

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

N X X X X X X X X X X X X

NEW BOMBAY BENCH

O.A. No.	-	198
T.A. No.	493 of	1986.

DATE OF DECISION 29.1.1988

Shri Narayan Yeshwant Gore. Petitioner Applicant.

Advocate for the Petitioner(s)

Versus

Union of India & four others Respondent

Shri P.M. Pradhan Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. B.C. Gadgil, Vice Chairman

The Hon'ble Mr. J.G. Rajadhyaksha, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

Tr. Application No. 493/86.

SHRI. NARAYAN YESHWENT GORE,
 Asstt. Mineral Economist (Statistics)
 Indian Bureau of Mines Ministry of
 Steel & Mines, Govt. of India,
NAGPUR. .. Applicant

Vs

1. Union of India (Through the Secretary to the
 Govt. of India,
 Deptt. of Statistics,
 New Delhi.

2. Secretary to the Govt. of India,
 Deptt. of Statistics,
 Ministry of Planning,
 New Delhi.

3. Dy. Secretary to the Govt. of India,
 Deptt. of Statistics,
 Ministry of Planning,
 New Delhi.

4. Controller General,
 Indian Bureau of Mines,
 Ministry of Steel & Mines,
 Nagpur.

5. Shri. H. C. Chaurasia,
 Dy. Director, NSSO (FOO)
 Deptt. of Statistics,
 Ministry of Planning,
 New Delhi. .. Respondents.

Coram: Hon'ble Vice Chairman B. C. Gadgil.

Hon'ble Member (A) J. G. Rajadhyaksha.

Appearance:

Applicant in person.

Shri P. M. Pradhan
 Counsel for the
 Respondents.

JUDGMENT (Per: J. G. Rajadhyaksha, Member (A)) 29.1.1988

This application was originally filed with the Principal Bench of the Central Administrative Tribunal and has been transferred by the Hon'ble Chairman to this Bench for disposal.

2. The applicant who is at present working as Assistant Mineral Economist (Statistics) in the Indian

...2

-: 2 :-

Bureau of Mines, is originally an employee of the National Sample Survey Organisation under the Department of Statistics in the Ministry of Planning. He has a dispute about his seniority in Grade.IV of the Indian Statistical Service. It would be necessary to narrate some of the facts admitted by both the applicant and the respondents in order to understand the dispute fully.

3. The applicant joined National Sample Survey Organisation as an Inspector on 25.7.1950. On 4.11.1954 he was appointed as Scrutiny Inspector in that organisation. On 27.5.1954 he was appointed as Assistant Superintendent. On 6.3.1961 he came to be deputed to the Census Office at Nagpur and worked there from 6.3.1961 to 21.10.1969 as a Tabulation Officer. While so working, he was granted a proforma promotion as Statistical Investigator in the parent department viz. the National Sample Survey Organisation on 11.10.1961. This post was later re-designated as 'Superintendent' and was also the feeder post for further promotion as Assistant Director in Gr.IV in the Indian Statistical Service. While on deputation, the applicant was promoted as Assistant Director of Census Operations with effect from 22.10.1969 and continued as such until 31.12.74. He then proceeded on leave and on reversion to the department, he was appointed as Assistant Director Gr.IV in the Indian Statistical Service in the parent organisation with effect from 11.4.1975 on an ad hoc basis. While the applicant was on deputation to the Census Organisation, several promotions took place in the National Sample Survey Organisation in the period September to October, 1969 and some juniors of the applicant came to be promoted to the posts of Assistant Director Gr.IV in the parent department on ad hoc basis. When the applicant was granted promotion as

-: 3 :-

Assistant Director of Census Operation in the Census Organisation both the parent department and the Union Public Service Commission had been consulted and his promotion cleared.

4. Some employees of the Indian Economic Service and the Indian Statistical Service had agitated the question of their seniority vis-a-vis direct recruits to the posts in Gr.IV in the Department before the Supreme Court. In the case of Narendra Chadha & Ors. v/s Union of India & Ors. reported in AIR 1986 S.C.638, the Hon'ble Supreme Court in the judgment gave certain directions and on that basis the department prepared seniority lists. In doing so, the seniority of those who were promoted as ad hoc came to be fixed on the basis of their continuous officiating service in those posts. In the case of a direct recruit the date on which he was first appointed to the service was required to be taken into account. Thus the relevant dates for deciding seniority were determined and seniority lists prepared accordingly. When the applicant reverted to the National Sample Survey Organisation, he was placed in that seniority list as if he had been appointed in Grade IV on ad hoc basis for the first time in 1975. The applicant's claim is that he had never ~~lost~~ his ^{lost} liaison in the department, that he had been included by proforma promotion in the feeder cadre and had been placed properly in the seniority list, that in 1969 when his juniors were promoted he too had been considered by the Departmental Promotion Committee, but he was not given actual promotion as he was not then available within the organisation. As a result, two of his juniors viz. Mr.H.C. Chaurasia and Mr.S.P.Ambekar who had been promoted in the parent department in 1969 have been shown as senior to him.

