

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 723/96

New Delhi, this 24th day of January, 2000

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Smt. Shanta Shastry, Member(A)

Dr. P.K.Chaudhuri
380/Sector III,
R.K.Puram, New Delhi .. Applicant

(By Shri B.C.Baruah, Advocate - not present)

versus

Union of India, through

1. Cabinet Secretary
Rashtrapati Bhavan, New Delhi

2. Director General (Security)
East Block V, R.K.Puram,
New Delhi

3. Director
Aviation Research Centre
East Block V, R.K. Puram
New Delhi

4. Shri N.D. Tewari
Joint Director (Tech)
Aviation Research Centre
East Block V, R.K. Puram
New Delhi .. Respondents

(By Shri N.S. Mehta, Sr. Advocate)

ORDER(oral)

Hon'ble Smt. Shanta Shastry

Neither the applicant nor his counsel were present at the time of hearing. Since the case is of 1996, we are disposing of this OA on the basis of available material on record.

2. In this OA the applicant has challenged the interlocutory seniority of Shri N.D.Tewari (R-4 herein) vis-a-vis Dr. S.R.Raghavan and himself in the grade of Deputy Director (Technical) [DD(Tech) for short] which was fixed in 1989. The applicant has prayed to quash the impugned office memorandum dated 18.3.96 and to declare him senior

h
y

to R-4 and to promote him to the post of Joint Director (Tech) from the date of promotion of his immediate senior with consequential benefits. He has also sought awarding of exemplary costs against the Appointments Committee of the Cabinet (ACC, for short). (6)

3. According to the applicant, he joined the Aviation Research Centre ARC, for short) under the Cabinet Secretariat, New Delhi in 1974 as an Assisant Director (Technical). He was promoted to the post of Joint Deputy Director (Technical) and then to the post of DD(Tech) in May, 1987.

4. There were 3 posts of DD(Tech) at the time of the regular promotion of the applicant in 1987. R-4 was working in one of the posts on deputation since 1983. A proposal was moved for permanent absorption of R-4 in 1988 and he was finally absorbed w.e.f. 16.12.88. The ACC approved his absorption with prospective effect without prejudice to the right of R-4 to be placed senior to Dr.Raghavan and the applicant in the rank of DD(Tech). Later on R-4 was given seniority from 1983 placing him above Dr.Raghavan and the applicant in the draft seniority list of DD(Tech) circulated in 1989. According to the applicant, he should have been shown senior to R-4.

5. It is the contention of the applicant that R-4 was given prospective absorption from 16.12.88. The instructions of DoPT as contained in OM dated 29.3.86 are clear on how to fix the seniority of persons on deputation. The respondents have wrongly given R-4 seniority above the applicant. Applicant claims that he

higher

was unaware of the seniority given to R-4. He had seen only draft seniority list and not the final list. He was under the impression that R-4 was given seniority of 1983 as a special case and therefore he did not raise any voice against the action of the respondents. Even when R-4 was promoted as Joint Director (Tech), the applicant accepted it for the same reason as before. He came to know of the real position of the higher seniority given to R-4 only in 1994, so he made a detailed representation in early 1994 to R-2 to restore his seniority. He got ad hoc replies and finally his request was rejected vide the impugned office memorandum dated 18.3.96. Immediately thereafter he has approached the Tribunal.

(A)

6. The learned counsel for the respondents has raised preliminary objection on the ground of limitation. Though the seniority list of DDs was circulated in 1983 the applicant took up the issue of wrong seniority with the Department only in March, 1994 for the first time i.e. after a lapse of five years of the issue of the seniority list. The request of the applicant for restoration of the seniority was rejected by the respondents. The applicant has approached this Tribunal in 1996 i.e. 7 years after issue of the seniority list. Thus, it is badly delayed. The applicant has not made any application for condonation of delay. Therefore the application deserves to be dismissed on the ground of limitation itself. The learned counsel has relied upon a few judgements in the matter of limitation.

