

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE FIRST DAY OF DECEMBER 1987

Present : Hon'ble Justice Shri K.S. Puttaswamy

.. Vice-Chairman

Hon'ble Shri P. Srinivasan

.. Member (A)

APPLICATION NO.212/87(F)

V. Krishna Murthy,
39, Sri Pushtaram,
Income Tax Layout,
Vijayanagar Extension,
Bangalore - 560 040.

Applicant

(Dr. M.S. Nagaraja .. Advocate)

v.

The Development Commissioner,
(Small Scale Industries),
Government of India,
Nirman Bhavan, 7th Floor,
Moulana Azad Road,
New Delhi-110 011. and 78 others

Respondent

(Shri M.Vasudeva Rao .. Advocate)
(Shri A.Keshava Bhat .. Advocate)

This application came up for hearing before this Tribunal on
20.11.1987. Hon'ble Shri P. Srinivasan, Member (A), made the
following:

O R D E R

The vexing question of interse seniority as between promotees and direct recruits in government service - a 'hardy annual' in service litigation - has yet once again come before us. The field of battle is the Small Scale Industries Development Organisation of the Government of India. The applicant is working as Small Industries Promotion Officer (SIPO) having been promoted to that post initially on ad hoc basis in 1973 and subsequently on regular basis with effect from 15.12.1978. His seniority among all SIPOs was fixed by R1 in accordance with the principle of rotation of vacancies as between direct recruits and promotees in the ratio of 3:1. The grievance of the applicant is that the quota rule of recruitment from the two

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sources had broken down and, therefore, determination of interse seniority on the basis of rotation of vacancies was not proper. He wants us to direct R1 to redraw the seniority list of SIPOs as on 1.1.1984 on the basis of continuous officiation in that post whether by promotees or by direct recruits.

2. R1 is the Development Commissioner (Small Scale Industries), Government of India, New Delhi. In his reply, R1 has submitted that the quota rule of recruitment is being consistently followed in his organisation for appointments to posts of SIPOs and, therefore, the determination of interse seniority by applying the principle of rotation of vacancies in the ratio of the quotas prescribed for each source was proper and did not amount to discrimination. R2 to 79 are direct recruits who in their reply have urged that the principle of seniority by rotation of vacancies was the appropriate principle in the present case since recruitment was made from two sources in a fixed ratio and the said quota system of recruitment had not broken down as alleged by the applicant.

3. A preliminary objection raised by R1 as well by some of the other respondents is that the application is barred by limitation. The impugned seniority list of SIPOs which sets out the position as on 1.1.1984 was circulated to all officials including the applicant and acknowledged by him on 5.12.1984. Since that seniority list represents the order against which it is directed, the present application should have been filed within a year i.e. by 5.12.1985. ^H~~In so far as it has been~~
⁸¹~~filed within year i.e. by 5.12.1985.~~ In so far as it has been filed on 26.3.1987 it is badly delayed. Shri A. Keshava Bhatt appearing for 12 of the 78 respondents other than R-1, submits

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that similar seniority lists of SPOs based on the principle of rotation of vacancies were brought out earlier in 1976 and 1978 and the applicant had not raised any objection to those lists and as such he cannot now be heard to complain against the same principle which was followed in the impugned seniority list as on 1.1.1984.

4. Dr. Nagaraja learned counsel for the applicant opposes the plea of limitation. Though the impugned seniority list as on 1.1.1984 was circulated on 5.12.1984 and the applicant had put his signature in token thereof on that date, he asked for a copy of the same on 28.8.1986 which was supplied on 22.9.1986.

