Central Administrative Tribunal
Principal Bench

O.A.No.3277/2002
with
O.A.No.1/2003

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri R.K. Upadhyaya, Member (A)

New Delhi, this the 4th day of September, 2003

O.A.No.3277/2002:

K.L.Gandhi
Assistant
L S I,
O/o CLC (C)
Labour Ministry
New Delhi. .. Applicant

(By Advocate: Mrs. Rani Chhabra)

Vs.

1. Govt. of India through its
Secretary
Ministry of Labour
Shram Shakti Bhawan
Rafi Marg
New Delhi.

2. The Deputy Secretary
Ministry of Labour
Govt. of India
Shramshakti Bhawan
New Delhi. ... Respondents

(By Advocate: Sh. R.N.Singh)

WITH

O.A.No.1/2003:

Vipin C.Tripathi
UDC D.G.E.&T
Labour Ministry
New Delhi. .. Applicant

(By Advocate: Mrs. Rani Chhabra)

V.

1. Govt. of India through its
Secretary
Ministry of Labour
Shram Shakti Bhawan
Rafi Marg
New Delhi.

2. The Deputy Secretary
Ministry of Labour
Govt. of India
Shramshakti Bhawan
New Delhi. ... Respondents

(By Advocate: Sh. R.N.Singh)

O R D E R (Oral)

By Shri Shanker Raju, Member (J):

As the issue raised in these OAs is founded on an identical question of facts and law, both the OAs are being disposed of by this common order.

2. Applicant, in OA 3277/2002, was selected in Clerical Examination conducted by UPSC and joined as LDC in the Ministry of Commerce on the basis of Central Secretariate Clerical Services (hereinafter called as 'CSCS'). As per Rule 11(3) of the CSCS Rules next promotional post of UDC is to be filled by substantive appointments of persons included in the Select List. As per the Zoning Scheme, additions to the Select List should be made from permanent officers of the concerned lower grade, who satisfied the prescribed conditions. Applicant, who had been working continuously since 1971, was asked to be relieved and joined duty in Ministry of Labour from 3.11.1982 as ad hoc UDC. A draft seniority list was published in 1987 shown the inter-se seniority between the selected persons included in the Select List as UDCs of Ministry of Labour and also transferred from other cadres. Applicant being aggrieved with the seniority position, objected to the seniority list, the matter was referred to DPA&R and a draft seniority list of 1989 was prepared.

3. Respondents have issued another seniority list in 1991 placing the applicants much below and revived their position of 1981 seniority list.

4. Being aggrieved, applicants preferred jointly OA 1006/1991 before this Tribunal.

5. Applicants in OA 1/2003, namely, Sh. V.C.Tripathi joined as LDC on a competitive examination held by UPSC and joined Ministry of Commerce on 30.11.1974. In 1984, he was directed by the Ministry of Commerce being appointed as UDC and was relieved on duties to join Ministry of Labour. In the seniority list circulated in 1987, which was not prepared as per the CSCS Regulations, in the draft seniority list of 1989, correct seniority was assigned instead of implementing the same another seniority list was issued.

6. Provisions of Rules 11 and 12 of CSCS Rules, 1962 and the provisional seniority list drawn up in 1987 for UDCs was subject matter of Civil Appeal No.4995-4996 of 1997 before the Apex Court.

7. In OA 1006/1991 by an order dated 13.4.1998 seeking finalisation of draft seniority list of UDCs of 1989 taking cognizance that the matter is subjudice before the Apex Court, OA was disposed of with direction that whatever benefits eventually flow from the Supreme Court's decision, in CA No.4995-4996/97 shall be made applicable mutatis mutandis to the applicants.

8. Ultimately, on 1.8.2000 seniority list of 1987 and 1991 has been held to be arbitrary and 1989 draft seniority list was directed to be the basis of accord of seniority to the petitioners with all consequential benefits.

9. Applicants submitted representations to the respondents, to restore their seniority as reflected in seniority list of 1989. By an order dated 25.7.2002 in compliance of the decision of the Tribunal on the basis of decision of the Apex Court seniority of the applicant was fixed in the seniority circulated on 26.2.1991. This has relegated the applicants position as reflected in the seniority list of 1989. By an order dated 28.8.2002 though applicants were promoted but the promotion was much after their juniors.

10. On 20.11.2002 respondents had issued seniority list of Assistants Grade of CSS cadre of Ministry of Labour as on 1.11.2002 where the seniority of petitioners before the Apex Court as well as applicants has been fixed. and the applicants were not shown in their correct position as per 1989 list. Respondents by an order dated 10.10.2002 called upon them to give details of the service despite the same lying with the respondents, giving rise to the present OA.

