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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1402/1999

New Delhi, this the 25th day of October, 2002

Hon'ble Shri M.P. Singh, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

P.P. Relan
M-22, Sham Nagar
New Delhi

.. Applicant

(By Shri M.L.Chawla, Advocate)

versus

Union of India, through

1. Secretary
Department of Telecommunication
Sanchar Bhawan, New Delhi
2. Secretary
Dept. of Posts
Ministry of Communications
Dak Bhawan, New Delhi
3. Secretary
Department of Personnel & Training
North Block, New Delhi .. Respondents

(By Shri D.S.Mehandru, Advocate)~

ORDER

Shri M.P. Singh, Member(A)

By filing the present OA, applicant seeks directions to respondents to:

- (i) Assign correct seniority to him, firstly when he was promoted from LDC to UDC and secondly from UDC to Assistant with all consequential benefits;
- (ii) promote him by virtue of revised/refixed seniority as Assistant by virtue of which he is becoming entitled to promotional post of Section Officer from the date his junior was promoted; and
- (iii) grant arrears of pay and allowances in the event applicant becoming entitled to promotion from the date his junior Shri A.K.Chadha was promoted with 18% interest on them.

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2. Briefly stated, it is the case of the applicant that he joined service as LDC on 20.3.67 with the respondent-department after qualifying successfully in Clerks Grade Exam of 1966. He was promoted as UDC on ad hoc basis w.e.f. 1.3.1980 and on regular basis w.e.f. 7.4.1980. According to the applicant, his seniority in the post of UDC should have been fixed in ratio of 3 : 1 in terms of DoPT OM dated 16.10.79. He came to know only on 1.11.85 from the seniority list that his name had appeared at Sl.No.5 with 1983 UDC exam instead of 1980 Exam when he was actually promoted as UDC on 1.3.80 on ad hoc basis and on 7.4.80 on regular basis. Assigning of incorrect seniority to him without proper intimation had resulted in great hardship, mental agony and irreparable financial implications. In the select list of Assistants in the year 1989 and 1991 circulated on 1.10.97, his name was shown as selectees of 1991 against Sl.No.7. By another order dated 1.10.97, seniority was said to have been revised and updated as on 1.10.97 by virtue of which his name was shown against Sl.No.95 against a selectee of 1991. The applicant was allotted to the cadre of Deptt. of Telecommunication on account of bifurcation of the cadre of Ministry of Communications cadre, which was based on an option exercised by him while working on the post of Assistant. He was taken in Deptt. of Telecommunication in the same capacity w.e.f. 1.3.96 vide order dated 15.11.96.

3. According to the applicant, when he was promoted as Assistant in CSS cadre w.e.f. 14.10.85 his name was included in the select list of 1991 whereas he should

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have been included in the select list of 1989. He has further stated that by including his name in the select list of 1989, he should have been assigned the seniority with the Direct Recruits of 1989 at a place somewhere in between Sl.No.27-67 depending upon his actual length of service as Assistant as against his other colleagues of the same year. In other words, his name should have appeared above Shri A.K.Chadha (S.No.44) and below Shri Jasbir Singh(SC)(Sl.No.43). Applicant represented against the seniority list within one month of its circulation but the respondents did not take any decision on his representation. Thereafter, he made an appeal to the Communications Minister on 13.8.98 but he had not received any reply so far. Aggrieved by this, he had filed the present OA seeking the aforesaid reliefs vis-a-vis challenging the inter-se seniority list of direct recruit and promotee Assistants vide communications dated 1.10.97.

4. Respondents have contested the application in their reply and have stated that the grievance of applicant relates to the year 1980 when he was promoted as UDC on long term basis and not on regular basis. But the said grievance was raised by him for the first time in the year 1993 after a lapse of 12 years. It is stated by the respondents that during the years 1992-93, DoPT nominated about 30 UDCs from the departments/Ministries under the zoning scheme for inclusion in the year 1989 and 1990 select list of Assistants of the Ministry of Communication cadre. Most of those officials belong to UDC select list of 1980, 1981 and 1982 of the Ministries/ departments from where they were nominated.

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5. The applicant who entered into service as LDC in the Ministry of Communications w.e.f. 20.3.67 and was working as UDC, is aggrieved by the nomination of the UDCs from other cadres by DoPT for appointment as Assistants in this cadre on the ground that they were junior to him in the grade of LDC. Though appointments and promotions to the decentralised grades of Assistants and Section Officer are made by the respective Ministries, overall management of these grades is done by DoPT(CS Division), which also fixes the zone for promotion to the decentralised grade on long term basis and for inclusion in the select list. The long term promotion scheme has been dispensed ^{with} since 1988. The officials who come within the zone fixed by DoPT are promoted by the Ministries to the extent vacancies are available in the respective departments and options are called for from the remaining officials for nomination to cadres where surplus vacancies exist. Names of optees for outside cadres are intimated to DoPT who maintain a Central Panel and from which allocations are made by DoPT to different cadres. Officials who do not opt for nomination to other cadres continue to work in the lower grade in the same department and they are included in the select list of subsequent years depending on the availability of select list vacancies in the department. Sometimes, the non-optees wait for years together for inclusion in the select list of the department in which they are working. Because of this, they lose seniority in the grade and when select list zones for the next higher grade are fixed by DoPT the disparity in seniority becomes more evident. In the year 1980, DoPT revised the

