

\$~12

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Date of Decision: 23.04.2019**

% **W.P.(C) 6662/2016 and C.M. No.10284/2018**

ANJU AZAD & ORS

..... Petitioners

Through: Mr. Pardeep Dahiya, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Sanjeev Sabharwal, Mr. Hem Kumar, Mr. Prithvi Sabharwal & Ms. Bushra Waseem, Advocates for UOI.
Mr. Anand Shankar Jha, Mr. Arpit Gupta and Md. Ali, Advocates for respondent Nos. 3 to 11.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

1. The petitioners have preferred the present writ petition to assail the order dated 17.05.2016 passed by the Central Administrative Tribunal (CAT/ Tribunal) in O.A. No.2481/2014. The Tribunal had rejected the said Original Application preferred by the petitioners, wherein they had assailed the provisional seniority list dated 31.01.2014 as also the final seniority list dated 11.07.2014. In the said provisional seniority list of Senior

Geographers as on 01.01.2012, the petitioners/ applicants were shown at serial Nos. 22, 23, 24 and 25 and the private respondents were placed above them at serial Nos. 14 onwards. The petitioners were aggrieved by the said fixation of their seniority, and they claimed that the respondents had wrongly changed the date of their regular appointment to the post of Senior Geographer to 11.10.2010 – in respect of applicant No. 3 (i.e. C. Rajeev – who is petitioner No. 3 before us), and 29.02.2011 – in respect of applicant Nos. 1, 2 and 4 (who are petitioners No.1, 2 and 4 before us). The petitioners' grievance was that they have been placed below the private respondents without even giving them any show cause notice.

2. The undisputed position is that the cadre strength of the Senior Geographer for the promotional posts was 18. There were 9 posts in the said cadre to be filled by direct recruitment. Thus, 66.67% of the promotional posts of Senior Geographer were to be filled by promotion, and the remaining 33.33% posts were to be filled by direct recruitment.

3. Four of the Senior Geographers, namely Dr. Rajendra Kumar, Sh. Pooran Singh, Sh. R. Joseph and Sh. Hari Kirtan Ram were sent on long term deputation, and the vacancies which were created on account of the said officers proceeding on long term deputation were, therefore, sought to be filled by promotion of the petitioners, who were then serving as substantive Geographers. The promotion orders in respect of all the petitioners clearly stated that the said promotions were against long term vacancies due to deputation of Senior Geographers to the post of Research Officer (Map) under plan scheme. On repatriation of Research Officer

(Map) to the post of Senior Geographer, the petitioners would stand reverted to the substantive post of Geographer.

4. The respondents circulated a provisional seniority list in the cadre of Senior Geographer as on 12.10.2009, on 24.10.2009. The same was followed by a final seniority list on 30.12.2009, wherein the four petitioners before us were placed at serial Nos. 19, 20, 21 and 23, and the private respondents before us were placed at serial Nos. 22 and 24 to 31.

5. It emerges from the record that even after publication of the said final seniority list in the cadre of Senior Geographers, representations were made by the private respondents continuously from time to time. The respondent authorities, consequently, issued another provisional seniority list of Senior Geographers on 06.11.2012. After considering the representations received in response to the said provisional seniority list, on 31.01.2014, the respondents authorities issued the final seniority list of Senior Geographers, on 11.07.2014, with which the petitioners were aggrieved. Their positions in the seniority list went down, vis-à-vis the private respondents, primarily on account of the regular dates of their promotions as Senior Geographers being refixed as 11.10.2010 and 29.02.2011.

6. The reason given by the respondents for fixing the dates of regular promotions of the petitioners as Senior Geographers, as aforesaid, was that there were no substantive vacancies available in the cadre of Senior Geographers prior to those dates, since the four deputationists mentioned hereinabove held lien on their substantive posts while on deputation. Only when the said four deputationists – who were substantive and regular Senior

Geographers, were further promoted, regular vacancies arose in the cadre of Senior Geographers in the promotional quota and, thus, the petitioners' seniority as Senior Geographers could be counted only from the date when such regular vacancies arose and they could be assigned to those slots. On the aforesaid premise, the Tribunal did not find favour in the petitioners' claim and rejected the Original Application.

