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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 302/99

New Delhi, this the 5th day of April, 1999

HON'BLE SHRI S.R.ADIVE, VICE-CHAIRMAN (A)
HON'BLE SHRI T.N. BHAT, MEMBER (J)

Smt. Leela Rawat,
w/o Shri B.S.Rawat,
H-7, Priya Apartment,
'D' Block, Vikaspuri,
New Delhi.Applicant

(By Advocate: Shri P.T.S. Murthy)

Versus

Union of India through

1. The Secretary to the Govt. of India,
Ministry of Finance,
North Block, New Delhi.
2. Director,
Directorate of Preventive Operations
Customs and Central Excise,
4th Floor, Lok Nayak Bhawan,
New Delhi.
3. Smt. Poonam Anchal, UDC,
Office of the Directorate of
Preventive Operations, Customs &
Central Excise, 7th Street, Shanti Niketan,
Shopping Centre,
New Delhi-110 021.Respondents

(By Advocate: Shri R.R.Bharti for respondents no. 1 & 2
Shri G.S.Lobana for respondent no. 3)

O R D E R

Hon'ble Shri T.N.Bhat, Member (J)

The applicant and respondent no. 3, namely,
Smt. Poonam Anchal, qualified in the Clerks Grade
Examination in the same batch in the year 1981 and the
applicant joined on 27.4.1983, whereafter she came to be
promoted as U.D.C. on 8.9.1993 and further promoted as
Assistant on 14.9.1998. Apprehending her reversion from
the post of Assistant in pursuance to the order dated

5.4.99.

25.1.1999 passed by the Directorate of Preventive Operations, Customs & Central Excise, whereby respondent no. 3 has been placed above the applicant in order of seniority on the ground that in the merit list of Clerks Grade Examination, 1981 the said respondent had secured a higher position than the applicant, the applicant has filed this O.A. The applicant relies upon the seniority list issued on 22.4.1997, as at Annexure -I to the O.A., which became final when no objections were received by the due date relating to that seniority list. It is further contended by the applicant that having been treated senior all along her seniority cannot now be reopened after more than 15 years when the question of seniority had already been settled.

2. Respondents have in their separate replies contended that respondent no. 3 ought to have been shown as senior to the applicant in the seniority list and should also have been granted promotion to the grade of UDC and Assistant before applicant. According to respondent no. 3 the applicant's merit position in the Clerks Grade Examination held by the Staff Selection Commission in the year 1981 was 114 steps below the said respondent.

3. We have heard the arguments of Shri P.T.S.Murthy, counsel for the applicant, Shri R.R.Bharti, counsel for respondents no. 1 & 2 and Shri G.S.Lobana, counsel for respondent no. 3, and have also perused the material on record.

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4. The fact that in the examination held by the Staff Selection Commission for initial recruitment to the post of L.D.C. respondent no. 3 had secured a higher position in order of merit than the applicant is not seriously disputed. But that was nearly 16 years ago. In the meantime, as already indicated, a tentative seniority list, which became final later, was issued by the respondents in the year 1997 and in that seniority list the applicant was shown one step higher than respondent no. 3. Prior to that date the applicant had been promoted to the grade of UDC on 8.9.1993 while promotion was granted to respondent no. 3 to the grade of UDC only on 17.7.1996. There is nothing on record to show that respondent no. 3 had made any representation within a reasonable time of the issuance of the seniority list or after the date of promotion of the applicant to the grade of UDC and later to the grade of Assistant. Although it is stated by respondent no. 3 in her counter that she represented to her Directorate but no date has been given of such a representation. The official respondents have also not stated as to when had respondent no. 3 made her first representation. Therefore, there is much merit in the contention of the applicant that respondent no. 3 had slept over her right for more than a decade and in the meantime the applicant's position in the seniority list became a settled matter. The action now sought to be taken by the respondents would unsettle the said settled position. That apart, respondents also do not seem to have considered it appropriate to give the applicant an opportunity of being heard before down-grading her seniority vis-a-vis respondent no. 3.

hjm

5. The Apex Court has held in P. Sadashiv Swamy vs. State of Tamil Nadu (AIR 1974 SC 2271) that where a Government servant slept over the promotion of his juniors over his head for 14 years his writ petition filed in the High Court would not be allowed. Similarly, in K.R.Mudgal and Ors. vs. R.P.Singh & Ors (AIR 1986 SC 2086) the Apex Court has held that satisfactory service conditions postulate that there should be no sense of uncertainty amongst the Government servants created by the writ petitions filed after several years and that Government servant who is appointed to any post should ordinarily be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity after a period of 3 or 4 years of his appointment. It has been further held that a challenge to seniority after a lapse of a long period would have the effect of causing insecurity to an employee who has enjoyed the fruits of seniority for such a long time. Conversely, a government employee who has enjoyed the benefits of higher seniority position for a long period can certainly come to the Court/Tribunal in defence of his seniority when the same is sought to be disturbed after a lapse of more than a decade, in this case more than 15 years.

6. Furthermore, as already mentioned, the order dated 25.1.1999 by which the seniority of the applicant has been down-graded vis-a-vis respondent no. 3 herein clearly appears to have been issued without giving any show cause notice to the applicant. For that reason also the said order cannot be allowed to stand.

By Mr.

7. For the foregoing reasons this OA is allowed, the impugned order dated 25.1.1999 placing respondent no. 3 above the applicant in the seniority list is quashed and the respondents are directed to maintain the seniority position of the applicant as it existed prior to the issuance of the aforesaid order.

There shall be no order as to costs.

15.4.99
(T.N.Bhat)
Member (J)

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(S.R.Adige)
Vice-Chairman (A)