
(1990) 09 DEL CK 0048

In the Delhi High Court

Case No : Original Appeal No. 2166 of 1988

L.R. Goyal and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 13-09-1990

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (1991) 20 DRJ 131

Hon'ble Judges : P.K. Jain, J;J.P. Sharma, J

Bench : Division Bench

Advocate : S.C. Luthra and Y.K. Jain, for the Appellant;

Judgement

J.P. Sharma, J.

(1) The applicants, seven in number, are departmental promotes who are/were working as Senior Technical Officers/Technical Officers with the National Airport Authority and originally belonged to Communication Directorate under Director General Civil Aviation. They have filed this application u/s 19 of the Administrative Tribunals Act, 1985 against Union of India, Director General. Civil Aviation (in short, D.G.C.A.). Chairman, National Airport Authority (in short, N.A.A.) and 30 private respondents working as Senior Technical Officers under National Airport Authority, New Delhi. The grievance of the applicants is regarding fixation of their seniority vis-a-vis direct recruit Technical Officers as shown in seniority lists issued by respondent No. 2 as on 1-10-83 (Annexure A-1), as on 1-12-1986 (Annexure (A-2) and as on 1-7-1987 (Annexure A-3). They have prayed for the following reliefs:

(I) To quash the seniority lists issued vide Annexure A-1, A-2 and A-3 ibid. (ii) To direct the respondents to recast the seniority lists for the said years in accordance with the principle of continuous officiation reckoning the seniority of both direct recruits (Respondents) as well as promotees (Applicants) Technical Officers on, the basis of their continuous officiation, that is from the dates their

respective approved service commenced. (iii) To direct the respondents to further give all consequential benefits as a result of revised seniority list including promotion to the next higher rank, refixation of pay and arrears with pensioner benefits wherever applicable

(2) The brief facts are that the applicant who arc/were on deputation to N.N.A. .were originally employees of Communication Directorate under D.G.C.A., Government of India. The applicants while serving in Civil Aviation as Assistant Technical officers (in short, A.T.O were promoted as Technical Officer on ad-hoc basis as follows:

SI. Name of Officer:	Date of promotion	No.	
		1	Shri L.R.Goyal
30-7-1980	2 Shri H.S.Grewal	2-8-1980	3 Shri R.Ramamurthy
8-4-1981	4 Shri C.N.Mahadev	8-4-1981	5 Shri P.C.Jain
30-11-1981	6 Shri I..J. Sharma	30-11-1981	7 Shri T.D.Sharma
2-1-1982			

They were later regularised as Technical officer with effect from 5-5-1983 without any break in service. On the passing of the Act No. 6:4 of 1985 u/s 13(3), the applicants were placed on deputation with N.A.A. and were to be governed by the same terms and conditions of service as in their earlier posting under D.G.C.A. Tins arrangement came into effect from 1-6-1986. The post of Technical Officer is a election post and as per the Recruitment Rules, 50 per cent of the vacancies are to be filled up by promotion from the departmental candidates failing which by direct recruitment and the remaining 50 per cent by direct recruitment The ratio waste be achieved by rotation one departmental promotee (in short D.P.) with one direct recruitment (in short, D.R). The next promotion is to the post of Senior Technical Officer (STO) and the mode of recruitment to this post is by promotion Only. Since, there was a quota/rota system prevalent. in the selection of T.O., the D.G.C.A, while fixing the seniority had been, keeping vacant slots for the direct recruits who came subsequently but were selected against the Vacancies carried forward from previous years. Such slots have been shown in the seniority last of 1983,1986 and 1987 (Annexure A-1 to A-3). Before the staff of the communication Directorate was transferred t N.A.A. on 1-6-1989, the only prevailing list was of 1983 which formed the basis of subsequent lists 1986 and 1987 (Annexure A-2 and Annexure A-3).

(3) The contention of the applicants that the seniority lists have not been prepared correctly on the basis of continuous length of service in the grade which is contrary to the various judgments given by the Honorable Supreme Court and high Courts It is contended that respondent No. 2 bad no justification for carrying forward the vacancies of direct recruits from year to year, despite the fact. that no such provision existed in the rules. The slots were kept vacant for later direct recruits, who were given the benefit of seniority from back date although they have not actually served in that period. That subsequently, the

