

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1757/98

New Delhi this the 2nd day of November, 2000.HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN
HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (ADMNV)

1. T.R. Sethi,
S/o late Sh. Dinnath Sethi,
R/o G-27/235, Sector-III,
Rohini, Delhi.
2. Sh. K.C. Anand,
S/o Sh. B.R. Anand,
R/o B-123, Nirman Vihar,
Delhi-92.
3. Sh. F.C. Makheeja,
S/o Sh. Nev Raj Makheeja,
R/o 241, Akash Darshan Apartments,
Mayur Vihar Phase-I,
Delhi-91.

...Applicants

(By Advocate Mrs. Meera Chhibber)

-Versus-

1. Union of India through
D.G. All India Radio,
Akashwani Bhawan,
Parliament Street,
New Delhi.
2. Station Director,
All India Radio,
Parliament Street,
New Delhi.
3. Sh. Yashpal,
Administrative Officer,
All India Radio, H.P.T.
Kingsway Camp, Delhi-7.

...Respondents

(By Advocate Shri Gajender Giri)

O R D E RJustice V. Rajagopala Reddy, Vice-Chairman (J):

The only question that has to be decided in this case is whether the seniority of the applicants who are Administrative Officers in All India Radio could be upset, without even cancelling the order of promotion and could they be shown as juniors in the lower grade of Head Clerk/Accountant and thus alter not only the seniority but also the status?

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2. The facts of the case are as under:

2.1 The applicants initially joined as UDC/Stenographer Grade II during 1972 and 1976 in Delhi Zone. R-3, a reserved candidate joined as UDC subsequent to the applicants on 24.10.76 in the same Zone. The next posts are that of the Head Clerk/Accountant and Senior Storekeeper. The method of recruitment is 50% by promotion from amongst the Clerks Grade II and Clerks Grade I/Stenographers with a minimum of five years of service in any of the grades on the basis of a qualifying departmental examination and the remaining 50% on the basis of seniority-cum-fitness from amongst Clerk Grade I/Stenographers with a minimum of 12 years of service. All the applicants and respondent 3 took the qualifying examination in 1983 and all the four had qualified in the same year. But R-3 being of a reserved category, got accelerated promotion in 1984, whereas the applicants were promoted in 1986 and 1987. A provisional seniority list was published in 1991 where R-3 was shown as senior to the applicants in the posts of Head Clerk/Accountant. But subsequently the department had corrected the erroneous seniority given to R-3 as per the ratio in Union of India v. Veer Pal Singh Chauhan's case, JT 1995 (7) SC 231 showing the correct position of seniority of the applicants vis-a-vis R-3 in the final seniority list published in October, 1991. In that list the R-3 was rightly shown junior to the applicants and the same was not challenged by R-3. The same position of seniority was maintained in the seniority lists published on 29.7.93 of Head Clerks/Accountants/Stenographers where the applicants have been shown above Yashpal at serial No.18, 14 and 19 and R-3 was shown at serial No.20. The next promotional post was

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that of Administrative Officer. The Head Clerks/ Accountants/Senior Stenographers of Doordarshan with 7 years regular combined service in the grade are eligible for promotion to the said post. An eligibility list was issued in September, 1995 and in that list also the applicants were shown above R-3. All the applicants and R-3 were promoted as Administrative Officers as per the eligibility list on ad hoc basis on 2.6.96. By order dated 31.11.96, they were promoted as Administrative Officer w.e.f. 31.10.96 on regular basis. Thus the seniority of the applicants vis-a-vis Yash Pal had become settled and final. However, surprisingly their seniority has been altered in the seniority list published on 25.3.98/7.4.98 of Head Clerks/Accountants/Senior Storekeeper as on 1.12.94 (Delhi Zone) with retrospective effect in their lower grades and the applicants' seniority has been brought down and showing them as juniors to R-3. Their representations have also been rejected. In the absence of any other remedy the applicants approached the Tribunal in this OA.

