

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 660/97

Dated: 3-11-1999.

Dr.Vimalchandra Mishra

Applicant.

Mr. Mr.S.P.Saxena

Advocate for  
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Mr.R.K.Shetty & Mr.D.V.Gangal

Advocate for  
Respondent(s)

CORAM :

Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,  
Hon'ble Shri B.N.Bahadur, Member (A)

- (1) To be referred to the Reporter or not? *WS*
- (2) Whether it needs to be circulated to  
other Benches of the Tribunal? *WS*
- (3) Library? *WS*

*R.G. Vaidyanatha*  
(R.G. VAIDYANATHA)  
VICE-CHAIRMAN

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.660/97.

this the 3<sup>rd</sup> day of NOV. 1997

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,  
Hon'ble Shri B.N.Bahadur, Member(A).

Dr.Vimalchandra Misra,  
D-3/2018 Type - IV,  
Qrs. National Defence Academy,  
Khadakwasla,  
Poona - 411 023.  
(By Advocate Mr.S.P.Saxena)

...Applicant.

Vs.

1. The Union of India, through  
The Secretary,  
Ministry of Defence,  
DHQ P.O.,  
New Delhi - 110 011.

2. The Commandant,  
National Defence Academy,  
Khadakwasla,  
Poona - 411 023.

3. The Principal,  
National Defence Academy,  
Khadakwasla,  
Poona - 411 023.

4. Dr.B.K.Bohra,  
Lecturer (SG/Reader),  
National Defence Academy,  
Khadakwasla,  
Poona - 411 023.

...Respondents.

(By Advocate Mr.R.K.Shetty for  
R-1 to R-3 and Mr.D.V.Gangal  
for R-4).

: ORDER :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the  
Administrative Tribunals Act, 1985. The respondents have filed  
their reply. We have heard Mr.S.P.Saxena, the learned counsel

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for the applicant, Mr.R.K.Shetty, the learned counsel for Respondent Nos.1 to 3 and Mr.D.V.Gangal, the learned counsel for Respondent No.4.

2. The applicant and Respondent No.4 are working as Lecturers (Selection Grade) in the National Defence Academy at Khadakwasla. They have also subsequently been re-designated as Readers. Now the dispute is about seniority between the applicant and Respondent No.4. Both of them <sup>are</sup> were working in the Hindi Department. The previous Head of Department has retired. Respondent No.4 has been designated as Head of the Department. The applicant's grievance is that he is senior to R-4 and hence he should be designated or nominated as the Head of the Department. To understand and appreciate the dispute, we will mention only necessary facts.

3. The applicant was earlier appointed as a Lecturer in Hindi w.e.f. 1.10.1977 at Port Blair. Subsequently, he was appointed as a Lecturer in the Government College at Daman. Then, later he responded to the advertisement for the post of Lecturer in Hindi in the National Defence Academy (for short, NDA) at Khadakwasla and he was selected by the UPSC and accordingly he was appointed as Lecturer in Hindi in NDA in 1981. The applicant has been subsequently promoted as Lecturer (Selection Grade) w.e.f. 1.10.1990, but Respondent No.4 was promoted as Lecturer (Selection Grade) in 1992. Since applicant's promotion was in 1990 and promotion of the 4th respondent was in 1992, the applicant is senior to R-4. After amending the application, the applicant is challenging the seniority given to R-4 as R-4 is shown senior to the applicant is incorrect. The applicant has obtained the P.hd degree and on

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that basis he has been promoted as Reader. The service conditions are governed by UGC package. Earlier, the applicant was promoted as Lecturer (Selection Grade) since he had not produced the P.hd degree as he had lost the same. But, subsequently, the applicant has produced his P.hd degree and now he has been promoted as Reader.

The applicant, therefore, wants the interse seniority list maintained between applicant and R-4 and others to be quashed, wants a declaration that applicant should be declared as senior to R-4 and then he wants a direction to Respondents to place the applicant as the HOD of Hindi.

