

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA No.575/1995

New Delhi this the 12th day of October, 1999

Hon'ble Smt. Lakshmi Swaminathan, Member (J)
Hon'ble Shri R.K. Ahooja, Member (A)

1. B.S. Rawat,
Assistant
Intelligence Bureau
Ministry of Home Affairs,
New Delhi.
 2. P.B. Saxena,
Assistant,
Intelligence Bureau
Ministry of Home Affairs,
New Delhi.
 3. N.S. Rane,
Assistant,
Intelligence Bureau,
Ministry of Home Affairs,
New Delhi.
 4. S.P. Gangwani,
Assistant,
Intelligence Bureau,
Ministry of Home Affairs,
New Delhi.
 5. R.K. Rupela,
Assistant,
Intelligence Bureau,
Ministry of Home Affairs,
New Delhi.
 6. P.C. Jain,
Assistant,
Intelligence Bureau,
Ministry of Home Affairs,
New Delhi.
 7. R.P. Bansal,
Assistant,
Intelligence Bureau,
Ministry of Home Affairs,
New Delhi.
 8. A.K. Maheshwari,
Assistant,
Intelligence Bureau,
Ministry of Home Affairs,
New Delhi.
 9. Jagdish Singh,
Assistant,
Intelligence Bureau,
Ministry of Home Affairs,
New Delhi.
 10. O.P. Sharma
Assistant,
Intelligence Bureau,
M/O Home Affairs,
New Delhi.
- De

12

11. R.L. Choudhary,
Assistant,
Intelligence Bureau,
Ministry of Home Affairs,
New Delhi.
12. Sri Chand,
Assistant,
Intelligence Bureau,
Ministry of Home Affairs,
New Delhi.
13. K.C. George,
Assistant,
Intelligence Bureau,
Ministry of Home Affairs,
New Delhi.
14. M. Ravindran,
Assistant,
Intelligence Bureau,
Ministry of Home Affairs,
New Delhi.
15. K.H.S. Subramanian,
Assistant,
Intelligence Bureau,
Ministry of Home Affairs,
New Delhi.

.. Applicants

(By Advocate Shri K.B.S. Rajan)

Versus

1. Director,
Intelligence Bureau,
Ministry of Home Affairs,
Govt. of India, New Delhi.
2. Union of India through
Home Secretary,
North Block, New Delhi.

.. Respondents

(By Advocate Sh. Madhav Panikar)

O R D E R (ORAL)

(Hon'ble Shri R.K. Ahooja, Member (A))

The applicants herein were appointed on various dates as LDCs in the Intelligence Bureau (IB) between the years 1964-1969. They were confirmed as LDCs from various dates between the years 1971 and 1973. In the meantime the applicants were promoted on ad hoc basis as UDCs on various dates between the years 1970 and 1974. They were confirmed as UDCs w.e.f. 1.5.1977. Thereafter they were promoted as Assistants on ad hoc basis from various dates between the years 1984 to 1986, and were regularised between the years 1987 to 1989. According to the applicants, a provisional seniority list was published on 21.11.89 (Annexure A-3). One M. Jena similarly placed as the applicants moved Cuttack Bench of this

Or

13

Tribunal in OA 46/1990 claiming, on the strength of Direct Recruits Class II Engineering Officers Association case (AIR 1990 SC 1607), the counting of his ad hoc service also for seniority purposes. The O.A. was allowed by order dated 21.9.1993 directing the respondents to offer seniority to Sh.M.Jena taking into account his ad hoc service of UDC as well as Assistant. On the basis of this decision, the applicants also filed representation in Feb., 1994 which was rejected by the respondents by the impugned order dated 20.1.1995 (Ann.A.1). This has lead them to move the present OA which was filed on 21.3.1995. The case of the applicants is that they are similarly placed as M.Jena and as per the ratio of the judgement in OA 46/90, the applicants are entitled to the same reliefs and refixation of their seniority by counting their ad hoc service as UDCs as well as in the rank of Assistants.

2. The respondents have resisted the claim of the applicants. They have raised preliminary objections on the ground of limitation and non-joinder of necessary parties.

3. We have heard the counsel. In regard to the point of limitation, Shri Rajan, learned counsel for the applicants submits that the 1989 seniority list at Annexure A-3 was a provisional seniority list calling for objections on account of any discrepancies or any in-accuracy. After that no further seniority list was issued. Hence the seniority in respect of assistants was even now not settled. In any case, learned counsel argued that technical objections ought not to be considered in the ratio of the judgement of the Hon'ble Supreme Court in Land Acquisition, Anantnag Vs. MST Katija and Ors (AIR 1987 SC 1353) wherein it has been held that:

" when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a deliberate delay. There is no presumption that delay is occasioned deliberately or on account of culpable negligence or on account of malafide... it must be grasped that judiciary is

du

14

respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

He has also relied on the judgement of the Supreme Court in G.P.Goval Vs. Chief Secretary(1985(1)SCR 70 in which it has been held that where the seniority list was not finalised for a period of 12 years for further promotion, the contention of limitation was rejected. He has also cited the judgement of the Hon'ble Supreme Court in Kuldip Chand Vs. Union of India & Ors. (1991(ATC 31(SC) 435) in which it was held that though a seniority list was prepared as early as 1982 but as no vacancy had arisen thereafter the mere rejection of the claim for seniority does not disentitle the applicant to claim consideration for promotion on account of delay.