Therefore, the impugned seniority list was actually communicated to him only on 22.9.1986 and counting from that date, the application is within time. Moreover, he made a representation to R1 against the seniority assigned to him in the seniority list, on 28.7.1986 to which he had received no reply till date. The Patna Bench of this Tribunal had held in Yudhister Singh v. Union of India 1987 (1) SLJ (CAT) 489 that limitation had to be reckoned only from the date when a representation was made and not from the date when the decision complained against was communicated. Dr. Nagaraja further submitted that it was only in 1986 when the decision of the Supreme Court in Narender Chaddha's case, AIR 1986 SC 638, was reported, that the applicant came to know the position in law viz. that length of continuous officiation should be the determining factor for regulating interse seniority between promotees and direct recruits when the quota system of recruitment broke down. Immediately thereon the applicant obtained a copy of the seniority list, submitted a representation to R1 and within a reasonable time thereafter presented this application before this Tribunal on 26.3.1987. In view of this, even if there was

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a delay, he prayed that this Tribunal should condone the same in exercise of its powers under Section 21 of the Act, particularly because the issue involved was of considerable importance.

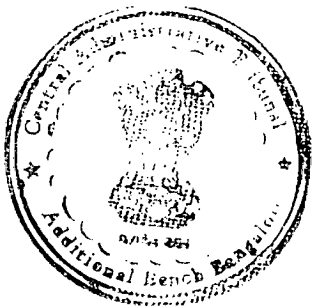
5. After hearing both sides we are of the view that the delay, if any, in filing this application should be condoned as reasonable cause has been adduced for the delay. We, therefore, condone the delay in filing this application.

6. Turning to the merits of this application, only a few more facts need to be mentioned in addition to those already narrated. Under the relevant rules regulating appointments to posts of SPOs, 75% of the posts were to be filled by direct recruits and 25% by promotion. Failing promotion, even the promotion quota of 25% could be filled in by direct recruits. The short point urged by Dr. Nagaraja is that this system of quotas for recruitment from the two sources had not been adhered to in actual practice and, therefore, the quota system of recruitment had broken down. Relying on a series of decisions of the Supreme Court on the subject, he contended that when the quota system broke down, inter se seniority between recruits of the two sources should have been regulated in accordance with the length of their continuous officiation in that post. The applicant was promoted as SPO in 1973 on ad hoc basis. This was done because there were no posts available at that time in the quota reserved for promotees to which the applicant could have been regularly promoted. In other words the promotion of the applicant in 1973 was in excess of the quota for promotion. He continued in that post, albeit on ad hoc basis, for five years till 1978. He was regularised in a post reserved for promotion only with effect from 1978. This meant that between



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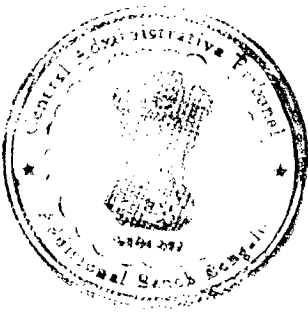
1973 and 1978 the quota rule of recruitment had not been followed and the officials like the applicant who were promoted on ad hoc basis to posts not reserved for promotees, regularly worked thereafter in those posts in violation of the quota system. The direct recruit who had been placed above the applicant in the impugned seniority list came into service in 1979. Thus, there was a gap of nearly six years between the promotion of the applicant and the appointment of the direct recruit with reference to whom the seniority of the applicant was fixed by rotation of vacancies. A delay between promotion and direct recruit/ment of this order clearly meant that the quota system had broken down. According to Dr. Nagareja, the course of events in this case also suggest that even the Government had deliberately departed from the quota rule of recruitment when the applicant and others like him were promoted from time to time on an ad hoc basis without vacancies being available in the quota for promotion. Just as the 25% quota for promotion could be filled up by direct recruitment if for any reason they could not be filled up by promotion, posts in the direct recruitment quota could also be filled up by promotion if direct recruits were not available: the appointment of recruits from one source in quota vacancies relatable to the other source cannot be one sided. If that be so, when the applicant and others like him were promoted in the absence of vacancies in the promotion quota, it only meant that Government deliberately decided to fill up posts meant for direct recruits by promotion which they could do under the rules. Therefore, the promotion of the applicant to the post of SIPO in 1973, though called ad hoc promotion, should be considered a regular promotion in accordance with the rules and the applicant should be accorded seniority from the date of his ad hoc promotion.