7. The submission of learned counsel for the petitioners is that when vacancies are created on account of the regular incumbents being sent on long term deputation, such vacancies have to be treated as regular vacancies. Thus, such vacancies have to be taken into account for the purpose of preparation of the panel, and appointments made against such vacancies should be considered as regular/ substantive appointments. In this regard, reliance is placed on Office Memorandum dated 15.05.2007 issued by the DOPT, Ministry of Personnel, Public Grievances and Pensions, Govt. of India. The said Office Memorandum reads as follows:

“

Dated 15th May, 2007

OFFICE MEMORANDUM

Subject:- Determination of regular vacancies for holding DPC – Inclusion of vacancy arising out of deputation for drawing up of select list for promotion

The undersigned is directed to refer to para 4.1 of guidelines on Departmental Promotion Committee, circulated vide this Ministry's O.M. No. No.22011/5/86-Estt (D) dated 10th

April 1998, which provides that “it is essential that the number of vacancies in respect of which a panel is to be prepared by a DPC should be estimated as accurately as possible. For this purpose, the vacancies to be taken into account should be the clear vacancies arising in a post/grade/service due to death, retirement, resignation, regular long-term promotion and deputation or from creation of additional posts on a long term. As regards vacancies arising out of deputation, only those cases of deputation for periods exceeding one year should be taken into account, due note, however, being kept also of the number of the deputationists likely to return to the cadre and who have to be provided for. Purely short-term vacancies created as a result of officers proceeding on leave, or on deputation for a shorter period, training etc. should not be taken into account for the purpose of preparation of a panel. In cases where there has been delay in holding DPCs for a year or more, vacancies should be indicated year-wise separately”.

2. *It has been brought to the notice of this Ministry that the Ministries/Departments are not following the above guidelines in right spirit thereby resorting to appointment of officers on promotion against deputation vacancies without ensuring that vacancies would be available for the existing deputationist(s) on return.*

3. *The matter has been examined in consultation with the U.P.S.C. and it has been decided to reiterate the above guidelines for strict compliance and also to ensure that vacancies arising on account of deputation for more than one year will be taken to the recruitment roster for regular appointment, only after ensuring that clear vacancies will be available for deputationists on return. Purely short-term vacancies created as a result of officers proceeding on leave or on deputation for a shorter period, training etc. will not be taken into account for the preparation of regular panel under any circumstances.”*

8. Learned counsel submits that the said Office Memorandum was

considered and enforced in *Union of India & Others Vs. N.R. Banerjee & Others*, (1997) 9 SCC 287; and *YS Dwivedi & Anr Vs. Union of India & Others*, 2010 SCC OnLine Del 2818.

9. The further submission of the petitioners is that the respondent authorities have disturbed the settled seniority position after many years, only on account of the rendering of its decision by the Supreme Court in the case of *Union of India & Anr. Vs. N.R. Parmar*, Civil Appeal No. 7514-7515/2005. Learned counsel submits that it is well settled, that settled seniority position should not be altered after many years. In this regard, reference is made to the decision of this Court in *Veena Kothavale Vs. Union of India & Others*, W.P.(C.) No. 3087/2016 decided on 22.01.2018.

10. On the other hand, the submission of learned counsel for the respondent authorities, as well as the private respondents, is that the cadre strength of Senior Geographers was 27 (18 promotional quota and 9 Direct Recruit quota) and, therefore, the final seniority list of Senior Geographers issued as on 12.10.2009 was erroneous, since the said list had 31 officers named in it, as against a cadre strength of 27. They further submit that the four vacancies created by the four long term deputationists could not have been filled by regular promotion, even if, for the purpose of filling up of those vacancies, they had to be considered as regular vacancies. The fact that the vacancies had to be considered as regular vacancies, has no bearing on the right of the promotees against such vacancies, and the right of the petitioners – who were promoted against such vacancies, were governed by the express terms of their letter of appointment, which they accepted without

any demur. In their letters of promotion, the petitioners were specifically put to notice that they were promoted to the vacancies created due to the deputation of Senior Geographers to the post of Research Officer (Map) under plan scheme, and on repatriation of Research Officer (Map) to the post of Senior Geographer, the petitioners would stand reverted to their substantive post of Geographer.