3. The official respondents filed counter and contested the case. R-3 remained ex parte. The stand of the respondents is that by mistake the applicants were shown right from October 1991 as seniors to R-3 and other SC category promotees though they were rightly shown as juniors in the provisional seniority list of May 1991 by giving a wrong interpretation of law. Since R-3 and other SC employees got accelerated promotion they are seniors to the applicants who were promoted later than SC promotees who were promoted against the vacancies of 1984 would remain senior to promotees of general category against the vacancies of 1986, a later year in the promoted posts irrespective of their position of seniority in the feeder

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cadre. That was the ordinary interpretation prevailing during the relevant years until a change in law was brought about by Veerpal Singh Chauhan's case in 1995, which had only a prospective operation. Thus the mistake occurred was being corrected in the impugned order.

4. Two questions arise for consideration in this case; (i) whether the R-3 and other SC category employees who got accelerated promotion though they are juniors to the applicants, would remain seniors to the applicants (general category) who were promoted later, in the promoted posts? and (ii) whether settled position of seniority could be unsettled without notice to the affected employees?

5. Taking the first question first, we find no difficulty in answering it in the positive. R-3 was promoted in 1984 because of his SC status against a reserved vacancy, whereas the applicants in 1986. As the law then stood a promotee against a vacancy of an earlier year remain senior irrespective of his position of seniority in the feeder cadre, to a promotee against a vacancy of a later year. His seniority in the feeder cadre would not be protected in the promoted post. Thus, though R-3 was rightly shown in May 1991 seniority list as senior to the applicants, but in October 1991 seniority list he was shown as junior to the applicants. It is clear from the counter that he made representations against the said seniority list but they were rejected. It is true, as contended by the learned counsel Mrs. Meera Chhibber that as per the ratio of Veerpal Singh Chauhan's case, the seniors in the feeder cadre would regain their seniority though they were promoted later than the SC category employees who got promotion on account of their reservation. But it should not be forgotten that the ratio

of the above case had only a prospective operation w.e.f. 1995 and the law stood earlier and the seniority fixed earlier as per the law prior to it, was not to be affected. Thus, it is clear that R-3 was wrongly shown as junior to the applicants right from October, 1991 till 1996, when they made a representations against SC/ST Commission and at whose instance the seniority was revised. We do not find any infirmity in the impugned seniority lists.

6. The second question: We may have to agree that settled position of seniority should not be unsettled. Learned counsel also cited various decisions of the Apex Court in support of this proposition. But as stated in the counter, the applicants never raised objection to the seniority lists from 1986 to 1991 though they were shown as juniors to R-3 and other SC promotees. By mistake the Zonal Director changed the seniority in October, 1991 and since then it continued. The representations of R-3 were rejected without proper investigation. The case was re-opened on their representation to SC/ST Commission and is now set right. Law is too well settled that it is always permissible to correct administrative errors. But it should, no doubt, ^{be done when} be done after due notice. But the question of want of notice pales into insignificance at this stage after a lapse of two years and that too when the reply is filed, the applicants are heard and the action was justified. It is also brought to our notice in the reply that though provisional revised seniority lists were issued on 18.11.97 calling for objections, the applicants did not raise any objection till 9.12.97 hence the proposed revised lists were made final and the impugned lists were issued. Hence, the applicants cannot make any grievance to the impugned orders on the ground of want of notice.

7. This is a case where the S.C. category employees were put to injustice inasmuch as their rightful seniority was deprived as they were shown as junior to the promotees promoted two years later to them. They are entitled for restoration of seniority, as their representations were illegally rejected. In fact the applicants having not raised any objection to the seniority lists of 1986 to 1991 cannot find fault with R-3 for the delay on their part. R-3 did make representation but they were wrongly rejected.

8. We do not find any warrant to interfere with the impugned orders. The O.A. fails and is dismissed. We do not order costs.

[Signature]
Govindan S. Tampi
Member (A)
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[Signature]
(V. Rajagopala Reddy)
Vice-Chairman (J)