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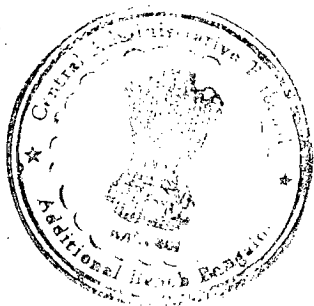
Dr. Nagaraja also cited some decisions rendered by other Benches of this Tribunal to the effect that once an ad hoc appointee is regularised, he should be allowed to count his ad hoc service also for the purpose of determining his seniority according to the rule of continuous officiation. In any case the ad hoc appointment which continued beyond one year and in this case for five years could no longer be regarded as ad hoc, since the applicant had performed the duties of the post to which he was promoted, was paid remuneration appropriate to that post and was in all respects like a regular employee in that post from 1973, and so the period from 1973 should be taken into account for determining his seniority. Even on equitable considerations it was not proper that the applicant should be accorded a lower position of seniority to a person who joined the post five years later ignoring the service efficiently rendered by the applicant during the interval.

7. Shri M. Vasudeva Rao, learned counsel for R1 sought to refute the contentions of Dr. Nagaraja. When the applicant was promoted to the post of SIPO in 1973, the order clearly spelt out that the promotion was purely ad hoc and would not confer any right to continue in the post indefinitely or to claim seniority on the basis of "these temporary arrangements". There was some administrative delay in making regular recruitment and as a stop-gap arrangement people like the applicant were promoted to work as SIPO and continued in the post till they could be regularly appointed. The ad hoc appointment in so far as the applicant was concerned was continued till 1977



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when vacancies in the promotion quota became available in which he could be regularised. The applicant was actually regularised in the quota for promotion which arose in 1977 but with effect from December 1978. The corresponding vacancies for direct recruits arising in 1977 were filled up in 1979 and 1980. Thus there was only a short interval of a year between regular promotion and direct recruitment to quota vacancies arising in the same year. From this it cannot be inferred that the quota rule of recruitment had broken down. Whenever regular promotions were taken up, the DPC was informed of the total number of vacancies and the number out of these available for promotion. Thus Government was always conscious of the quota rule and had at all times intended to follow this rule. There were inevitable delays in the filling up of vacancies from the date of their occurrence and as between appointments to those vacancies from the two sources but it was never the intention to give up the quota rule of recruitment or to let it break down. Shri Rao, therefore, submitted that the quota rule of recruitment had not broken down and consequently the rota rule of seniority was rightly applied in this case for determining the seniority of the applicant vis-a-vis direct recruits. Shri A. Keshav Bhat, appearing for 12 of the remaining 78 Respondents also opposed the contention of Dr. Nagaraja and reiterated the arguments of Shri Rao. He relied on the decisions of Supreme Court in Bachan Singh's case, AIR 1973 SC 441, in Badami's case 1978 1 SCR 815 and in Gonal Bhimappa's case ILR 1987 KAR 3127. Citing the ruling of Supreme Court in H.V. Pardasani's case, 1985 SCC (L&S) 482, Shri Bhat submitted that length of service became irrelevant when the quota rule of recruitment was being regularly operated as was the case here.



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8. We have given the matter our most anxious consideration. As we have indicated earlier, the question of interse seniority between direct recruits and promotees in Government service has been the subject of litigation before the higher courts in the country for over 20 years now and many decisions have been handed down by the Supreme Court. Both sides to the present litigation have relied on decisions of the Supreme Court as well as of several Benches of this Tribunal, Dr. Nagaraja citing those where continuous officiation was held to be the determining factor and Shri Rao and Shri Bhat highlighting decisions where the rota rule was upheld. It is not necessary to refer to each of these cases individually as the decision in each case has turned on the facts of that case. We may, however, notice certain broad principles which have been evolved by the Supreme Court in these decisions. Ordinarily length of continuous service in a particular grade should be the basis for determining seniority in that grade. But this does not preclude a different method of fixation of interse seniority as between recruits from different sources if such a method is prescribed in the rules and is not found to be unconstitutional. Where recruitment is made to a grade or post from different sources on the basis of fixed quotas and interse seniority as between recruits from the different sources is regulated by rotation of vacancies between these sources in accordance with such quotas, such a rule of seniority is not liable to be struck down as being unconstitutional. Where, however, the quota rule of recruitment is found to have broken down completely, the rotational principle of seniority would also have to go with it and the relative seniority of recruits from the different sources would fall to be determined on the basis of continuous officiation. Adherence to the quota system of