Ministry of Personnel Public Grievances and Pensions, Department of Personnel and Training issued order dated 7-2-1986 (Annexure A-5) in consonance with the judgment of the Hon'ble Supreme Court that the practice of keeping vacant slots for being filled by Direct recruits of later years, thereby giving them unintended seniority over D.P., who were already in position would be dispensed with. These orders were effective from 1-3-1986. The respondents in utter disregard of these orders have been keeping vacant slots, even thereafter, as will be seen from seniority lists of 1986 and 1987 (Annexure A-2 and A-3). That respondents 4 to 33 who joined much later than the applicants have all been shown senior to them in the seniority lists and thus jeopardising their chances of promotion. A perusal of the seniority lists would show that even direct recruits of later years i.e., of 1984, 1985, 1986 and 1987 have been accorded seniority with the Dp of 1981 and, the extent of advantage thus conferred, on the D.R. has increased considerably and the gap between the two categories ranges from seven to eight years. " The applicants have been pushed down in the matter of seniority from year to year because of the carry forward system of vacancies earmarked for D.R. adopted by respondent No.2. Year wise recruitment through U.P.S.C was not done for many years. The applicants have quoted some instances and referred to the position of respondent No.33, S.K. Swamy, who was recruited on 14-4-1987 placed at SI. No. 81 in the 1987 list (Annexure A-3) while P.C. Jain. Applicant Dp has been shown at Si No. 102, though he was promoted on ad-hoc basis on 30-11-1981 and later on regularised w.e.f., 5-5-1983. Similar position has been shown for Respondent No 27, Shri Y.K. Bhagat, who joined on 13-2-1987 and placed at Serial -No 69 and shown senior to Shri H.S.Grewal. Dp at Serial .No. 70 in the list of 1987; though Shri Grewal has been a T.O. since 2-8-1980 on ad-hoc basis and regularised on 5-5-1983.

(4) It, is further contended that even after the transfer of the entire staff on N.N.A., the later authority has issued promotion orders on ad-hoc basis in respect of 14 direct recruits. Some of whom got their promotion within months of their joining service, Annexure A-6 to A-10 are the promotion orders in respect of respondents No. 4 to 33. That a direct recruit T.O. has to be on two years probation which is liable to be extended and it is clear from the chart given by the applicants in para 4.14 at page 12-13 that some of the D.R. respondents had not even completed their probation period and still given promotion to the post of Senior Technical Officer. It is further contended that even after the transfer of the Communication. Directorate to N.A.A., the Dgca is still the cadre controlling authority.

(5) The official respondent filed the counter affidavit contesting the claim of the applicants and have stated the interest seniority of D.P. vis-a-vis D.R. has been fixed in accordance with the earlier practice of determining the same according to the Dp and Dps as per notification by the Ministry of Home Affairs O.M. No. 9/11/55- Rps 107 dated 22-12-1959. This O.M. had been followed in fixing seniority in the filling up of the vacancies prior to the issue of O.M. dated 7-2-1986 (supra) wherein the practice of keeping vacant slots for Dp or Dr was

dispensed with Thus the seniority lists are stated to have been Correctly prepared Regarding the promotion of Dr to the post of senior Technical Officer without completing the period of probation, the respondents in the counter affidavit have referred to the note given at the end of the Recruitment Rules for the post of Sales Tax Officer which lays down "in case where an officer is considered for promotion, every officer who is senior to him in the grade from which promotion is to be made shall also be considered for promotion, though any such senior officer has not completed three years in that grade rendered after appointment thereto", It is further stated by the respondents that the D.P. applicants were, promoted to the grade of T.O, on regular basis w.e.f., 5-5-1983 and thus they were eligible for regular promotion in the grade or Senior Technical Officer only after completion of three years of service in the grade i.e., in. May, 1986. Thus, it is stated by the respondents that the seniority lists need no interference and the application is devoid of merit.

(6) The private respondents did not file any counter affidavit in spite, of service.

(7) We have heard the learned counsel for the parties at length and perused the record as well as cases cited. It is not disputed that recruitment to the post of T.O. is made from two sources, from the departmental candidates up to 50 per cent falling which by direct recruitment, and the remaining 50 percent by direct recruitment. The O.M. of 1959(supraprovided for the seniority to be fixed between the two sources and it was a practice to keep slots for Dr or Dp whose posts remained Unfilled by rotation of vacancies. There are a number of decisions wherein it has been held that the continuous officiating service by a D.P. followed by regularisation should not be ignored if his appointment has been according to the rules. The latter's judgment on the point is The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others, . The Five-Judge Bench of the Hon'ble Supreme Court has held as follows:

