

Central Administrative Tribunal
Principal Bench: New Delhi

(15)
OA-2437/95

New Delhi this the 12th day of October 1999

Hon'ble Mr. Justice, V. Rajagopala Reddy, VC (J)
Hon'ble Mrs. Shanta Shastry, Member (A)

Shri Alok Bhatnagar,
S/o late Shri J. Bhatnagar,
R/o 96/11, Pushp Vihar-I,
M.B. Road, New Delhi-110 017

...Applicant

(By Advocate: Shri Surinder Singh)

Versus

1. Union of India- through
The Secretary, Min. of Defence,
South Block, New Delhi-110 011
2. The Director General , *Res & Serv*
DRDO Min. of Defence,
South Block, New Delhi-110 011
3. The Director,
INMAS
DRDO Min. of Defence,
Timarpur, Delhi-110 054
4. The Secretary,
DPC II (INMAS/DIPAS),
C/o DIPAS
DRDO, Min. of Defence,
Timarpur, Delhi-110 054.
5. The Director,
C/o DIPAS
DRDO, Min. of Defence,
Timarpur, Delhi-110 054.
6. Ms. Renuka Ganju,
C/o Director, INMAS,
Timarpur, Delhi-110 054.
7. Ms. Krishna Chhuttani
C/o Director, INMAS,
Timarpur, Delhi-110 054.
8. Ms. Joginder Dey
C/o Director, INMAS,
Timarpur, Delhi-110 054.
9. Shri R.K. Dubey,
c/o Director, INMAS
Timarpur, Delhi-110 054.
10. Shri Anil Kumar Babbar
C/o Director, INMAS,
Timarpur, Delhi-110 054.
11. Shri Surender Singh
C/o Director, INMAS
Timarpur, Delhi-110 054.

CASE

12. Shri R.P. Singh
C/o Director, INMAS,
Timarpur, Delhi-110 054.

13. Shri Krishan Swaroop,
C/o Director, INMAS
Timarpur, Delhi-110 054.

14. Shri K.C. Gogna
C/o Director, DIPAS,
DRDO, Min. of Defence,
Timarpur, Delhi-110 054.

15. Shri R.L. Babbar,
Ex-SAO, INMAS/DIPAS
A-43, New Gupta Colony,
Delhi-110 009.

(By Advocate: Shri K.R. Sachdeva)

... Respondents

ORDER (Oral)

By Reddy, J.-

Heard the counsel for the applicant and the respondents.

2. The applicant was originally appointed as Junior Scientific Assistant Grade II (JSA-II) on 11.7.75 in the Ministry of Defence. He was then promoted as Junior Scientific Assistant Grade-I (JSA-I) w.e.f. 6.10.1980.

3. Aggrieved by the seniority list published on 4.12.84 the applicant filed a suit in the Court of Senior Sub-Judge, Delhi which stood transferred to the Tribunal consequent upon coming into force of the Administrative Tribunals Act, 1985 and registered as TA-369/86.

4. On the basis of the ratio of the Constitution Bench Judgment in Direct Recruits Class-II Engineering Officers Association Vs. State

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of Maharashtra JT 1990 (2) SC 264, the Tribunal held that the applicant was not entitled to count his service from 7.4.1980 and his seniority for all purposes should be counted only from the date of the regular appointment viz. 6.10.1980. Since the above seniority list was provisional and final seniority list was yet to be prepared, the question whether the 'quota' and 'rota' should be followed was also considered and the Tribunal held that while finalising the seniority list the respondents should keep in mind the principles decided by the Supreme Court in the above case. Accordingly the OA was disposed of directing the respondents to finalise the seniority list, after considering all the representations and objections received and in the light of the observations made in the course of the judgment.

5. The respondents thereafter, purporting to comply with the directions given by the Tribunal, passed in the Impugned order dated 20.7.93 finalising the seniority list of JSA-I in conformity with the provisional seniority list dated 4.2.84. The applicant aggrieved by his seniority as shown in the order passed by the respondents filed the present OA.