-: 4 :-

Another Officer admittedly senior to the applicant viz. Mr.R.C.Pande had been allowed to draw pay in the scale of Assistant Director Gr.IV in the Indian Statistical Service w.e.f.17.10.1969. Thus what the applicant wanted was that he should have been given seniority next to that of Mr.Pande, even if necessary by giving him a proforma promotion and placed above Mr.Chaurasia and Mr.Ambekar and that too w.e.f.the date on which those & junior to him were given such promotion. It is his further claim that having fixed his seniority properly he should be considered on due date for further promotion to Gr.III in the service. The applicant's grievance also is that the judgment of the Supreme Court in CWP No.2604/1985 in Civil Writ Petition No. 1595/1979 i.e. Narendra Chadha's case had not been properly implemented by the department when they issued orders No. 11024/4/86-IFS dt.8th May, 1986. He contends that if his seniority is properly fixed, he would be between Sl.No.153 and 154 i.e. below Mr.R.C.Pande and above Mr.Chaurasia. In the Gr.III seniority list, he claims to be immediately below Mr.Ramaswamy and immediately above Mr.Ambekar who are Sl.No.124 and 125 respectively and, therefore, the applicant expects to be at Sl.No.124A in that gradation list.

5. The application was resisted by the respondents by their reply contending that the revised seniority lists had been prepared strictly in accordance with the directions of the Supreme Court. The applicant was appointed, even on ad hoc basis, in the parent department (emphasis ours) for the first time only on 11.4.1975. As against that, Mr.Ambekar was appointed as a Gr.IV Officer in the parent department on ad hoc basis & long before 1975. Thus he got his seniority by the date of his continuous officiating service as a Gr.IV Officer. Since the seniority of the applicant was reckoned even after taking into account his

-: 5 :-

officiating appointment in the feeder cadre, as also his officiating service in Gr.IV of the Indian Statistical Service w.e.f.11.4.1975, he had been correctly placed and he would not be able to claim an earlier date in view of the decision given by the Hon'ble Supreme Court.

6. The applicant appeared in person and the respondents were represented by the Learned Advocate Shri P.M. Pradhan. The applicant's only prayer is that his seniority in Gr.IV of the Indian Statistical Service should count from the date (22.12.1969) when he was appointed Assistant Director, Census Operation while on deputation and not from 11.4.1975 when he was appointed, so to say on ad hoc basis, in the parent department. The question, therefore, would be whether the applicant would be entitled to such seniority from 22.10.1969 when he was promoted in the deputation department or from 11.4.1975 when he was promoted on an ad hoc basis in the parent department.

7. Since the whole dispute hinges upon the decision given by the Supreme Court in the case of Narendra Chadha & Ors. V/s Union of India & Ors. it will be useful to quote important relevant portions from that judgment so that the position would become clearer. In paragraph 24 and 25 the Supreme Court observes:

"Para 24. We are aware that the view we are taking may upset the inter se seniority between those promotees who were included in the Select Lists of 1970, 1982 and 1984 and those who were included later on or ~~now~~ who have not been included at all till now. The existence of this possibility should not deter us from adopting a uniform rule in the case of all promotees and direct recruits to adjust the equities amongst them as regards their relative seniority in the light of the violent departure made by the Govt. both as regards direct recruitments and promotions which it had to make every year under the Rules. The prejudice which the promotees included in the Select Lists might suffer is marginal and has to be ignored.

Para 25. Having given our anxious considerations

to the submissions made on behalf of the parties and the peculiar facts present in this case we feel that the appropriate order that should be passed in this case is to direct the Union Government to treat all persons who are stated to have been promoted in this case to several posts in Grade IV in each of the two Services contrary to the rules till now as having been regularly appointed to the said posts in Gr.IV under rule 8(1) (a)(ii) and assign them seniority in the cadre with effect from the dates from which they are continuously officiating in the said posts. Even those promotees who have been selected in 1970, 1982 and 1984 shall be assigned seniority with effect from the date on which they commenced to officiate continuously in the posts prior to their selection. For purposes of seniority the dates of their selection shall be ignored. The direct recruits shall be given seniority with effect from the date on which their names were recommended by the Commission for appointment to such grade or post as provided in clause (a) of the Rule 9-C of the Rules".

8. From this portion quoted above it will be clear that when the decision in Narendra Chadha's case was given the Supreme Court was aware that there were people like the applicant who were on deputation or in ex-cadre posts outside the parent department and there was every possibility that their seniority would be upset by the decision and the directions given to fix seniority on the basis of continuous officiating ad hoc service in the post.