4. The official respondents viz. R-1 to R-3 have taken the stand that placement as a Lecturer (Selection Grade) or as Reader is not a promotion as such, but it is only done in the Career Advancement Scheme (for short, CAS) is purely personal and notional to the concerned official. It is further stated that placement in higher pay scale under this scheme will not confer any seniority over other seniors in the organisation. It is stated that the post of HOD is not a promotional post, but the seniormost official is designated as HOD. It is not a case of promotion either to the applicant or to R-4 either to Selection Grade or to the post of Reader, but it is only a case of placement in a higher pay scale under the CAS of UGC. It is stated that notwithstanding this placement in higher scales either in Selection Grade or Reader will not confer any seniority. The seniority in the original cadre of Lecturers will govern all the Lecturers notwithstanding subsequent placement in higher pay scale.

After the amendment of OA, the official respondents have filed additional reply reiterating the stand taken in the earlier reply. It is now stated that the applicant's allegation that he is senior to R-4 is not correct. That applicant is not entitled to any of the reliefs prayed for.

5. Respondent No.4 Dr.B.K.Bohra has filed a written statement asserting that the previous service of the applicant at Port Blair and Daman cannot be counted for the purpose of seniority. The applicant should produce the necessary Recruitment Rules and must show the nature of his appointment as Lecturer at Port Blair and at Daman and he must further show whether the appointments were regular appointments or ad-hoc or temporary appointments. He must also furnish the dates of appointment in both the places. He must also show that it was a continuous service and that there was no break in between. It is alleged that applicant's promotion from earlier date than R-4 in Selection Grade is illegal. Since the applicant's earlier service at Port Blair and Daman is not in conformity with UGC circular dt. 27.11.1998, the applicant cannot get the benefit of past service for the purpose of seniority in the NDA. It is stated that in NDA R-4 was appointed as a Lecturer in 1979, whereas, the applicant was appointed in 1981 and therefore, it is stated that the applicant is junior to R-4. The applicant could not have been granted Selection Grade from 1.10.1990.

After the amendment of the OA, R-4 has filed additional written statement reiterating the earlier stand. It is stated that applicant is not entitled to any of the new reliefs now prayed for after the amendment of the OA. It is stated that the

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CAS under the UGC package is only to grant higher scale and nothing more.

6. The learned counsel for the applicant contended that since the applicant has been given Selection Grade and also promotion as Reader in 1990 and since R-4 has been given Selection Grade and promotion as Reader in 1992, the applicant must be held to be senior to R-4. But, the argument on behalf of the official respondents and on behalf of R-4 is that this is not the case of regular promotion to claim seniority, but it is a case of placement in a higher pay scale and therefore, the seniority is based on the original appointment as Lecturer. Admittedly, applicant was appointed in 1981 and R-4 was appointed as Lecturer in 1979. It is also the contention of Advocate for R-4 <sup>that</sup> the applicant's ante-dated promotion or designation in Selection Grade and as Reader from 1990 is illegal, since he did not have the minimum required service of 13 years regular service prior to 1990 and if the placement of 1990 goes away, then applicant is always junior to R-4. The promotion <sup>of</sup> designation as Lecturer (Selection Grade) or Reader is not strictly a promotion in the sense we understand in service matters. Here the promotion is given only as a CAS or Career Progression Scheme (for short, CPS). Applicant's counsel is relying on the Government of India Circular dt. 22.7.1988 under which the number of ~~instructions~~ are given in CAS or CPS. It only enables Lecturers with certain years of standing to be placed in a higher pay scale. The Lecturers who get a higher pay scales after certain years is called as Lecturer (Selection Grade), but if that Lecturer in addition holds a P.hd degree, then he is designated or promoted as Reader. Even a Selection Grade

