

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 168 of 1989.  
Plaintiff.

198

DATE OF DECISION 18.4.90

Mrs Chandraprabha A.Kapdi Petitioner

Mr G.S.Walia Advocate for the Petitioner(s)

Versus

Union of India &amp; others Respondent

Mr M.I.Sethan, for respondent No.1 Advocate for the Respondent(s)  
Mr R.M.Agarwal for respondent No.2 to 4.

CORAM Hon'ble Shri G.Sreedharan Nair, ViceChairman

The Hon'ble Mr. Hon'ble Shri M.Y.Priolkar, Member (Admn.)

The Hon'ble Mr.

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 ?

  
 ( G.Sreedharan Nair)  
 Vice Chairman.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: NEW BOMBAY BENCH  
NEW BOMBAY.

O.A. 168/89.

Mrs Chandraprabha A.Kapdi ... Applicant.  
-versus-  
Union of India and others ... Respondents.

P R E S E N T :

The Hon'ble Shri G.Shreedharan Nair, Vice Chairman.

The Hon'ble Shri M.Y.Priolkar, Member(Admn):

For the applicant- Mr G.S.Walia, Advocate.

For the respondents- Mr M.I.Sethna, Advocate for  
respondent No.1  
Mr R.M.Agarwal, for respondent No.  
2 to 4.

Date of hearing - 16.4.90

Date of Judgment and Order - 18.4.90.

JUDGMENT & ORDER.

G.Sreedharan Nair, Vice Chairman :

The Personal Assistant ( P.A.) to the Administrator,Dadra and Nagar Haveli and the P.A. to the Collector, Dadra and Nagar Haveli, were borne on the same seniority list. Both were in the scale of pay of Rs. 1400-2300/-.

The applicant and the 5th respondent are the two employees in the aforesaid seniority list. The applicant has been continuously working in that cadre with effect from 23.11.1981 and the 5th respondent from 26.12.1983. The applicant is holding the post of P.A. to the Collector while the 5th respondent holds the post of P.A. to the Administrator.

By the order dated 5.2.1988, the post of P.A. to the Administrator which was in Group 'C' was upgraded to Group 'B' in the pay scale of Rs. 2000-3200/- p.m., and by the order dated 26.2.1988 the 5th respondent was appointed in the upgraded post on an adhoc basis. The grievance of the applicant is that she has not been considered for the adhoc promotion though she is the seniormost permanent and confirmed candidate in the feeder cadre of Stenographer Grade-I. It is alleged that the

guidelines issued by the Union of India for making ad hoc promotions have not been followed. She prays for setting aside the order appointing the 5th respondent and for a direction to the respondents to promote her to the upgraded post of P.A. to the Administrator.

2. On behalf of the first respondent, the Union of India, a reply has been filed where it is stated that the creation of the upgraded post itself was irregular as the Administrator did not have the power to create/upgrade any post under 'Non-Plan' in view of the economy instructions issued by the Ministry of Finance. It is also stated that the appointment of the 5th respondent was irregular as violative of the instructions regarding adhoc appointment. The reply proceeds to state that the Administration was directed to rectify the irregularity by taking requisite corrective measures.

3. The second respondent, the Administrator, or the Chief Secretary, Dadra and Nagar Haveli has not filed any reply; nor has the Collector, Dadra and Nagar Haveli who has issued the order upgrading the post filed any reply.

4. In the reply filed by the 5th respondent, it is stated that the post of P.A. to the Administrator involves serious responsibilities and that the upgraded post of P.A. to the Administrator is an entirely different post, so that itcannot be expected to be filled up by promotion of the P.A. to the Collector and, as such, the seniority of the applicant would not confer any special right or preference for appointment to

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the upgraded post.

5. After hearing counsel on either side, we are satisfied that the order of appointment of the 5th respondent to the upgraded post of P.A. to the Administrator cannot be sustained.

6. It is clear from the records that as on 1.1.1987 the post of P.A. to the Collector and P.A. to the Administrator were borne on the same seniority list. The copy of the final seniority list was published alongwith the letter dated 5.1.1988. It is at Annexure-I. It shows that the applicant who is working as P.A. to the Collector is continuously working in the cadre with effect from 23.11.1981, having a basic pay of Rs. 2000/- on 1.1.1987. Besides, she was confirmed in that cadre with effect from 23.11.1982. As against this, the 5th respondent entered the cadre only on 26.12.1983 and was drawing a basic pay of Rs. 1520.00 only on 1.1.1987. She had not even been confirmed in the cadre but was confirmed only in the cadre of Stenographer Grade-II on 1.3.1980.