"13. When the cases, were taken up for hearing before us, it was fairly suggested that the principle laid down in Patwardhan's case was Unsound and fit to be overruled, but no attempt was made to substantiate the plea.....we are in complete agreement with the ratio decidendi, that the period of continuous officiation on by a Government servant, after his appointment by following the rules applicable for substantive appointment, has to be taken into account for determining his seniority; and seniority cannot be determined on the sole test of confirmation for, as was pointed out, confirmation is one of the of the inglorious uncertainty of government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. The principle for deciding inter-se seniority has to conform, to the principles of equality spelt out by articles 14 and 16. If "an appointment is, made by way of stop-gap arrangement, without considering the claims of all the eligible available persons and without following rules of appointment, the experience on such appointment cannot be equated with the experience of a regular appointee, because the

qualitative difference in the appointment. To equate the two would be to treat two unequals as equal which would violate the equality clause, But if the appointment is made after considering the claims of all eligible candidates, and the appointee continues in the uninterruptedly till the regularisation of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority. Same will be position if the initial appointment itself is made in accordance with the rules applicable to substantive appointment as in the present case. To hold otherwise will be discriminatory and arbitrary. This principle has been followed in innumerable cases and has been further elaborated by this Court in several judgments including those in *Baleshwar Dass v. State of UP. and others* (1981) 449 and *Delhi Water Supply and Sewage Disposal Committee and Others Vs. R.K. Kashyap and Others*, , with Which we are in agreement. In *Narender Chadha and Others Vs. Union of India and Others*, , the officers were promoted although without following the procedure prescribed under the rules, but they continuously worked for long period of nearly 15-20 years on the posts without being reverted. The period of their continuous officiation was directed to be counted for seniority as it was held that any other view would be arbitrary and violative of Articles 14 and 16. There is considerable force in this view also. We, Therefore, confirm the principle of counting towards seniority the period of continuous officiation following, an appointment made in accordance with the rules prescribed for regular substantive appointments in the service. 47. To sum up, we hold that: (A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad-hoc and not according to rules and made as stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority. (B) If the initial appointment is not made-by following the Proselyte laid down by the rules but the appointee continues in, the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of. officiating service will be counted. (C) When appointments are made from more than one source it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard the must ordinarily be followed strictly. (D) If it becomes impossible to adhere to the existing quota rules, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down. (E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date. (F) Where the rules permit the authorities to relax the provisions relating to the quota, ordinarily a presumption should be raised that there was such relaxation when there is a deviation from the quota rule. (G) The quota for recruitment

from the different sources may be prescribed by executive instructions, if the rules are silent on the subject. (H) If the quota rule is prescribed by an executive instruction, and is not followed continuously for a number of years, the inference is that the executive instruction has ceased to remain operative."

(8) The respondents have only referred to the O.M. of 1959 and O.M. of 1986 (Annexure A-5) but in view of the judgment of the Supreme Court (*supra*), the provisions of O.M. of 1959 cannot be now applied. The Recruitment Rules do not provide any other mode of fixing seniority between Dp & DR.

(9) In the limit of the foregoing, the seniority lists for the post of Technical Officer as on 1-10-83 (Annexure A-1), as on 1-12-86 (Annexure A-2) and as on 1-7-86 (Annexure A-3) are hereby quashed. Respondents 1 and 2 are directed to draw up a fresh seniority list as on 1-10-83 in accordance with the principles laid down by the Supreme Court in the case of *Direct Recruits Class Ii Engineers Officers Association v. State of Maharashtra* (*suora*) within a period of four months from the date of receipt of a copy of this order, and also convene a Review D.P.C. for reviewing promotions to the post of Senior Technical Officer on the basis of the seniority list of the cadre of Technical Officers to be drawn up as above, within a period of further two months. Those of the Technical Officers, who are selected for promotion to the post of Senior Technical Officer on the basis of the recommendations of Review D.P.C. shall be deemed to have been promoted with effect from the date from which the person next junior to him in the revised seniority list was promoted, and will also be entitled to arrears to pay and D.A./ Addl D.A.. /Interim Relief admissible thereon with effect from the deemed date of promotion as above. Those who have already retired will also be entitled to have their retirement benefits refixed from the date of retirement and will also be paid arrears on that account. We also make it clear that those Technical Officers who had been regularly promoted as Senior Technical Officer on the basis of the impugned seniority lists which have been quashed by this order, shall not be reverted on account of deemed promotion as above and they may be adjusted by creating supernumerary posts of Senior Technical Officers, if necessary till such time they are adjusted against future vacancies.

(10) The application is disposed of in terms of the directions in para 10 above. We leave the parties to bear their own costs.