11. Smt. Rani Chhabra, learned counsel for applicants contends that the seniority which has been assigned to the applicants is in pursuance of the decision of the Apex Court and therein the seniority

list of 1991 has been found to be incorrectly prepared against the rules. Accordingly, as per the seniority list of 1989, which has been found to be correct by the Apex Court the applicants should have been assigned seniority and further benefits.

12. In view of the directions of this Tribunal in OA 1006/1991 as the seniority of the applicants is to be assigned with all consequential benefits, mutatis mutandis were placed from the decision of the Apex Court, the assignment of the seniority on the basis of 1991 seniority list is per-se illegal and cannot be countenanced.

13. On the other hand, respondents have filed voluminous reply in both the cases. Their basic plea is that the seniority in 1989 has been wrongly assigned to the applicants de hors the rules. Accordingly, the same has been now rightly corrected, and this is in consonance with the directions of the Apex Court.

14. According to them, the seniority of the applicants has been fixed as per the date of confirmation as LDC as per the provisions of Para 3(2) of the CSCS (preparation of common seniority lists) Regulations, 1971.

15. It is stated that those who were confirmed in the grade of LDC prior to the applicants, have been placed before them. As the applicants have been asked to clarify further points vide memorandum

dated 10.10.2002, they have not responded to, depriving the respondents an opportunity to examine the issue.

16. In the rejoinder applicants have reiterated their pleas.

17. As held by the Apex Court in B.S.Bajwa & Others v. State of Punjab & Others, 1998(2) SCC 523 that seniority cannot be reopened after long lapse of time to unsettle the settled position.

18. In so far as objection as to impleadment of the affected parties are concerned the seniority assigned to the applicants by the respondents is in compliance of the decision of the Apex Court, as well as of the Tribunal supra wherein directions issued by the Apex Court were to be applied mutatis mutandis to the cases of the applicants. Accordingly, as a principle, the applicants are claiming seniority in pursuance of directions of Apex Court, the aforesaid objection cannot be sustained. However, assuming that the persons are likely to be affected would be taken care of by issuing a notice to them before fixing their seniority.

19. In so far as the seniority assigned to the applicants is concerned, on perusal of 1989 seniority list, their position was much above what has been fixed by the respondents vide their impugned orders.

20. Apex Court while dealing with the seniority of UDCs, over turning the decision of the Tribunal made by the seniority list of 1991, has been held to be in accordance with relevant rules and instructions.

21. Apex Court observed that 1989 seniority list has been issued with due consultation with Department of Personnel and as well as Rule 25 of the CSCS Rules which is a provision of interpretation, and in case of any doubt, the matter shall be referred to the Central Government whose decision shall be final. Accordingly, on the decision of the Government, seniority list of 1989 has attained finality. The Apex Court was of the view that alteration of seniority of 1989 without any fresh advice from DoPT and in absence of denial of assertion made by the appellant, the seniority list of 1991 has been set aside.

22. As the respondents' Government before the Apex Court failed to indicate any reasons for altering the seniority drawn in 1989, the same held to be arbitrary exercise of power.

23. In view of the above, seniority of the applicants should have been assigned to them, on reconsideration, in view of the directions of the Apex Court as well as Tribunal supra taking into consideration the seniority position of the applicants in 1989 list, the list of 1991 has already been set aside by the Apex Court.

24. We also find that objection putforth by the respondents is a reiteration of their contentions which have already been rejected by the Apex Court.

25. Calling further particulars, when the applicants particulars are with the respondents, has no logic or rational. In the result, the seniority assigned to the applicants is not in accordance with the decision of the Apex Court which has to be mutatis mutandis applicable to the cases of the applicants. Accordingly, we have no hesitation to hold that the seniority assigned to the applicants is not correct.

26. In the result, OA's are allowed. Impugned memorandums dated 25.7.2002 and 28.8.2002, 10.10.2002 and 2.12.2002 are quashed and set aside. Respondents are directed to assign the seniority of 1989 in respect of the applicants and to place them in the same position as shown in the seniority list of 1989 with all consequential benefits. This should be complied with within three months from the date of receipt of a copy of this order. No costs.

27. Copy of this order also be placed in the OA No.1/2003.

(R.K.Upadhyaya)
Member (A)

S. Raju
(Shanker Raju)
Member (J)

/rao/