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zone for promotion to UDC grade on long term basis and for inclusion in the select list 104 LDCs from the Communications cadre were covered in the zone for promotion on long term basis. Applicant was one among them and figured at Sl.No.27. He was, therefore, promoted as UDC on long term basis w.e.f. 7.4.80. While issuing orders, the respondents did not explicitly mention that these officers were promoted on long term basis. Instead the order stated that they were promoted on regular basis which gave room to the applicant to consider his promotion ^{for} inclusion in the select list of 1980. On the other hand, the applicant having been covered in the long term zone clearly indicates that he was not covered in the select list zone of 1980. Consequently, he was included in the 1983 UDC select list due to which he was not eligible for inclusion in the select list of Assistants for the year 1989 and 1990.

6. Applicant's case was referred to DoPT in January, 1994 stating all the facts of the case. DoPT opined that when the number of vacancies in a particular select list year vary from cadre to cadre, disparities in promotions in different cadres are bound to occur. DoPT further stated that notwithstanding the merits of the case, the claim of the applicant cannot be considered at this stage in view of inordinate delay in raising the matter after more than 10 years. At the insistence of the applicant, the matter was again taken up with DoPT who observed that vide OM dated 7.4.80, the LDCs upto Sl.No.2280 were made eligible for promotions against long term vacancies. Since name of applicant was at Sl.No.773, he was eligible



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only for long term appointment in 1980 and not for inclusion in the select list for the year 1980. In view of this, the claim of the applicant is not acceptable.

7. According to the respondents, they bring out seniority list every year which is circulated amongst staff without any prejudice and discrimination. Applicant was shown against the select list of 1991 only because he was included against select list of 1983 of UDCs grade which ultimately enabled him to be included in the select list of 1991 for Assistants grade. He was never included in select list of 1980 of the UDCs. Applicant is trying to confuse this Tribunal by producing the seniority list of the year 1997. Since he was included in 1983 UDC select list, he has rightly been placed in the 1991 select list of Assistants and also rightly been placed in the inter-se seniority list of 1991. In view of this position, OA being without any merit be dismissed.

8. We have heard the learned counsel for the parties and perused the records.

9. During the course of the arguments, the learned counsel for the applicant was reiterating his contention that because of the inaction of the respondent-department, applicant's juniors have become seniors and they have risen to the next level of Section Officer much earlier to applicant, while he has been discriminated in the matter of seniority vis-a-vis his promotion thus attracting violation of Articles 14 and 16 of the

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Constitution. However, respondents have denied this contention in view of the submissions made by them in their detailed reply, which are discussed above.

10. We have carefully gone through the department file relating to seniority list of UDCs. A perusal of the same reveals that the case of the applicant was considered by DoPT in depth twice from all angles and ultimately DoPT rejected the claim of the applicant on the ground that vide OM dated 7.4.80, the LDCs upto Sl.No.2280 were made eligible for promotion against long term vacancies. Since the name of the applicant was at Sl.No.773, he was eligible only for long term appointment in 1980 and not for inclusion in the select list for the year 1980. We find that a mistake was committed by the respondents by issuing the order of promotion of the applicant from 7.4.1980 on regular basis instead of on long term basis. We also find that the respondents have rightly included the applicant in the ^{1983 up to} select list keeping in view his position in the seniority list. That apart, the applicant had raised his claim after such a long delay and in the meantime he had retired from service.

11. It is a settled legal position that seniority once finalised cannot be allowed to be challenged after a long gap of several years. It is also a settled legal position that repeated representations would not extend the period of limitation. In the instant case, the applicant is challenging the seniority assigned to him in the grade of Assistant on the basis of select list of the year 1991. That apart he has also chosen to challenge the seniority assigned to him when he was promoted as UDC

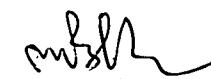
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as far back as 1980. Though the applicant has filed MA for condonation of delay in filing the present OA, we are not convinced with the grounds taken by him in the MA. Therefore MA filed by him is liable to be rejected. The present OA is badly hit by laches and delays. Even on merits, applicant has no case in view of the detailed reasons furnished by the respondents in paras 4 to 7 above.

12. Therefore, for the reasons recorded above, the present OA fails and is accordingly dismissed. No costs.

S. Raju

(Shanker Raju)
Member (J)


(M.P. Singh)
Member (A)

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