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Lecturer after he possess a P.hd degree may be re-designated as Reader. It is interesting to notice that the pay scale of Selection Grade Lecturer and Reader is one and the same viz. the scale of Rs.3,700-5,700. The duties and responsibilities of Selection Grade Lecturer and Reader are identical and pay scales are identical. Those who have got P.hd degree <sup>are</sup> called Readers and those without P.hd degree <sup>are</sup> called Selection Grade Lecturers. It is interesting to notice that the rules prescribed for grant of this benefit of CAS or CPS does not say a word about seniority among those people. The stand of the administration is that it is purely a notional and personal benefit given to a particular Lecturer and it is not a case of regular promotion as such.

7. In this connection, we have come across a decision of the Apex Court reported in 1995 (3) SLR SC 21 ( Dr.Rashmi Srivastava Vs. Vikram University and Others). That was a case where there was dispute about seniority between Direct Recruit Readers on the one side and promoted Readers on the other under the CAS. According to the Direct Recruits, they should have seniority from the date of their appointment and the promoted Readers under the CAS cannot be given any seniority in the cadre of Readers since their promotion or designation as Reader is purely personal to them and not a case of regular promotion. But, the contention of the Readers promoted under CAS is that they are entitled to seniority with the direct recruits from the date of their promotion as Reader. The Supreme Court referred to number of circulars and rules of UGC and of Vikram university and then came to the conclusion that the promoted Readers under the CAS cannot claim any seniority over the direct recruit Readers. The Supreme

Court pointed out at page 47 of the Reported Judgment that a merit promoted Reader under the CAS will be having a personal promotion, it will neither create any addition to the cadre nor it will create any vacancy in the lower cadre from which he is promoted. When that merit promoted Reader retires no vacancy is caused in the post or cadre. In the absence of amendment of relevant rule, the Supreme Court points out that merit promotion by itself will not create a new source of recruitment for the promoted Readers. In para 40 of the reported Judgment the

"While the promotees under the merit promotion scheme stand outside the cadre and fill no posts as such, since no posts are created. The promotions given to them are purely personal and the posts to which they are upgraded do not survive their service career. The posts vanish with the incumbent person like the shadow vanishing with the substance. Such a promotee fills up no vacancy in the promotional avenue since no post is available by promotion."

It is true that in the present case, there is no such dispute between direct recruits and merit promoted Readers. Why we have referred to the above Judgment is to show that a promotion or designation as a Reader under the CAS is not really a promotion at all, but it is a case of personal benefit given to a particular Lecturer by giving higher pay scale to avoid stagnation in service. It is not really a promotion as we understand in service jurisprudence. Though the word "promotion" is loosely used in the scheme, at many places it is shown as a designation as a Reader or placement as a Reader. The Selection Grade Lecturer can be designated as a Reader after he gets a P.hd degree. Therefore, strictly speaking it is a case of designation or placement as a Reader and not a promotion as such as a Reader.

8. Ultimately, the question of seniority will have to be

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decided as per rules. The applicant has not brought on record any rules to show that a Reader promoted under the CAS is entitled to seniority over the Selection Grade Lecturer who has not yet got promotion as a Reader. If there are no rules, then seniority will have to be decided on the basis of Administrative or Executive instructions. In this case, a similar point had been raised in an earlier OA in this Tribunal in O.A. Nos.578/96 and 896/96. This Tribunal gave a direction to the Government to take an appropriate decision about the question of seniority among the persons who are promoted under the UGC scheme. In pursuance of this direction, the administration has taken a decision. The learned counsel for the official respondents has placed before us the policy decision taken by the administration on this point. The first policy decision taken is dt. 23.2.1998. Then, subsequently, there is slight alteration in this policy decision which is clarified by a corrigendum dt. 29.4.1998. Now, as per the corrigendum dt. 29.4.1998, the policy decision taken by the Ministry of Defence is as follows :

"There will be no change in the work load for the post of Lecturer on grant of Reader designation under the Career Advancement Scheme and inter-se seniority of the Civilian academic Officers recruited as per SRO 1968 as the placements are personal and notional."

