

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.300/1996

New Delhi, this 9th day of February, 2000

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

1. D.K. Jain
186C, Pocket I
Mayur Vihar Phase I, New Delhi
2. Suman Kumar Sharma
DA/22C, Hari Nagar
New Delhi
3. V.P.Dwivedi
53A, Pocket D-~~IV~~
Sector 6, Rohini, Delhi
4. P.K.Vashisth
498, S-~~IV~~, R.K.Puram
New Delhi

.. Applicants

(By Smt. Meera Chhibber, Advocate)

versus

Govt. of NCT of Delhi, through

1. Chief Secretary
Old Secretariat, Delhi
2. Lt. Governor of Delhi
Raj Niwas, Delhi
3. Chief Engineer, I&F
4th Floor, ISBT Bldg.
Kashmere Gate, Delhi-6
4. Joint Secretary, I&F
Room No.144, Tis Hazari Court
Delhi
5. Gulshanbir Singh
6. Vinay Saxena
7. S.P.Garg
8. P.S.Batola
9. Y.K.Batra

.. Respondents

(Shri Ajesh Luthra, proxy for Smt. Sumedha Sharma,
Advocate for official respondents
Shri Vijay Pandita, Advocate for R-6 and R-9)
(None for R-5, 7, 8 ~~and 9~~)

ORDER(oral)

By Reddy, J.-

The question that is involved in this case is whether the impugned office order dated 8.1.96 cancelling the seniority list (SL, for short) of 1993 and replacing that of 1983 is valid in the eye of law?

✓ Corrected vide Govt's
order dated 18.4.2000

2. The applicants have been appointed as Junior Engineers (Mechanical) {JE/M, for short} in the Department of Irrigation and Flood in 1980 in pursuance of selection made by the Staff Selection Board (SSB, for short) in 1979. It is not in doubt that the SSB while making selection had given ranking to the candidates according to their merit. In the 1983 SL of JE/M as on 31.12.81, prepared by the respondents on 20.8.83 the applicants were shown at Sl.No.20, 28, 29 and 32, whereas respondents No.6 and 9 were shown at Sl.No.25 and 26. It appears that several representations were made by the affected employees against the above SL. Thereafter, respondents considered the objections and found that the SL was not prepared as per the order of merit given by the SSB and revised the SL through OM dated 19.3.93. In that list, applicants were shown at Sl.No.20, 23, 24 and 28 but the respondents No.6 and 9 were shown as juniors at Sl.No.25 and 27.

3. One Shri Bhika Ram aggrieved by his placement in 1993 SL, filed OA No.954/93 before the Principal Bench stating that his seniority was not properly shown in the said SL and that 1983 SL which was finalised had been revised without notice to him. That OA was disposed of by a common order dated 9.11.95 alongwith another OA No.1188/91, holding that the respondents should have given an opportunity to the applicant therein and other adversely affected persons, to show cause as to why such a revision should not be undertaken and that in the absence of such a notice, the revision made being against the principles of natural justice. The

⑩ Corrected vide Court's
order dated 18.4.2000

Tribunal, therefore, quashed the SL in so far as it affected the applicant therein. Purporting to implement the directions given in the above judgement, respondents passed the impugned order dated 8.1.96 cancelling the SL of 1993 and restoring the SL of August, 1983. This action of the respondents is under challenge in this OA.

4. Learned counsel for the applicants submits that the impugned OM in cancelling the SL of 1993 is also contrary to the principles of natural justice in that the applicants were not afforded an opportunity before it was cancelled. By virtue of its cancellation the applicants are adversely affected and they stand to lose their seniority. It is also contended by the learned counsel that the direction given by the Tribunal in OA 954/93 was not to cancel the SL but only to revise the position of the applicant in that OA after giving notice to the affected persons. It is contended that the respondents have cancelled the entire SL without giving notice to the applicants.

5. Shri Ajesh Luthra, proxy counsel for the official respondents submits that the impugned order was passed only in order to implement the judgement of the Tribunal in OA 954/93. It is contended by him that 1993 list being the final SL after having considered the objections raised by the affected employees was not amenable to revision, without giving notice to the affected persons.

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⑥ Conceded vide order
order dated 18.6.2000

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6. Heard the learned counsel for the applicants and respondents. We find some force in the case of the applicants. It is no doubt true that 1981 SL which was circulated in 1983 was the final SL. It must have been prepared after considering the objections raised by the affected employees. But it appears that the Department having received subsequently large number of representations against the SL had considered the representations once over and prepared SL of 1993. The only reason which prompted the Department to revise the SL of 1993 as is evident from the notification dated 19.3.93 was to set right the placement given to some of the employees in accordance with their merit as decided by the SSB at their selection in 1979 for the post of JE/M. It is not in doubt that the employees are entitled for seniority as per their merit shown in the selection. Accordingly the 1993 list has been prepared and as per the applicants their seniority was properly placed at Sl.No.20,23, 24 and 28 but in the process R-6 to R-9 were admittedly affected among others. But while doing so, the respondents had committed an error in not issuing notice to the affected persons. But none of the affected persons, including R-6 to R-9 had questioned this SL of 1993 except one Shri Bhika Ram. Thus the 1993 SL has become final. In OA 954/93 filed by Bhika Ram whose seniority was displaced, the Tribunal finding that a mistake has been committed by the department in revising the SL without giving notice to the applicant therein as well as to other affected persons, allowed that OA in so far as the applicant was concerned and set aside the SL of 1993 as applicable to the applicant in the case. Thus what was set aside by the Tribunal was

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not the entire SL of 1993, as the entire list cannot be set aside without hearing those that accrued rights under the revised 1993 list. Respondents were therefore directed to revise the SL of 1993 to the extent of the applicant. But what was erroneously done by the respondents was once again to cancel the entire SL of 1993 without issuing notice to the affected persons among whom the applicants are included. Thus, ex facie this course of action is illegal. While setting right the mistake committed the respondents have committed a second mistake. If the entire list was liable to be cancelled, then the Tribunal, having found that the list was void, should have set aside the same. But it did not rightly do so as all the parties affected who acquired rights under the 1993 list were not before it. If the respondents wanted to revise the SL of 1993 once again they should have issued notices to the affected persons. We are, therefore, of the view that restoration of SL of 1983 is wholly illegal.

7. It is true that the applicants whose seniority was not properly placed have not challenged the 1983 list when they were so affected. But the applicants' representations were considered and the 1993 SL was prepared. Thus we are of the view that though the 1993 list is void as was held by the Tribunal in OA 954/93 it was necessary in the interest of justice and fairplay that the applicants and other affected persons should have been issued notice before cancelling the 1993 SL if found necessary to give due recognition of the merit. But it has to be kept in mind that the impugned order was passed in 1996 whereby the 1983 list was restored.

(X) Correced vide entry
order dated 18-6-2000

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Though this action is illegal, as held above by us, but the fact still remains that the employees acquired rights under this list and the same cannot be set aside without hearing all the affected persons. It is liable to be set aside only as it is applicable to the applicants.

8. In the circumstances, we set aside the SL of 1983 to the extent it applies to the applicants without, however, affecting the seniority of Bhika Ram as determined/revised in OA 954/93. We direct the respondents to restore the seniority of the applicants in conformity with the seniority accorded to them in SL dated 19.3.93 vis-a-vis respondents No. 5 to 9.

9. OA accordingly allowed. No costs.

Shanta S-

(Smt. Shanta Shastry)
Member(A)

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

/gtv/

⑧ Corrected vide Court's
order dated 18.4.2000

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