9. The position becomes further difficult for the applicant, as will be seen from the Judgment given by the Principal Bench of the Central Administrative Tribunal in the two cases that they decided by a common judgment, i.e. the cases of Bhavanishankar Kapila v/s the Cabinet Secretary and others and M.H.Shankaranarayanan and Ors. V/s Union of India & Ors. The applicants in both these applications were Economic and Statistical Investigators & in various departments of the Government of India, as also Superintendents in the Field Operation Division of the National Sample Survey Organisation of the Ministry of Planning with which we are dealing in this case.

10. That judgment of the CAT discussed Rule 8(1)(a) (ii) of the Indian Economic Service Rules, 1961 and the Indian Statistical Service Rules, 1961 respectively. By this rule 60% of the posts in Gr.IV of Class I service were required to be filled by direct recruitment through open competitive examination to be held by the Union Public Service Commission. 40% of the vacancies were to be filled in by selection from amongst Officers serving in offices under the Government in Economic and Statistical posts. The controlling authority was required to draw up a list of such posts in consultation with the Union Public Service Commission. The controlling authority had also to prepare a select list including therein the names of persons who possessed qualifications referred to in the rule and who held the posts included in the lists so prepared "on the basis of merit with due regard to seniority" on the advice of the Union Public Service Commission. The proviso to Rule 8(1)(a)(ii) lays down that "if any junior person in any office under the Government is eligible and is considered for selection for appointment against these vacancies, persons senior to him in that office shall also be so considered, notwithstanding that they may not have rendered 4 years of service on a regular basis in their posts". This is how the rule read after its amendment in 1981. We may now quote from the judgment of the Principal Bench in portions.

".....No combined seniority list of Investigators was drawn up. That list was prepared and circulated for the first time in the year 1981. It may, however, be pointed out that the Investigators in different Ministries and Departments hold isolated posts. There is no common cadre for them nor is their recruitment regulated by any common recruitment rules. No Departmental Promotion Committee meeting was held prior to 1970. When in 1970 it was held the selection was limited to persons who had become eligible by completing 4 years of service as Investigators prior to 31.12.1966. For over 12 to 15 years,

thereafter no Departmental Promotion Committee was held although the vacancies in the posts of Gr.IV Class I in both I.E.S. and I.S.S. went on steadily increasing..... It is the grievance of the applicants that while the applicants in the said Writ Petition were senior to the applicants herein and were asserting their claim for seniority over direct recruits in that Writ Petition, who were senior to the applicants herein, there were also several other ad hoc promotees of Gr.IV Class I of I.E.S and I.S.S. who were junior to the applicants herein and were promoted and appointed on an ad hoc basis and even those were regularised purportedly in compliance with the orders of the Hon'ble Supreme Court dt.11.2.1986, without considering the merit and/or the seniority of the applicants. Neither the Union of India nor the applicants therein nor any one else brought to the notice of the Supreme Court that the applicants herein were senior to several ad hoc promotees to Gr.IV, Class I I.E.S. and I.S.S. The applicants not being party to the same petition obviously could not claim these facts before the Supreme Court.....
The applicants also claim that the principles underlying the next below rule (NBR) should also guide these appointments and regularisations.....

.....
The facts averred by the applicants are really not in dispute. All that the respondents claim is that they have only strictly complied with the directions of the Supreme Court contained in its Judgment dt.11.2.1986. It is their case that the Supreme Court, while issuing the directions, was very much aware of the fact that ~~the~~ some senior investigators would be affected if the ad hoc promotees were regularised and given seniority. Attention in this behalf is particularly drawn to para 24 of the judgment of the Supreme Court (1) in which Supreme Court observed " we are aware that the view we are taking may upset the inter se seniority...." It is also argued that neither the Next Below Rule nor the principles underlying it nor the proviso to Rule 8(1)(a)(ii) can have any application when the regularisation of promotion and seniority are being determined under the directions of the Supreme Court..... Large scale ad hoc appointments made and allowed to continue over a long period are clearly not covered under Rule 8. Consequently, proviso to Rule 8(1)(a)(ii) is not attracted. In making such appointments the statutory provisions contained in that Rule which envisages that when juniors are considered for appointment seniors should also be considered is given a go by although in fairness, even ad hoc promotions were made, this principle ought to have been followed.... This is no doubt resulting in grievous injustice to the seniors who were eligible for consideration even on the date of the ad hoc appointment of their juniors in their respective departments and perhaps in other Departments as well..... this Tribunal cannot ignore that judgment (extracted above) and issue any direction

