CENTRAL ADMINISRTRATIVE TRIBUNAL, PRINCIPAL BENCH

(11)

OA No.2436/94

New Delhi, this 2nd day of August, 1999

Hon'ble Smt. Lakshmi Swaminathan, Member(J)
Hon'ble Shri S.P. Biswas, Member(A)

S/Shri
1. Sukhlal
147/3, Jagarti Vihar, Meerut
2. Malkhan Singh
626/3, Jagarti Vihar, Meerut
3. Govind Singh
Kalayani, Near Sector 7
Jagarti Vihar, Meerut
4. S.K. Goyal
39/9, Shastri Nagar, Meerut
5. Neena Arora
1070/3, Shastri Nagar, Meerut
6. Rajeev Dixit
28/1, Shastri Nagar, Meerut
7. B.R. Banga
Jawala Naar, Saboon Godown, Meerut
8. Ravindra Tyagi
53, New Arya Nagar
Suraj Kund Road, Meerut
9. Mukesh Verma
Pera Mal Bazar, Meerut
10. G.P. Kandiyal
I-104, Shastri Nagar, Meerut
11. Mahiman Singh
540, Kamala Nehru Nagar
Ghaziabad
12. D.G.Gairola
555, Kamala Nehru Nagar
Ghaziabad
13. Prem Chand Sharma
896-A, Sanjay Marg
Near Gandhi Nagar, Muzaffarnagar
14. R.K.Chopra
80, Hakikat Nagar, Saharanpur
15. A.K. Garg
Ragoli Hlose, Dal Mandi
Saharanpur
16. Ram Sewak Saxena
Hakat Sarai Pukhta, Rampur
17. A.K. Sinha
Akat Sarai Pukhta, Ramnpur
18. U.C.Kandpal
5, Type II, Central Excise Colony
Rampur

.. Applicants

(By Smt. Meera Chhibber, Advocate)

versus

Union of India, through

1. Secretary
Department of Revenue
Central Board of Excise & Customs
Ministry of Finance
North Block, New Delhi

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2. Collector
Custom & Central Excise
North U.P. CVollectorate
Mangal Pandey Nagar, Meerut

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3. Collectorate Custom & Central Excise
32, M.G. Road, Allahabad .. Respondents

(None for the respondents)

ORDER(oral)

By Hon'ble Smt. Lakshmi Swaminathan

None appears for the respondents even on the second call. We have perused the pleadings on record and heard Mrs. Meera Chhibber, learned counsel for the applicants.

2. There are 18 applicants in this application who have challenged the action of the respondents on the ground that they have acted in a discriminatory manner in fixing their seniority as Lower Division Clerks (LDC for short) vis-a-vis their colleagues who joined service initially along with them, namely S/Shri Narain Das and H.C.Khatri. All the applicants were appointed as LDCs in 1980 by the Central Excise Collectorate, Meerut after obtaining the 'No objection' from the Staff Selection Commission (SSC for short), subject to the condition that when candidates selected by the SSC are available, their services were liable to be terminated. At the time of their initial appointments, as well as of the aforesaid two persons, namely, S/Shri Narain Das and H.C. Khatri in 1980, their appointments were all made on ad hoc basis.

3. In their reply, the respondents have also stated that since the SSC was not able to provide the selected candidates, they requested the Commission to regularise the services of the ad hoc LDCs. For that purpose, SSC

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conducted a Special Qualifying Examination (SQE) in 1983. Out of those who appeared in this examination 25 passed, and further examinations were conducted in 1984 and 1985. Despite three such opportunities having been given by the SSC, S/Shri Narain Das and Khatri could not qualify in the examination and ultimately their services were terminated in 1988 vide order dated 6.4.88. Aggrieved by the termination order, these two persons filed OA 487/88 and OA 488/88 respectively, in the Allahabad Bench of the Tribunal, which were disposed of by that Bench by order dated 17.11.89. That Bench set aside the termination order dated 6.4.88 and directed that the applicants shall be reinstated within a period of one month and they shall be treated to be in continuous service from the date of their termination of their services till the date of their reinstatement for all purposes, except with regard to receipt of pay. The respondents have stated that in pursuance of the aforesaid order of the Tribunal dated 17.11.89, those two persons were reinstated in service by order dated 29.1.90. They have also stated that the appeal filed by them against the order of the Tribunal was dismissed by the Supreme Court by order dated 6.8.90.

4. Respondents have stated that after consulting the cadre controlling authority i.e. the Collectorate, Kanpur and the competent authority, i.e. the Board, they have thereafter fixed the seniority of S/Shri Narain Das and Khatri vis-a-vis those appointed on ad hoc basis along with them, subject to maintenance of inter-se seniority as a result of the SSC examination held in 1983.