It clearly says that inter-se seniority of the civilian academic officers will not change even after designation as Reader and that the placements are personal and notional.

9. In this case, the applicant joined the National Defence Academy on 1.12.1981, whereas R-4 Dr. B.K. Bohra joined NDA on 19.3.1979. Therefore, as Lecturer, admittedly and undisputably R-4 is senior to the applicant. Then, in the first instance, the

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*[Signature]*

1.10.1977. But, in para 4 it is stated that his appointment is on deputation and on ad-hoc basis for a period of one year. There is no other material on record to show that his ad-hoc service was regularised on a particular day and if so w.e.f. what date. The applicant has produced one regularisation letter which is at page 117 of the paper book where his name appears at Sl.No.38. But, it is not a case of regularisation in Lecturer's post, but it is a case of confirmation in the post of a Teacher in the Education Department. As far as his service at Daman is concerned, ~~the~~ appointment letter issued to applicant is not before us. We do not know on what terms and conditions he was appointed as a Lecturer at Daman. There is also no material on record to show whether there is any break in service between the service at Port Blair and service at Daman and service in NDA. This is a matter which calls for investigation. The applicant should be given sufficient time to produce the necessary records. If necessary records are not available with the applicant then the documents will have to be called for from the Administration at Port Blair and Daman. Then, on the basis of the records the Competent Authority has to decide whether applicant had continuous service as a Lecturer from 1.10.1977 till he joined NDA on 1.12.1981. Then, the competent authority has to decide whether applicant's appointment as Lecturer at Port Blair and subsequently at Daman were as per the Recruitment Rules and whether the appoints were regular or they were purely ad-hoc and temporary and then decide whether applicant's past service is in conformity with all the conditions mentioned in the UGC letter dt. 27.11.1990. If the competent authority decides that applicant's past service is in full conformity with the UGC

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letter dt. 27.11.1990, then applicant will have put in 13 years of regular service as Lecturer up to 1.10.1990 and therefore he can be granted Selection Grade/Reader from 1.10.1990 and in which case he will be senior to R-4. But, if the competent authority on the basis of records comes to a conclusion that the applicant did not have regular service as a Lecturer, within the parameters of UGC circular dt. 27.11.1990, then applicant cannot be given Selection Grade/Reader designation from 1.10.1990, but he should be given that designation from the date he completes 13 years of regular service. On that basis the Competent Authority has to decide whether the applicant is senior to R-4 or vice-versa. Till such exercise is done and decision is taken by the Competent Authority, the present seniority list which is in force shall be continued and acted upon. In case, the competent authority takes some decision, then the person aggrieved either the applicant or R-4 may challenge that decision according to law. We give liberty to both the applicant and R-4 to make representations to the Competent Authority putting forward their respective contentions on the question of seniority and producing whatever documents they want in support of their contentions. If relevant documents are not produced the Competent Authority shall write to the concerned officer at Port Blair and Daman and get necessary documents and then take a decision about the seniority dispute between the applicant and R-4.



10. In the result, the OA is disposed of with the following directions:

- (1) The Competent Authority shall take appropriate decision on the seniority dispute between applicant and R-4 as per the directions given in para - (9) above.
- (2) Till such decision is taken about seniority dispute, the existing seniority list be operated and given effect to.
- (3) Needless to say, that person aggrieved by the decision of the competent authority regarding the question of seniority can challenge the decision of the competent authority according to law.
- (4) It is desirable that the competent authority should take appropriate decision as mentioned above as early as possible.
- (5) No order as to costs.

*B.N. Bahadur*

(B.N. BAHADUR)

MEMBER (A)

*R. G. Vaidyanatha*

(R.G. VAIDYANATHA)

VICE-CHAIRMAN

3/11/95