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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O. A. NO. 1953/1999

New Delhi this the 13th day of February, 2001.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI S.A.T.RIZVI, MEMBER (A)

P. K. D. Nag
S/o Shri R.K.D. Nag
R/o M-38 Rama Krishna Vihar
Plot No.29, Patparganj
I.P. Extn. Delhi- 110092. Applicant

(By Advocate Shri Shyam Babu)

-versus-

1. Union of India through
Secretary (R)
Cabinet Secretariat, Room No.7
Bikaner House Annexe
Shahjahan Road
New Delhi.
2. Shri S.P.K. Singh, PS
Cabinet Secretariat
Room No.7
Bikaner House Annexe
Shahjahan Road
New Delhi.
3. Shri T.R. Ramachandran, PS
Cabinet Secretariat
Bikaner House Annexe
Shahjahan Road
New Delhi. Respondents

(Shri Madhav Panikar, Advocate for
Respondent No.1 and Shri N.Ranganathaswamy,
Advocate for Respondents 2 & 3)

O R D E R (ORAL)

Shri S.A.T.Rizvi, Member (A):-

Aggrieved by the Memorandum dated 17.5.1999, at
Annexure-A whereby the respondent numbers 2 & 3,
respondent numbers 2 & 3, namely S/Shri S.P.K. Singh
and T.S.Ramachandran have been given seniority above
that of the applicant, the applicant has filed this OA
on 6.9.1999.)

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2. We have heard the learned counsel on either side and have perused the material placed on record.

3. The learned counsel appearing for the applicant contends that since the applicant was appointed in R&AW at the time of the initial constitution of the service, it will not be possible to declare the aforesaid respondents as senior to him in accordance with the relevant rules. The learned counsel relies on Rule 115 of the Research and Analysis Wing, RCS Rules, 1975 reproduced at pages 5 to 6 of the OA which insofar as is relevant for our purpose provides as follows:-

"Rule 115. Seniority: (1) The seniority of the personnel absorbed in each grade of each sub cadre at its initial constitution shall be determined in the manner specified in sub rule (2) and (3).

(2) The personnel whose seniority is governed by the orders which were in force immediately before the issue of the Govt. of India, Ministry of Home Affairs Office Memo No. 9/1155-RPS dated 22.12.1959, shall continue to retain their seniority in accordance with those orders.

(3) The personnel whose seniority is governed by the orders contained in the O.M. of Ministry of Home Affairs referred to in sub rule 2 shall have their seniority fixed on the basis of their confirmation in the respective grades either on absorption in the R&AW or in the Department or Service to which they belonged immediately before such absorption, whichever is earlier.."

4. That the applicant was appointed in the Service on 1.2.1983 which is the date of initial constitution of the service, is not disputed. However what is disputed by the learned counsel for the

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~~respondents~~ is that having missed the bus as on 1.2.1983, they (respondents) cannot claim seniority under sub-rule (3) of the same Rule 115 which deals with initial constitution of service. It is contended by the learned counsel appearing for the respondents that in accordance with sub rule (3) of Rule 115 reproduced above, it is possible to refix the seniority of others also who were not absorbed on the date of initial constitution of service by referring to the dates on which such others might have been confirmed in the department or service to which they might have belonged immediately before such absorption. We are inclined to accept this position. The maintenance phase-related Rule will, according to us, apply to those only who are freshly recruited after the service has been initially constituted and will not apply to those who were already in service on the date of initial constitution of service and whose seniority etc. remained to be finally determined or else such seniority ^{having been} ~~once~~ fixed is required to be reviewed in accordance with the relevant Rules.

5. According to the learned counsel, the respondent No.2, namely Shri S.P.K. Singh was confirmed in his parent department, namely All India Radio with effect from 5.3.1974 whereas the other respondent, namely Shri T.R.Ramachandran was confirmed in his parent department, namely Karnataka Police with effect from 4.4.1975. According to him, the aforesaid respondents could not be confirmed earlier by their respective departments owing to administrative

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lapse/inadherence and the same has since been rectified by their parent departments.

6. The result of confirmation of respondents 2 & 3, as stated in the previous paragraph, is that they have gained in seniority and have been placed at S1.Nos.63A and 63B respectively whereas the applicant stays on at S1.No.66. The applicant had represented against the fixation of seniority of the respondents, as above, by filing representations on 17.9.1997 and again on 23.9.1997. These were considered by the respondents and were rejected by an order contained in the Memorandum dated 10.12.1997 thus settling the matter once and for all.

7. The learned counsel appearing for the respondents have also raised the issue of limitation having regard to the date (10.12.97) of the aforesaid Memorandum by which the representations filed by the applicant were rejected by the respondent authority. The learned counsel for the applicant however stresses that limitation cannot be counted from 10.12.1997, the date of the aforesaid rejection order but instead from 17.5.1999 when the respondents, after further consideration of the matter in the light of the yet one more representation filed by the applicant on 17.12.1997, once again rejected the applicant's claim of seniority over the aforesaid respondents. We have perused the aforesaid impugned order and find that, before rejecting the applicant's representation, the matter was referred to the Ministry of Law and

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Justice, Department of Legal Affairs for their opinion and that the representation dated 17.12.1997 filed by the applicant has been rejected only after the Department of Legal Affairs had opined that, according to them, there was no illegality or impropriety in the fixation of seniority of the aforesaid respondents. We are prepared to go along with the argument advanced by the learned counsel and are, therefore, inclined to take the view that since the respondents have reconsidered the matter on merits, even if they have done so again, the bar of limitation will not apply. The aforesaid plea of the learned counsel for the respondents is thus rejected.

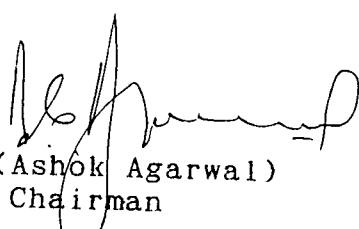
8. In the background of the aforesaid discussion, we conclude by holding that there is no force in the argument advanced by the learned counsel for the applicant in respect of the claim of seniority of the applicant over and above the seniority given by the respondent authority to private respondents 2 & 3.

9. The OA is accordingly dismissed. There will be no order as to costs.



(S.A.T. Rizvi)
Member (A)

/sns/



(Ashok Agarwal)
Chairman