4. In regard to the objections of non-joinder of parties, Shri Rajan has cited the judgement of the Hon'ble Supreme Court in A.Janardhana Vs. Union of India and Ors (1983(3)SCC 601) in which it was held that all persons placed senior to the appellant were not necessary parties, no relief having been claimed against them and as such failure to implead them would not disentitle the appellant to claim relief.

5. We have carefully considered the aforesaid submissions of the learned counsel. In regard to applicants claim for re-fixation of the seniority as UDCs which was notified in 1977, Learned counsel submits that he would not press this relief because of limitation. In regard to the contention of Shri Rajan that the seniority list dated 21.11.1989 is a provisional seniority list, we find that in the preamble thereto it has been stated as follows:-

" The seniority list in the grade of Assistants was last issued on 10.11.1986 in compliance with the directions of the Supreme Court of India given on 30.9.1986 in the Civil Appeal filed by the Union of India and the Promotee Assistants against the

Do

judgement of the Hon'ble High Court in 1981. The list has since been enlarged and revised by deleting the names of officers figuring upto S.No.545 of the old list (Corresponding to S.No.137 of the revised list) who have expired, superannuated, voluntarily retired. This has been done only to make the list compact and there is no change in the inter-se-seniority already assigned to the officers still in service, and for ascertaining the rotation, the old list can be consulted."

(Emphasis added)

From the above it is clear that the seniority list which was issued on 10.11.1986 did not bring out any change in inter-se-seniority already assigned but only excluded the names of those who had expired, superannuated or voluntarily retired. It is true that the affected persons were asked to inform of any factual error or omission. Such errors relate to various factors like date of birth, date of joining the service etc. and not inter-se-seniority. Further the seniority list of 10.11.1986 is said to have been issued in compliance of the Supreme Court directions given on 30.9.1986. We do not find that this is a provisional seniority list. The applicants had neither challenged the seniority list of Assistants issued on 10.11.1986 or 21.11.1989. It is contended by Shri Rajan, learned counsel that the Tribunal had laid down the law in M.Jena's case (supra) that the applicants became entitled to have their seniority determined in accordance with that law. We find that the law was settled by the Supreme Court in the case of Direct Recruit Class-II Engineering Officers Association Vs. State of Maharashtra and others reported in AIR 1990 SC 1607). If the applicants ^{are} ~~want~~ ^{also} ~~aggrieved by~~ the order given in favour of M.Jena, it was open to them to agitate the same at the relevant time but they ~~have~~ failed to do so. Therefore, they cannot claim that Jena's order in OA 46/90 on 21.9.93 has been their cause of action. This principle is also well settled in Bhoop Singh Vs. Union of India and Ors. (JT 1992(3)SC 322) in which it was held that the orders of the Court in other cases do not give a cause of action, the cause of action has to be reckoned from the actual date. In the judgement

16

of the Hon'ble Supreme Court in K.R.Mudgal and Ors. Vs. R.P.Singh and (1986(4)SC 531) it was held that promotions should not be disturbed after a long lapse of time. Therefore, we consider that if the applicants have any grievance it was open to them to file OA in 1990 itself but they have failed to do so and thus lost their right and cannot claim for condonation of delay. Application is, therefore, liable to be dismissed on account of limitation.

6. The orders passed by the Tribunal's dated 30.3.1995, 4.4.1995 and 26.5.1995 also support the view we have taken on the issue of limitation. No doubt after the case was dismissed for default, we have heard both the parties on this point again.

7. We also find that the second objection raised by the respondents regarding non-joinder of the parties is also valid. Shri Rajan's contention is that he is not specifically claiming any relief against any particular person and the applicant only want application of a principle in their case. In so far as the principle is concerned, the same is not applicable to the facts and circumstances of the case. The Supreme Court in Direct Recruit Class II Engineering Officers Association's case (supra) has laid down the principle regarding determination of seniority in cases where appointments were made from more than one source. In case of ad hoc promotion, the Supreme Court held that "when appointments are made from more than one source, it is permissible to fix the ratio of recruitment from the different sources and if rules are framed in this regard, they must ordinarily be followed strictly."

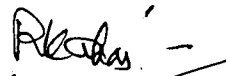
8. In the present case we find that the main claim is that the applicants were promoted on ad hoc basis in 1984-1986, while the examination was held for direct recruits in 1986. The actual appointments on the basis of that examination were made in 1987. The main grievance of the applicants is that those persons who were appointed as direct recruits on the basis of examinations held

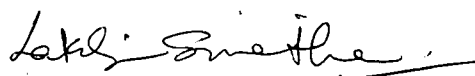
Da

17

in 1986 have been placed above them. If the applicants are to be given the benefit of ad hoc officiation, the question arises whether the applicants were promoted on ad hoc basis against their own quota. In this view the direct recruits to be adversely affected must be given an opportunity to show that they were correctly assigned seniority on the basis of their quota. We also note that in M.Jena's case (supra) all the affected parties had been impleaded as respondents.

9. In view of the above discussion, this OA is dismissed on the grounds of limitation as well as for non-joinder of parties. No order as to costs.


(R.K. Ahooja)
Member (A)


(Smt. Lakshmi Swaminathan)
Member (J)

sk