11. Learned counsel for the respondent authorities further points out that one of the deputationists, namely Sh. Hari Kirtan Ram was, in fact, reverted to the post of Senior Geographer with effect from the date of issuance of the order i.e. 13.07.2011 and he was, therefore, directed to report for duty at ORGI, New Delhi.

12. He has also drawn our attention to the two orders dated 28.02.2011, whereby several officers – including the four deputationists aforesaid, were promoted on regular basis to the post of Research Officer (Map) and these promotion orders also record the fact that they were regular Senior Geographers at the time of their promotion.

13. Having heard learned counsels and given our thoughtful consideration to the matter, we are of the view that there is no infirmity in the impugned order and the same does not call for any interference. The purport of the Officer Memorandum dated 15.05.2007 is only that the vacancies which arise on account of the incumbents going on long term deputation, are to be considered as clear and regular vacancies. Therefore, to fill up such vacancies, the same method of recruitment is required to be adopted as would be adopted in the case of clear regular vacancies, and not the process

by which ad-hoc vacancies are filled. It is generally accepted that regular vacancies are filled up by holding regular Departmental Promotion Committee (DPC) meeting(s), whereas ad-hoc vacancies are filled, generally speaking, on the basis of seniority. However, the fact that such vacancies (created on account of incumbents going on long term deputation) are filled in the regular manner *per se* does not lead to the consequence of the promotions being made on regular basis. This is because the deputationists invariably hold a lien on their substantive posts, and they could either be reverted back to their substantive post, or even voluntarily they may chose to come back to their substantive post even before the expiry of their periods of deputation. It is precisely for this reason that in the promotion orders issued to the petitioners, they were clearly informed that their promotions were against long term vacancies due to deputation of Senior Geographer to the post of Research Officer (Map), and that they would stand reverted to their substantive post of Geographer on repatriation of Recovery Officer (Map) to the post of Senior Geographer. Consequently, merely because the petitioners were granted promotions against the vacancies which arose on account of the incumbents proceeding on long term deputation, they cannot claim their seniority in the cadre of Senior Geographer from their dates of promotions, and were rightly accorded seniority upon clear vacancies arising in the cadre of Senior Geographer in the promotion quota which, as taken note of hereinabove, are 11.10.2010 in respect of C. Rajeev, and 28.02.2011 in respect of the other three petitioners.

14. We do not find any merit in the submission of the learned counsel for the petitioners that in the present case, the settled seniority has been upset

after many years. Even after the circulation of the final seniority list vide Office Memorandum dated 30.12.2009, representations continued to be made by the private respondents. The fact that they did not assail the seniority list circulated on 30.12.2009 may have disabled them from assailing the same on account of the bar of limitation. However, that did not preclude the respondent department from, on its own, correcting the errors which had crept into the preparation of the seniority list circulated on 30.12.2009. The error in the said seniority list was glaring inasmuch, as, opposed to the cadre strength of 27 Senior Geographers, the said list contains 31 names, which could not have been the case. The said error had crept in on account of the petitioners being treated as substantive Senior Geographers, even though the four deputationists held lien on the said posts and, therefore, were also included in the seniority list. There is nothing placed on record by the petitioners to show that a conscious decision was taken to treat them as substantive Senior Geographers – when the seniority list was circulated on 30.12.2009, contrary to the express terms of their promotion. The petitioners are only seeking to capitalize on an obvious error which crept into the making of the said seniority list. This cannot be permitted.

15. Further, for the reasons stated above, reliance placed on ***Veena Kothavale*** (supra) by the learned counsel of petitioner is misplaced. We also find that if this submission were to be accepted, it would create an imbalance between promotee category and direct recruit category, which cannot be permitted.

16. For the aforesaid reasons, we do not find any merit in this petition and dismiss the same.

VIPIN SANGHI, J.

REKHA PALLI, J.

APRIL 23, 2019

B.S. Rohella