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recruitment means a substantial compliance with the quota rule, a deviation here or a deviation there not being treated as a break down of the quota rule. If from year to year recruitment is made from different sources according to the quotas prescribed or even if recruitment to quota vacancies from one source is made after a time lag, the interval not being unreasonably long, it would still be held that there had been substantial compliance with the quota rule of recruitment. If persons are appointed from one source in excess of the quota vacancies available to that source, their appointment though irregular, could be regularised later when vacancies in their quota become available: they would be liable to be pushed down as against recruits from the other source who come in later but are regularly appointed within their quota. Persons appointed on ad hoc basis from one source as a temporary measure till regular appointments could be made to the vacancies cannot as a rule claim seniority based on their ad hoc appointment. An ad hoc appointment made outside the rules of recruitment would not confer any right on the person so appointed for seniority vis-a-vis persons regularly appointed in accordance with the Rules. Where, however, ad hoc appointments continue for long periods, say 10 or 15 years without being regularised it would shock the conscience if persons so appointed are assigned lower places of seniority to those appointed from another source after the lapse of such a long time: if that happens the courts will not hesitate to direct the Government to treat the entire period of ad hoc service of the former as regular service and to assign them seniority on the basis of their length of continuous officiation in the higher post. That was the situation in Janardhana's case AIR 1983 SC 769, in Lamba's case

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AIR 1985 SC 1019 and in Narender Chadha's case AIR 1986 SC 638.

9. Turning to the present case, we have seen that when promotions were being considered by the DPC to posts of SIPOs, care was taken to determine the number of posts available in the promotion quota and the DPC concerned recommended for promotion only that number of persons as was necessary to fill that quota. The following statement of vacancies of SIPOs filled up from 1973 to 1987 was filed on behalf of R-1.

"STATEMENT SHOWING DETAILS OF VACANCIES OF SMALL INDUSTRY PROMOTION OFFICER (EI/S) IN S.I.D.O. ARISING AND FILLED UP FROM THE RECRUITMENT YEAR 1973 TO 1987

				Promotion	:	25%
				Direct Recruitment	:	75%
Recruit- ment year	No. of va- cancies arising		No. of vacan- cies filled		Year, month of filling up of vacancies	
	Direct- Recruit- ment quota	promo- tion quota	Direct recru- itment quota	promo- tion quota	Direct recru- itment quota	promo- tion quota
1	2	3	4	5	6	7
1973	14	05	14	05	1/76,4/76	9/1975
1974	12	04	12	04	1/76,9/76 & 9/77,11/77 &	9/1975
1975	13	05	13	05	1 - 3/79	12/78
1976	20	06	20	06	1 - 4/79	12/78
1977	07	02	07	02	7/79,1-3/80	12/78, 12/79
1978	08	03	08	03	1/80,7/80 and 8/80	12/79
1979	17	06	17	06	8/80,11/80, 5/82, 8/82 10/82	12/79 2/81 3/83
1980	08	02	08	02	6 - 10/82 & 5 - 08/83 &	05/83

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1	2	3	4	5	6	7
1981	03	01	03	01	8/82, 2/83	05/83
1982	15	06	05	06	1/82, 4/83 9/83 1/84	05/83 08/86
1983	05	01	-	01	*	08/86
1984	06	02	-	02	-	08/86
1985	06	02	-	02	-	08/86
1986	08	02	-	02	-	06/87
	<u>141</u>	<u>47</u>	<u>107</u>	<u>47</u>		

*Note: Recruitment stopped due to ban on filling up of vacancies. Subsequently consequent on lifting of ban proposals have been sent to UPSC for filling up of 34 vacancies as on 7.11.1986 and the UPSC nominees are awaited."

