

Mohd. Safdar Ali and Others

Vs

Union of India and Others

Civil Appeals Nos. 7430-31 of 1996

(G. B. Pattanaik, S. P. Kurdukar JJ)

02.04.1998

ORDER

1. These appeals are directed against the judgment of the Central Administrative Tribunal, Patna Bench, before whom the appellants had claimed seniority over Respondents 5, 6, 7 and 8 in the cadre of Statistical Assistant under the Census Organisation. In the Census Organisation, the hierarchy of posts starts from Assistant Compiler and then Computer, Statistical Assistant, Tabulation Officer and then Investigator. The appellants joined the organisation as Assistant Compilers in May-June 1970; whereas Respondents 5, 6 and 7 were also appointed as Assistant Compilers on 2-6-1970 and Respondent 8 had been appointed on 22-7-1970. There were no recruitment rules then in force, and persons were promoted on ad hoc basis to the posts of Computers and then also to Statistical Assistants. The recruitment rules came into force in the year 1973. After the recruitment rules came into force, the Government took the task of considering the cases of all ad hoc promotees in different ranks by constituting a Departmental Promotion Committee, and on the basis of the recommendation of the said Departmental Promotion Committee, regularised the services of different employees in different ranks. As a result of such steps taken by the Government and as a result of the process of selection held by the Departmental Promotion Committee, Respondents 7 and 8 were reverted from the post of Statistical Assistant to the post of Computer. It may be stated that in the gradation list which had been published prior to the rules coming into force as well as even after the rules coming into force, the appellants had been shown senior to the respondents. In the gradation list of Statistical Assistants, which was published on 1-1-1986, only Appellant 1 had been shown and Respondents 5 to 8 had not been shown, though they had been recruited by that date. The reversion order of the second respondent as aforesaid was challenged before the Tribunal, but the Tribunal rejected their claim. The matter was then carried to this Court in Civil Appeal No. 3819 of 1989. By judgment dated 6-9-1989, this Court came to the conclusion that since the two appellants before this Court, who are Respondents 7 and 8 in the present proceedings, had been promoted to the post of Statistical Assistants after going through a process of selection by a Departmental Promotion Committee, then the question of reconsideration of their case by another Departmental Promotion Committee was not justified. In this view of the matter, the order of reversion was quashed and it was directed that those appellants shall be deemed to be continuing in service in the post of Statistical Assistants. In giving effect to the aforesaid judgment, the seniority list stood altered and these Respondents 7 and 8, who were the appellants in the earlier proceedings, were shown senior to Respondents 5 and 6. The said Respondents 5 and 6 approached the Central Administrative Tribunal claiming that since they were senior to Respondents 7 and 8 in the previous gradation list, they must also be held to be senior to them in the altered list and the Tribunal allowed their applications. Needless to mention that neither in the earlier proceedings when Respondents 7 and 8 challenged the order of reversion nor in the subsequent

proceedings before the Tribunal, when Respondents 5 and 6 claimed seniority in the gradation list, the present appellants had not (sic) been arrayed as parties. Being aggrieved by the gradation list that was amended on 25-2-1991, the appellants approached the Tribunal claiming, inter alia, that the respondents should not have been granted seniority over them and they not being parties to the earlier proceedings, the seniority list which stood valid from 1974 should not have been altered to their detriment and therefore appropriate direction be issued. The Tribunal, however, being of the opinion that the seniority list stood altered because of the earlier decision of this Court in Civil Appeal No. 3819 of 1989, dismissed the application. Hence the present appeals.

2. Mr. Ranjit Kumar, learned counsel appearing for the appellants, strenuously contended that injustice has been caused to these appellants by virtue of the earlier judgment of this Court in Civil Appeal No. 3819 of 1989 and that as this Court has passed the earlier judgment on certain incorrect premises, it would be open for this Court to correct that error and to rectify that error by recalling the earlier judgment and reconsidering the matter afresh. Mr. Ranjit Kumar also contended that even under the statutory rules, Respondents 5 to 8 should not have been promoted to the higher cadre by getting any accelerated promotion, and therefore both on facts as well as on law the earlier judgment cannot be sustained and this would be a fit case for invoking the power under Article 142 for rectifying the error committed by this Court.

3. There is no dispute to the fact that the earlier judgment proceeded on an incorrect premise as to the recommendation of the Departmental Promotion Committee before giving ad hoc promotion to Respondents 7 and 8, who were the appellants before this Court. But solely on that ground, the order of reversion of those appellants, who are Respondents 7 and 8 in this proceeding which was annulled by this Court as early as in the year 1989, cannot be set aside and it will not be proper to reopen the matter afresh. In the earlier proceedings which was merely in connection with the legality of an order of reversion, the present appellants cannot be held to be necessary parties. The Court was concerned with the question whether the order of reversion was in accordance with law and justified or not. No doubt, the effect of that judgment has ultimately affected adversely so far as the seniority of the present appellants in the rank of Statistical Assistants is concerned, but that itself would not be a sufficient ground to recall a concluded judgment of this Court which was passed 9 years before, at this length of time. Even on examining the question as to whether by giving the ad hoc period in the post of Statistical Assistants, whether the present appellants can claim seniority over the respondents, we find that that is not possible since even on ad hoc basis, the appellants were promoted to the post of Statistical Assistant later than Respondents 7 and 8. Therefore, even if we extend our equitable relief in favour of the appellants, this will not help them until and unless the earlier order is reversed. We do not think the case warrants for such direction and in these premises, we have no other alternative but to dismiss these appeals.

4. These appeals are accordingly dismissed, but with no order as to costs.