1) and the orders issued by Government on 20.1.1995 implementing those orders, it is quite possible that there are now earlier vacancies of Senior Investigators when the applicants could be regularised. Therefore, we are of the view that only a review DPC can do justice to the applicants in terms of para 43 of our order in Rai's case.

13. Therefore, we dispose of this O.A. with a direction to the respondents to convene a review DPC to reconsider the dates with effect from which the applicants could be regularised, keeping in view the fact that, in respect of the applicants, excepting Smt. Manjula Prashar and S.K. Grover, they may not be regularised before completing 5 years of regular service as Junior Investigator, while Smt. Manjula Prashar and S.K. Grover may not be regularised as Senior Investigators until after they have completed 3 years of regular service as Junior Investigators, in view of the relaxation given in their favour. The regularisation will, however, be subject to the availability of regular vacancies of Senior Investigators for their regularisation. We direct that this should be done within three months from the date of receipt of this order and the applicants shall be informed about a decision taken.

14. O.A. is disposed of accordingly. No costs.

  
(Dr. A. Vedavalli)  
Member(J)

  
(N.V. Krishnan)  
Vice Chairman(A)

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