7. Respondents have cited the judgement of Hon'ble Supreme Court in the case of M.L.Cecil D'Souza Vs. UOI 1976 SCC(L&S)115 wherein it has been held that "raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear in the interest of smoothness and efficiency of service that such matter should be given a quietus after lapse of some time". In another case K.K.Mudgal & Ors. Vs. R.P.Singh & Ors. 1987 SCC(Lab) 6, it has been held that "government servant who is appointed to any post ordinarily should atleast, after a period of 3 to 4 months of his appointment, be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity. Seniority after having been settled for once should not be allowed to be reopened after a lapse of many years".

8. This is a matter of seniority relating to 1989 and as such it is not proper to disturb the same after a lapse of so many years. Moreover, it was for the applicant to have pursued this matter. As has been held by the Hon'ble Supreme Court in the case of Ex-Capt. Harish Uppal Vs. UOI JT 1994(3) SC 126, "it is for the parties to pursue their rightful claim and not sleep over their rights. If they choose to sleep over their rights and remedies for an inordinately long time, the court may well choose to decline to interfere in its discretionary jurisdiction". This application deserves to be dismissed on the ground of limitaton itself as the applicant has agitated after a lapse of 7 years and has slept over his right.

9. Arguing on merits, the learned counsel for the respondents submits that the applicant was fully in the know of the seniority given to R-4. In the written submissions made by the respondents in pursuance of the order dated 5.11.96 of this Tribunal, it is stated that the applicant had himself endorsed on the seniority list circulated on 19.4.89 as follows: "Corrections made of educational qualification please see and do the needful". At the same time he corrected his educational qualifications in the seniority list. This seniority list was treated as final because no objections were raised by the applicant as well as the other two persons mentioned in the seniority list. The respondents have submitted further that the applicant himself had initiated a note on behalf of the ARC about confirmation of DPC of R-4 in the grade of DD(Tech) and had also countersigned the confirmation DPC note dated 28.5.90 wherein it was clearly mentioned that R-4 is the senior most in the grade of DD(Tech). The seniority list of DDs was also attached alongwith the above note. On 14.3.91, the applicant again acknowledged to have seen order No.4/6/91-DO-II dated 12.3.91 in which R-4 was redesignated as JD(Tech) in ARC. Thus the applicant's claim of ignorance of seniority list after 1989 is a false claim and he is clearly estopped from challenging the seniority.

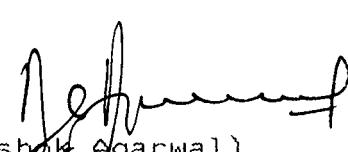
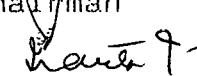
10. The respondents have further contended that the applicant had in one of his DO letters dated 17.1.94 addressed to Director, ARC (Annexure R-VI) clearly stated himself that "neither Dr.Raghavan nor we represented against this inspite of various provocations. This is because firstly we did not want

M

to vitiate the atmosphere and also we were aware that in sequence all will get opportunity of becoming JD(Tech) in appropriate time". In another D.O. letter addressed by him to the Director General of Security dated nil (Copy at Annexure R-VII) he has clearly admitted that "he had always considered Shri Tewari (R-4) as the most competent person to occupy the senior most position and also he did not want to take advantage of the technicalities of the specific rules on the subject. He did not represent and he has no regret for this" The applicant cannot therefore challenge the seniority now as he is estopped.

11. In the rejoinder, the applicant has reiterated his stand that he is not aware of the final seniority position of DD(Tech) till 1994 and he was under the impression that R-4 was given seniority over him by making a special case.

12. After hearing the learned counsel for the respondents and perusing the written submissions of the respondents, we are satisfied that there is no merit in this OA. We cannot see as to how the applicant can challenge the orders issued at his own instance. He himself was a party to the DPC as he himself had drafted the note for consideration of the DPC. On merit also the OA does not deserve any consideration. Therefore, both on the grounds of limitation as well as on merits, the OA is dismissed. No order as to costs.


 (Ashok Agarwal)
 Chairman

 (Smt. Shanta Shastri)
 Member (A)

/gtv/