

(2) CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2455/1997

New Delhi, this the 24th day of November, 2000

Hon'ble Shri Kuldip Singh, Member (J)
Hon'ble Shri M.P. Singh, Member (A)

N.K. Pillai
C-4/C-149, Janakpuri
New Delhi-110058

.. Applicant

(By Shri P.T.S. Murthy, Advocate)

Versus

Union of India, through

1. Secretary
Ministry of Labour
Shram Shakti Bhavan, New Delhi
2. Director General/Joint Secretary
Employment & Training
Shram Shakti Bhavan, New Delhi
3. Director of Employment Exchange
DGET, 3/10, Jamnagar House
New Delhi

.. Respondents

(By Shri R.V. Sinha, Advocate, through proxy
counsel Shri R.N. Singh)

ORDER

By Shri M.P. Singh

By the present OA, the applicant has assailed the OM dated 29.8.97 showing improper placement of his name in the seniority list of Junior Computers (JC, for short) as on 30.12.96.

2. Briefly stated, it is the case of the applicant that he joined service as JC on 2.8.72 in Bangalore, that he was transferred to Cannanore, Visakapatnam and Pune from where he was relieved on 31.8.75 and he joined in New Delhi office on 1.9.75; he is continuing as such till date. In the seniority list of (SL, for short) of JCs 5.2.82 his position was rightly shown at Sl.No.37, his date of appointment being 2.8.72. He was appointed in a substantive capacity w.e.f. 23.2.80 by order dated 19.1.83. Yet another order was issued on 3.5.85 showing



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that the applicant was appointed on regular basis w.e.f. 2.8.72, i.e. the date of his initial appointment. In the SL issued on 9.7.85 his seniority position was correctly shown as from 2.8.72. However, in the revised SL issued on 30.12.86 his position was wrongly shown at Sl.No.44 his date of continuous appointment as JC being 15.9.75. Applicant made a detailed representation on 12.1.87 followed by a reminder on 1.8.87. However, by communication dated 4.11.87 issued by R-3, it was stated that SL issued on 30.12.86 may be treated as final. Again by the impugned OM dated 29.8.97 (Annexure I) the applicant was informed that the SL was finalised after examining the representations and in consultation with DoPT and considering the fact that the applicant was taken in the strength of DGET (Hqrs.) as a fresh appointee w.e.f. 15.9.75. It is further stated therein that SLs of 1982 and 1985 became infructuous. Aggrieved by this, the applicant is before us seeking to quash the SL dated 30.12.86, direct the respondents to assign him proper seniority by reckoning the date of appointment as 2.8.72 and to consider in situ promotion to the next higher grade i.e. Junior Investigator w.e.f. from the date he is stagnating in the maximum pay of JC i.e. August, 1997.

3. It is the case of the respondents in their reply that the OM dated 29.8.97 is just a statement of position explained to the applicant with regard to his seniority which was fixed and finalised in the year 1987, that on receipt of objections from the applicant on 12.1.87, he was replied to on 23.12.87 (Annexure R-V) stating that "the SL of JCs was finalised in consultation with the DoP&T and does not warrant any

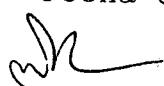
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(24)

change", that thereafter no representation whatsoever was received from the applicant and, therefore, if the applicant had any grievance in 1987, he should have approached the Tribunal within the stipulated time which he had failed to do. Respondents would further submit that on the closure of the offices of the Area Skill Survey, in which the applicant was working ~~upto 31.8.75~~, he joined in the Hqrs. office on ad hoc basis as JC w.e.f. 15.9.75 as a fresh appointee. Consequent upon abolition of 6 posts of JC w.e.f. 16.7.79, the applicant was also adjusted against the vacant post of Key Punch Operator from 16.7.79 to 4.2.80 and he was appointed in a substantive capacity as JC w.e.f. 23.2.80. Later on he was made regular with effect from 2.8.72 instead of 23.2.80 on the basis of the SL drawn in the year 1982 which was not found in order after consultation with DoPT and therefore SL was amended and circulated on 30.12.86 showing the position of applicant as appointed w.e.f. 15.9.75. The representation of the applicant was duly considered along with others and he was duly informed on 23.2.87, whereas he has chosen to take up the matter after a lapse of 10 years through a representation on 1.8.97 for restoring his seniority, which is barred by limitation. Therefore the OA is not maintainable and deserves to be dismissed.

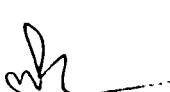
4. Heard the rival contentions of the contesting parties and perused the records.

5. Learned counsel for the applicant submits that the services of the applicant were not terminated but he was relieved/transferred w.e.f. 31.8.75 from his duties in the Poona office of Area Skill Survey on its closure to



join the Hqrs. office of DGET. The applicant was granted terminal leave from 1.9.75 to 14.9.75 to the extent EL was due and available to him by order dated 17.6.76. The learned counsel further submits that the applicant was appointed on regular basis w.e.f. 2.8.72 which fact was reflected in the earlier SLs and therefore it cannot be changed all of a sudden on 30.12.86 showing the date as 15.9.75 without giving him a notice to that effect.

6. Learned counsel for the respondents on the other hand would contend that after termination of the services of the applicant from the office of Area Skill Survey he was taken in the strength of DGET as a fresh appointee to the post of JC. He is not denying that the applicant was granted terminal leave but it was for the sake of providing pensionary benefits to the applicant. The applicant was given seniority w.e.f. 15.9.75 in consultation with DoPT and his inter-se seniority was maintained. The applicant raised objections regarding the SL of 1986 on 12.1.87 which was replied to on 23.2.87. Thereafter the applicant made representation only on 1.8.97 which was replied to on 29.8.97 conveying the facts already supplied to the applicant in the year 1987. Reopening a settled matter after a gap of 10 years would unsettle the issue. Seniority of similarly placed persons like the applicants was given with effect from the dates of their appointment in DGET. As regards applicant's prayer for promotion as Junior Investigator, his case would be considered as and when his turn comes subject to fulfilling the eligibility conditions.



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7. We find force in the contentions of the learned counsel for the respondents. The applicant should have agitated the issue of seniority in 1987 itself or that he should have approached the appropriate judicial forum if he was so aggrieved within the time limit. No doubt he has failed to do so. 26

8. Though the learned counsel for the applicant is relying upon SR 285 in support of this case, we find that the said rules talks about grant of leave without a lien on a permanent post while officiating in a post or holding a temporary post. Again as rightly contended by the learned counsel for the respondents, the OM dated 29.8.97 is in reply to applicant's representation dated 1.8.97 which is clarificatory in nature and cannot be taken as a rejection and it cannot be termed as an impugned order for the purpose of challenge. It is also true that the applicant's seniority was taken from 2.8.72 in the earlier SLs but the same were got rectified in consultation with DoPT and the applicant did not raise any objection when the draft SL of 1986 was circulated. Again any change in the seniority position of the applicant at this stage, i.e. after a gap of 14 years, would adversely affect the position of others who have not been impleaded as necessary parties.

9. In view of the above position, we are afraid, we are not in a position to grant any relief to the applicant. OA is devoid of merit and is accordingly dismissed. No costs.


(M.P. Singh)
Member(A)

/gtv/


(Kuldeep Singh)
Member(J)