

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 1004 of 1995

New Delhi, dated this the 14th August 2000

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MR. KULDIP SINGH, MEMBER (J)

1. Shri A.P.S. Chauhan,
S/o Shri U.C. Chauhan,
R/o C-3/255, Janakpuri,
New Delhi-110058.
2. Shri Sunil Baweja,
S/o Shri G.P. Baweja,
R/o 11/29, Old Rajinder Nagar,
New Delhi-110060. Applicants

(By Advocate: Shri G.D. Gupta)

Versus

Union of India through
the Secretary to the Govt. of India,
Ministry of External Affairs,
South Block,
New Delhi-110021.

Respondent

(By Adv. Mr. N.S. Mehta)

ORDER

Mr. S.R. Adige, VC (A)

In this O.A. filed on 26.5.95, applicants impugn the seniority list dated 4.1.91 (Annexure A-1) and O.M. dated 23.8.94 and seek a direction to respondents to prepare a fresh seniority list of Assistants in Ministry of External Affairs.

2. Heard both sides.

3. Admittedly, pursuant to C.A.T., P.B. order dated 21.11.86 in T.A. No. 129/85 P.N. Tandon & Others Vs. Union of India and others, directing respondents to fix the seniority of those applicants (who were Assistants in Ministry of External Affairs) on the basis of the total length of their service in Grade IV of General Cadre of IFS 'B' in accordance with the principle of continuous officiation irrespective of whether the service was ad hoc, the seniority list of Assistants as on 1.12.86 was issued on 18.5.87 (Annexure A-2). This revised seniority list of Assistants dated 18.5.87 included Assistants

up to 1985 batch of departmental promotees and 1983 batch of direct recruits i.e. direct recruits, recruited on the basis of the Assistants Grade Examination, 1983.

4. Applicants do not deny in corresponding para of their rejoinder the specific averment of respondents in para 4 of their reply that the impugned seniority list dated 4.12.91 is only an updated version of the seniority list dated 18.6.87 after deleting the names of those who resigned, superannuated or were promoted to higher grade between 1987 and 1991.

5. Indeed in its order dated 9.6.94 in O.A. No. 201/89 M.S. Rao Vs. Union of India & Others, another coordinate Division Bench of C.A.T., P.B. held as follows:

"Based on the directions in TA-129/85 seniority list of Grade IV of IFS (B) was issued on 18.5.87. In this memorandum of 18.5.87, it has been mentioned that the seniority list is subject to final decision of the case of Karam Singh which as indicated did not alter the position. In other words, the seniority list issued on 18.5.87 has become the final list and admittedly there is no dispute on this aspect."

6. Applicants in the corresponding para of their rejoinder have not rebutted the following specific averment of respondents contained in para 6 of their short reply:

"That the seniority list issued on 18.5.87 has the approval of this Hon'ble Tribunal and has been accepted by all concerned as the final list (the list of 4.12.91 being only an updated version) is beyond doubt. This is also endorsed by the fact that no objection whatsoever was received from any one concerned up to 1993."

7. Respondents have raised the preliminary objection that applicants cannot challenge the seniority list dated 18.5.87 (the impugned seniority list dated 4.12.91 is only an updated version of the

seniority list dated 18.5.87 which is not denied by applicants) at such a late stage, as any such challenge is hit by limitation and also by constructive Res Judicata. There is considerable merit in this contention. In this connection our attention has been invited by respondents' counsel to the Hon'ble Supreme Court's ruling in Nityanand Kar and anr. Vs. State of Orissa & Ors. 1992 (19) ATC 236 wherein it has been held thus

"Issue decided earlier held operates as Res Judicata not only against employees who were parties in an earlier case, but against the whole class or category to which they belong. Hence the seniority position on that issue cannot be allowed to be agitated again and again."

8. No reasons have been given by applicants, let alone satisfactory ones, why they did not challenge the seniority list dated 18.5.87 or indeed the one dated 4.12.91 well in time, and there is not even an application for condonation of delay.

9. Applicants agitated this matter before respondents and then filed the present O.A. only after the C.A.T., P.B. order dated 16.3.93 in O.A. No. 837/86 K.J. Francis Vs. U.O.I. & Ors. was delivered, and place reliance on that order. We notice that Shri K.J. Francis and others were Section Officers while applicants are assistants. Shri G.D. Gupta asserts that the principles for determination of seniority discussed in Shri K.J. Francis' case (supra) would be equally applicable in the present case and for that reason the impugned seniority list requires to be reviewed. Even if Shri Gupta's averments were correct, in Bhoop Singh Vs. U.O.I. JT 1992 (3) SC 322 the Hon'ble Supreme Court have held that judgments and

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orders of Courts in other cases do not extend the period of limitation, which has to be reckoned from the date the cause of action initially arose.

10. In the present case the cause of action arose from 18.5.87 and reckoned from that date, this O.A. filed on 26.5.95 is clearly hit by limitation, besides being hit by constructive Res Judicata in the light of the Hon'ble Supreme Court's ruling in N. Kar's case (supra).

11. The O.A. is, therefore, dismissed. No costs.


(Kuldip Singh)
Member (J)

/ug/


(S.R. Adiga)
Vice Chairman (A)