We find from the above that vacancies which arose in 1973 were filled up by regular promotion only in September 1975 and by direct recruitment in the first half of 1976. Thus when the applicant was given ad hoc promotion in 1973 it was not against regular vacancies either in the quota for promotion or in the quota for direct recruitment which arose in that year because these vacancies were filled up on a regular basis later. Similarly vacancies arising in 1974 to 1982 were regularly filled up in accordance with the quota but appointment from both sources were made sometime after the vacancies had in fact arisen as illustrated by the filling up of the vacancies which arose in 1973 to which we have alluded. In this manner the vacancies that arose between 1973 and 1982 have been filled up strictly in accordance with the quota rule with a time gap as between the date of vacancy and the date of its filling up as also as between promotion and direct recruitment. After 1982, for the years 1983 to 1986, no doubt only the quota of promotion was filled up by regular appointment but not the quota for direct recruitment. The reason for this was the ban on fresh recruitment. This ban was subsequently lifted and

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thereafter R-1 ~~xxx~~ sent a reference to the UPSC on 7.11.1986 to nominate persons for direct recruitment to those vacancies in the direct recruitment quota arising between 1983 and 1986 and the list of such nominees is said to be awaited. Thus Government has adhered to the quota rule of recruitment even for the years 1983 to 1986 ~~xxx~~, since they have proceeded to fill up the direct recruit vacancies immediately after the ban on recruitment was lifted. The applicant cannot lay claim to seniority from the date of his ad hoc promotion in 1973 because that was an appointment by way of a stop-gap arrangement and had conferred no right on him. His is not a case like those of the promotees in Lamba's or Janardhana's or Chadha's case who continued to hold posts on ad hoc basis for long periods without regularisation. As soon as his turn for promotion in the quota available for promotees came in 1977, the applicant and others like him were considered by a DPC and were regularly promoted with effect from December 1978. Corresponding vacancies of 1977 of direct recruits were similarly filled up within a year thereof and the seniority of the applicant and those directly recruited to such vacancies was determined on the principle of rotation. We do not see any injustice or gross inequity in this. As we have already stated the quota system of recruitment has been adhered to in recruitments made between 1973 and 1982 and as such we find no infirmity in the application of the rotational principle of seniority to persons appointed on a regular basis during this period including the applicant



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who was so appointed with effect from December 1978. We hold that the quota system has not broken down and further that this is not one of those cases which shock the conscience and so the rota rule of seniority was rightly applied.

10. In the result, the application is dismissed. Parties to bear their own costs.

Sd/-
VICE CHAIRMAN

Sd/-
MEMBER (A)

bsv

True Copy

16/12/87
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

Read this CAT. ff. enter
in S. list of Registrar,
Main Register. All to be noted
thereafter. O. A. order as per R. 143 Pop.
28/6/94

D. NO. 1616/88/SEC. IV A
SUPREME COURT OF INDIA
NEW DELHI.

DATED: 17.6.1994

From:-
The Registrar,
Supreme Court of India
New Delhi.

To
The Registrar
Central Admin. Tribunal,
Bangalore Bench, Bangalore.

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL/SL.) NO. 3722/88
(Petition under Article 136(1) of the Constitution of India
from the Judgment and Order dated 1-12-87
of the High Court of Judicature at CAT, Bangalore Bench
in Appn. No. 212/87).

Shri V. Krishna Murthy

...PETITIONER(S)

-VERSUS-

Development Comm. & Co.

...RESPONDENT(S)

Sir,

I am directed to inform you that the petition above
mentioned filed in the Supreme Court was dismissed
by the Court on 14-2-94.

Missent. Transmitted to
Registrar Central Admin. Tribunal
Bangalore Bench, Bangalore. 30

Yours faithfully

For Registrar

To
The Registrar
Central Admin. Tribunal
Bangalore Bench
Bang.

Assistant Registrar,
Karnataka Administrative Tribunal,
Bangalore.
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