6. It is contended by the learned counsel for applicant that the 'quota' 'rota' rule as contemplated under the Recruitment Rules cannot be applied because it was found impossible to apply the 'quota' and 'rota' rule. It was also contended that the seniority shown in Annexure A-2 as on 8.7.83 in respect of the applicant should not have been

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altered. It was further contended that the seniority list was not in accordance with the directions issued by the Tribunal in the OA and it was not prepared in accordance with the principles laid down by the Supreme Court in the Direct Recruits case (supra). Learned counsel for respondents, however, refutes the contention and submits that the provisional seniority list dated 8.2.84 as well as in the final seniority list published dated 20.7.93 (Annexure A-5) were properly prepared strictly in accordance with the directions issued by the Tribunal in the earlier OA.

7. We have carefully examined the rival contentions. The applicant principally relies upon the seniority list (Annexure A-2) prepared for JSA-I as on 8.7.83. In the said seniority list the applicant was shown at Sl. No. 33. In the seniority list of 1984 the applicant was shown at Sl. No. 66. Thus according to the applicant, the applicant's seniority has been brought down by more than 31 Nos. He, therefore, filed the suit which was transferred to this Tribunal. Considering that the seniority list was only a provisional one, the Tribunal directed to prepare the final Seniority List in accordance with the ratio laid down in Direct Recruits Case (supra). The T.A. was accordingly disposed of.

8. Accordingly in pursuance of the said directions the respondents passed the impugned order, however, conforming to the provisional seniority list. It is the case of the respondents that the

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applicant and other promotees have been promoted without following the Recruitment Rules and applying the "quota" of 2/3 by promotion and 1/3 by Direct Recruits, as per the recruitment rules. Hence rectifying the mistake committed earlier by the respondents, and after following the "quota" and "rota" rule placed the employees in their proper place in the present seniority list. By following the "quota" and "rota" rules the place of the applicant has now been shown in the impugned seniority list at Sl. No. 66.

9. We have perused the impugned seniority list. In the last column i.e. Remarks column, we find that the date of appointment of each of the employee was shown correctly and it is also shown whether they were promoted as a promotees or the Direct Recruits. It is also seen that the quota of 2/3 promotees and 1/3 Direct Recruits has been followed.

10. Thus the persons who have been appointed by Direct Recruitment subsequent to promotees are allotted the places in between the dates of promotion of the promotees, this principle in our view is in accordance with the decision of the Constitution Bench of the Supreme Court in Direct Recruits case and also in accordance with the directions given by the Tribunal in the earlier OA. It is strenuously contended by the learned counsel for applicant that as the "quota" and "rota" rule has failed and that it was found impossible to follow the Recruitment Rules to apply the "quota" "rota" rule.

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the promotions made in respect of the promotees including the applicant in accordance with their dates of promotion should not have been disturbed by the respondents. It is true that prior to the preparation of the seniority list of 1984 which was produced before the Tribunal in the earlier OA and also the present impugned seniority list, the recruitment rules have not been followed. Thus in the seniority list dated 8.7.83 the employees were promoted on the respective dates of promotion and direct recruitment.

11. It is admitted that the Recruitment Rules were in force from 1968. Only in the year 1984, the promotions were made in accordance with the rules following the 'quota and 'rota' rules. We do not agree with the contention that the 'quota' and 'rota' rules have been collapsed in the present case. It is only a case of promotions irrespective of the 'quota' and 'rota' rules. In the Direct Recruits case it was held that in Principle (D) "If it becomes impossible to adhere to the existing rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down". The only material that is placed before us that the promotions have been made without following the quota rule was from 1980. Even here, though quota was observed, 1/3 to 2/3 was not, however, strictly followed. But nothing brought to our attention to hold that the quota rule has been

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found impossible continuously for a number of years. Learned counsel for applicant only places reliance upon the seniority list dated 8.7.1983 and makes a grievance that his seniority has been disturbed in the impugned seniority list of 1984. Promotion given to the applicant without following the quota rule cannot be continued forever. Now that the quota rule has been followed and the employees were placed in their proper seniority after applying the quota in accordance with the Recruitment Rules, in our view, it had to be held as perfectly valid.

12. We do not find any merit in the OA. In the circumstances, the OA fails and accordingly dismissed. No costs.

Shanta

(Mrs. Shanta Shastry)
Member (A)

V. Rajagopala Reddy

(V. Rajagopala Reddy)
Vice-Chairman (J)

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