

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2031/97

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New Delhi this the 13th day of September, 2000.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman (J)
Hon'ble Mrs. Shanta Shastry, Member (Admnv)

Gurcharan Singh,
S/o Sh. Ranjit Singh,
R/o UB-14-A, Usha Park,
Jail Road,
New Delhi-110064.

...Applicant

(By Advocate Shri Surinder Singh)

-Versus-

1. Union of India through
the Defence Secretary,
DHQ PO,
New Delhi-110 011.
2. Additional Dte. General
of Staff Duties (SD 6B),
Army Headquarters, DHQ P.O.
New Delhi.
3. G.O.C.-in-C,
Headquarters Western Command,
Chandimandir-134 107.
4. G.O.C.,
Headquarters,
Delhi Area, Delhi Cantt-10.
5. Sh. R.K. Sahni,
Steno Grade I,
HQ PH & HP Sub Area,
Ambala, Ambala Cantt.

...Respondents

(By Advocate Shri A.K. Bhardwaj)

O R D E R

By Justice V. Rajagopala Reddy, Vice-Chairman (J):

The applicant has been working in headquarter (HQ) Delhi Area as Steno Grade I from 1995. One R.K. Sahni Steno Grade I, respondent No.5 herein, who has been posted HQ Punjab, Haryana and Himachal Pradesh Sub Area was junior to him all along since he has been appointed on 6.10.84 in Steno Grade II, whereas the applicant has been appointed on 4.8.81 in Steno Grade II and both of them have been promoted to Steno Grade I on the same date in October, 1995. In the

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impugned order, however, the R-5 has been promoted to Grade I w.e.f. 6.10.89.

2. We have heard the learned counsel for the applicant and the respondents. It is contended by the learned counsel for the applicant that the DPC held in 1995, having considered the relevant position of seniority of the applicant vis-a-vis R-5, has promoted both of them in 1995 and hence the impugned order, giving R-5 promotion from an earlier date, is wholly illegal.

3. The stand of the respondents is as follows:

3.1 R-5 was erroneously promoted to the post of Steno Grade I w.e.f. 1.2.87 in its HQ Punjab and Haryana Sub Area. When he was reverted, he challenged the order of reversion before the Chandigarh Bench of the Tribunal, contending that being senior in its HQ he was rightly promoted to Grade-I. Prior to 1.9.89 seniority was maintained headquarterwise and promotion was also made accordingly. With effect from 1.9.89 fixation of seniority was commandwise and a common seniority list has been prepared of the incumbents in each post in the HQ under each command. The Tribunal held that as the vacancies of Grade I fell on 1.2.87, the rules in vogue prior to 1.9.89 should be followed. The order of reversion was set aside and direction was issued to consider the case of R-5 for promotion to Grade I for filling the vacancy of 1.2.87 according to his eligibility under the rules existing prior to 1.9.89, by order dated 21.8.95. Accordingly, it is stated that R-5 was considered and was promoted by the impugned order in 1996 giving him seniority w.e.f. 1989.

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The learned counsel for the respondents, therefore, contends that the impugned order was in accordance with the Tribunal's order and since the Tribunal's order has become final, it cannot be re-agitated or enquired into in this OA.

4. Having considered the contentions, we are unable to give acceptance to the case of the respondents. The facts are not in controversy. The law applicable for filling up the post of Steno Grade I fell vacant on 1.2.87 in the HQ of Punjab, Haryana Sub Area was the law existing till 1.9.89. The seniority that was prevalent then was HQ seniority. For the purpose of promotion to Grade I one should have five years regular service in Grade II. As R-5 was appointed in Grade II on 6.10.84, he would become eligible for consideration for promotion only on 7.10.89. The post was, however, filled up by promoting him in 1987 itself when he was not eligible by that date. Hence, he was rightly reverted. The only direction that was given by the Tribunal was as to the applicability of the principle of seniority whether it is HQ seniority or command seniority. The Tribunal in OA-120-HP/91 directed as under:

"5. The impugned orders, thus, cannot be sustained under the law. The same are, therefore quashed. The respondents are directed to consider the applicant for promotion to the post of Stenographer Gr.I against the vacancy which fell vacant with effect from 1.2.87 according to his eligibility by taking steps required for the same under the rules existing prior to 1st September, 1989."

5. Though the learned counsel for the respondents has taken us through the entire judgment, we are not persuaded to hold that any such direction was given, as contended by the learned counsel for the respondents that

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the applicant was eligible for being considered for promotion to the post which fell vacant on 1.2.87. The Bench has taken note of the fact that R-5 becomes eligible only from 5.10.89. It only directed, as seen supra, that his case should be considered 'according to his eligibility' as per the existing rules prior to 1.9.89 but the respondents seem to have mis-interpreted the order and holding themselves bound to give appointment to R-5, even though he was not eligible, appears to have passed the impugned order. As he was eligible only on 5.10.89 for consideration for promotion, even if he was considered earlier, his case should have been rejected on the ground of eligibility. Thus, no body was found eligible till 1.9.89, when, admittedly, the applicant becomes senior to R-5 after 1.9.89 because of commandwise seniority due to preparation of a common seniority list of all incumbents in the command. Hence, after 1.9.89 the applicant should have been considered for the post ^{that} fell vacant on 1.2.87, but admittedly he was not considered.

6. Though R-5 is served, no appearance was made on his behalf. The learned counsel for the applicant also fairly conceded that he is not seeking any relief to set aside the appointment of R-5. His only relief is for giving proforma seniority for promotion purposes. Though the impugned order is liable to be set aside, in view of the concession made by the learned counsel for the applicant, the order is not quashed.

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7. In the interest of justice we, however, direct the respondents to grant proforma seniority to the applicant from the date when R-5 was promoted to Steno Grade I. The O.A., therefore, partly succeeds and is accordingly disposed of. No costs.

Shanta Shastri

(Smt. Shanta Shastri)
Member (Admnv)

'San.'

V. Rajagopala Reddy

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