which may be at variance with it on any such assumption. On the contrary, in view of what is stated in paragraph 24 of that Judgment (extracted above) it is clear that the Supreme Court was fully alive to the existence of such seniors....There is no common cadre of all investigators working in the various Departments/Ministries. There are no common Recruitment Rules for them. As all the investigators in the different Departments/Ministries do not constitute a single service, the Next Below Rule, in our opinion, does not in terms apply.... But once again we find that the directions contained in paragraph 24 of the Judgment of the Supreme Court extracted herein above bar the exercise of this discretion in their favour. Any direction to give effect to the principles underlying the proviso to Rule 8(1)(a)(ii) or the Next Below Rule would run counter to the directions contained in paragraph 24 of the Supreme Court Judgment in Narendra Chadha's case. We must however, hasten to add that in all probability if only the categories of employees such as the applicants were represented before the Supreme Court, the Supreme Court would have given appropriate directions to safeguard their interests.....It is not open to this Tribunal to give any directions which may even remotely run counter to the directions of the Supreme Court or disturb the seniority list which has been prepared in compliance with the Supreme Court directions. The grievance of the applicants, in our opinion, is very genuine and cannot be brushed aside, but the equities can be adjusted only by appropriate directions of the Supreme Court. It is in this view of the matter that the Tribunal is constrained to reject the applicant's claim"

It will now be necessary for us to return to the case of the applicant before us further for some brief details. The applicant has brought to our notice a letter issued by the parent department in 1970. This letter dt.21.1.1970 reads as follows (in its second paragraph):-

" Shri N.Y.Gore has not been considered for appointment to a Grade IV post on the basis of his placement in the integrated Select List for short term vacancies as he is already holding an equivalent ex-cadre post. The question of giving him proforma promotion to Grade IV ISS on the basis of his inclusion in the select list for short term appointments will be taken up separately. As and when Shri Gore reverts from the ex-cadre post he will be provided with a grade IV service post or an equivalent ex-cadre post."

The letter clearly states that the applicant was not precluded from promotion because the Departmental Promotion Committee

had found him unsuitable in any way. In fact, he was precluded for appointment (emphasis ours) on promotion even though the Departmental Promotion Committee had cleared him only because he was with the Directorate of Census Operations on an equivalent ^{post} and was not actually in the parent organisation. The contention before us of the Respondents that the post of Assistant Director Census Operation was not considered by them to be equivalent to the post of Assistant Director Gr.IV in the Indian Statistical Service i.e. in the parent department of the National Sample Survey Organisation is without substance in view of the letter given by them on 21.1.1970. Had the department taken a proper perspective, the applicant could have been then considered for proforma promotion, but he was excluded even from short term vacancies as he was holding an equivalent post. Civil Service Rules provide in appendix 29, particularly paragraphs V and X that if a person on deputation is cleared for promotion the course open to the parent department is to give him the option of coming back to the department on promotion or foregoing his promotion and remaining in the deputation department. Admittedly, neither of the options were offered to the applicant nor was any action taken to give him a proforma promotion. It is also clear, as already stated, that both the department and the UPSC had considered him fit for promotion as Asstt. Director, Census Operation and therefore, concurrence was given to the Directorate of Census Operations to promote the applicant. Therefore, it is very clear here that by going on deputation the applicant suffers an irreparable jeopardy inasmuch as his promotion in the deputation department has not been treated as one in an equivalent post nor is he given even a/^{proforma} promotion in the parent department. This con-
...11

sequence in our opinion, is not something which was contemplated either by the deputation department or by the parent department. It is also clear that even the applicant himself had not anticipated any such jeopardy against him, otherwise as soon as he learned of his juniors' promotion to the posts of Assistant Directors Gr.IV in the Indian Statistical Service, he would have pressed for his repatriation to his department for promotion within the department. Yet, though the applicant claims that there is patent injustice caused to him, we have discussed the factors which disabled the department from extending any relief to the applicant. On the part of the Central Administrative Tribunal also, we suffer from the same constraint that the Principal Bench of the Central Administrative Tribunal experienced when they decided the cases of Bhavani Shankar Kapila and Shankaranarayanan.

11. We are bound to follow the judgment of the Supreme Court in the case of Narendra Chadha & Ors. v/s Union of India & Ors as well as the observations of the Central Administrative Tribunal, Principal Bench, in the two cases already cited above. Even though, therefore, we feel that the applicant can claim that he has a good case and in normal circumstances the applicant would have got relief from the respondent department itself, the decision of the Supreme Court and observations of the Principal Bench that " we shall do nothing to disturb the seniority bestowed upon the ad hoc appointees in terms of the Supreme Court judgment " will have to be followed by us fully. In the circumstances, we have no alternative, but to dismiss the application of the applicant.

12. The application is accordingly dismissed. Parties to bear their own costs.

B.C. Gadgil
(B.C.GADGIL)
VICE CHAIRMAN

A.S.G. Rajadhayaksha
(A.S.G. RAJADHYAKSHA)
MEMBER (A)

Delivered to Open Court