7. By the order dated 5.2.1988, the post of P.A. to the Administrator was upgraded to Group-'B' in the pay scale of Rs. 2000-3200/-. It may be noted that before upgradation, the post was in the payscale of Rs. 1400-2300/-. Admittedly, the next higher grade is Rs. 1640-2900/-. The upgraded post is ~~in the next higher scale of pay~~ <sup>thus two grades higher</sup>.

8. No sooner than the upgradation was made, the

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5th respondent who was working in the lower grade was appointed in the upgraded <sup>post</sup> scale by the order dated 26.2.1988. No doubt, it is mentioned in the order that the appointment is purely on an adhoc basis till further orders or till regular appointment. However, no regular appointment has been made till date. Even the Recruitment Rules have not been framed for the purpose of filling up the post.

9. From the reply filed by the first respondent, the Union of India, it is seen that the creation of the upgraded post itself is questioned and is stated to be irregular as violative of the instructions issued by the Union of India. It appears from the concerned file of the Administration as well that the Collector has <sup>been</sup> pointed out the irregularity in the upgradation of the post without reference to the Ministry of Home Affairs as well as the appointment of the 5th respondent to the post, <sup>in</sup> she being only in the scale of pay of Rs. 1400-2300.00. He has pointed out that even if the post is upgraded the feeder category should be Stenographer Grade-I in the scale of pay of Rs. 1640-2900/- and the eligible persons in the Administration have to be considered. The Chief Secretary also approved the minutes of the Collector. However, the Administrator issued orders to the effect that the upgradation is perfectly in order. In view of the representation submitted by the applicant, which was also referred to in the minutes of the Collector, it was ordered by the Administrator that she may also be promoted to the post of Stenographer

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Grade-I in the scale of pay of Rs. 2000-3200/- on an adhoc basis and her pay may be drawn against the post of Private Secretary.

10. When a post is ~~only~~ created, normally the rules for recruitment for appointment to the post have also to be framed, so that the post may be duly filled up. There may be cases where on account of administrative exigency the filling up of the post has to be done even before the Recruitment Rules are finalised. In such cases, resort can be had to fill up the post by making promotion from the lower category on an adhoc basis. But if such adhoc appointment is made it cannot be done arbitrarily; it has to be done fairly, <sup>and</sup> in consonance with the recognised guidelines for making such appointment.

11. In the instant case, even assuming that it was necessary to upgrade the post of P.A. to the Administrator, we are not able to comprehend the urgency in making appointment to the post on an adhoc basis. We cannot but point out that in making the adhoc appointment the claims of eligible persons were either overlooked or not taken into consideration at all. The applicant had been in the cadre of P.A. to the Collector/P.A. to the Administrator long before the 5th respondent. While she was confirmed in that cadre, the 5th respondent had been confirmed only in the cadre of Stenographer Grade-II. The applicant was drawing a far higher basic pay than the 5th respondent and had more qualifying service. In view of the above, the grievance of the applicant that the appointment of the 5th respondent is unfair and illegal has to be accepted.

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12. The question arises whether a direction is to be given to consider the applicant for appointment to the post. In the nature of the case, we are of the view that there is no scope for the issue of such a direction as the creation of the upgraded post itself is in controversy as between the Administration and the Union of India. Suffice it to say that if the post is recognised as validly created, appointment to the post shall be made strictly in accordance with the instructions regarding adhoc appointment, in case the appointment is proposed to be made adhoc, and in accordance with the Recruitment Rules, if the appointment is proposed to be made on a regular basis.

13. In the result, the order dated 26.2.1988 appointing the 5th respondent to the upgraded post of P.A. to the Administrator is hereby quashed. The fifth respondent shall be restored to the post that she was holding on the date prior to the said appointment. The 5th respondent shall not have any weightage on account of having held the <sup>upgraded</sup> ~~aforesaid~~ post till date.

14. The application is disposed of accordingly.

*SP Singh*  
(8-4-90)  
( M.Y.Priolkar)  
Member (Admn)

*G.Sreedharan Nair*  
(8-4-1990)  
( G.Sreedharan Nair)  
Vice Chairman.

... ...

SP Singh/  
17.4.90.