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5. Smt. Meera Chhibber has drawn our attention to the seniority list of Upper Division Clerks (UDCs for short) as on 1.1.93 (Page 78 of the paper book) in which the names of the two persons S/Shri Narain Das and Khatri who have admittedly failed in the SQE held in 1983, 1984 and 1985 have been shown at Sl.Nos.136 and 137, i.e below Shri Sukhlal who is shown at Sl.No.135. She has further submitted that all the applicants have been shown junior to Narain Das and Khatri in the seniority list of UDCs prepared as on 1.1.93. In the seniority list of temporary LDCs as on 1.1.86 (page 49 of the paper book), names of the aforesaid two persons who have not qualified in the SQE did not figure as they had admittedly failed when the list was issued. Following the judgement of the Allahabad Bench dated 17.11.89, respondents have issued the seniority list of Tax Assistants, in which the name of Shri Narain Das has been shown at Sl.No.M36 and the date of his initial appointment in the Department as 29.2.80. Learned counsel has submitted that in the seniority list of 1994, applicants have been shown junior to Shri Narain Das from M36 onwards, for example, Applicants Rajeev Dixit at M69, Smt.Neera Arora at M86, G.P.Kandyal at M81, Govind Singh at M88 and Sukhpal at M104. She has contended that the respondents have shown Shri Narain Das as senior i.e. from the date of his initial appointment in the post of LDC from February, 1980, whereas the applicants have been denied the same benefit from their dates of entry into service and their services were being counted only from the date they qualified in the SQE held between 1983 and 1985. In other words, she has submitted that the respondents have given the benefit of continuous service from the date of

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appointments of S/Shri Narain Das and Khatri on their reinstatement as LDCs in pursuance of order of the Allahabad Bench, even though they had admittedly failed in the SQE. She has relied on the judgement of the Supreme Court in the case of Direct Recruit Class II Eng. Officers Assn. Vs. State of Maharashtra (AIR 1980 SC 1607). The relevant portion of the judgement is reproduced below:

> (A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not acording to the date of confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

6. Learned counsel has submitted that since the respondents have given the benefit of service to be counted for Shri Narain Das, who has admittedly failed in the SQE, there was no reason to deny the said benefit to the applicants who have passed the SQE in accordance with the "No objection" certificate issued by the SSC at that time. She has further submitted that the respondents have themselves stated in their reply that the Tribunal may like to pass any order as deemed proper.

7. From the facts stated above, it is seen that S/Shri Narain Das and Khatri were appointed, along with the others, as LDCs in 1980 initially on ad hoc basis, after obtaining "No objection" from SSC. Their services have been continued, on the ground that candidates sponsored by SSC had not become available. It is also an admitted position that both S/Shri Narain Das and Khatri did not

qualify in the SQE held in the years 1983 and 1985, as a result of which respondents terminated their services in 1988. Against the termination order, these two persons approached the Allahabad Bench of the Tribunal. In its order dated 17.11.89, the Tribunal held that "considering all the above facts, we are of the opinion that the appointments of the two applicants have to be considered as regular and temporary and not as ad hoc.....We also note that there was no condition or stipulation as to the length of the duration of the appointment" (emphasis added). In the result the two OAs 487/88 and 488/88 were allowed with the directions to the respondents to reinstate the applicants therein and give them the benefit of continuous service.

8. After the SLP filed against the Tribunal's aforesaid order was dismissed, the respondents have in implementing the judgement, issued seniority list of Tax Assistants as as on 1.1.94. From the reply filed by the respondents, it is seen that they have taken the plea that S/Shri Narain Das and Khatri have been given seniority from February, 1980, i.e. from the date of their initial appointment on ad hoc basis. After considering the relevant facts and hearing the parties before it, the Allahabad Bench of the Tribunal had come to the conclusion that the appointments of these two applicants have to be considered as regular and temporary and not as ad hoc, in spite of the fact that both of them had admittedly failed in the SQE held between 1983 and 1985. That being so, we find force in the submissions made by the learned counsel for the applicants that the appointments made in 1980 vis-a-vis the applicants should also be considered as regular and

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not as ad hoc. In other words, after the SLP was dismissed by the Supreme Court by the order dated 6.8.90, the Tribunal's order of 17.11.89 has becomme final and so the respondents cannot treat the applicants differently, especially as they have admittedly also passed the SQE, which is not so with regard to S/Shri Narain Das and Khatri. It is also relevant to note that the applicants have continued in the post of LDC uninterruptedly till they were regularised after qualifying in the SQE. Respondents have themselves stated that since SSC could not provide the candidates, these persons who were initially appointed on ad hoc basis were regularised after conducting the SWE with the approval of SCC in 1983.

9. We find that the Tribunal in its order dated 8.2.94 has mentioned that "In the meantime, if any appointmentis made on the basis of the DPC, the same shall be subject to the decision of the OA". Smt. Meera Chhibber, learned counsel has submited that, at that time DPC was being held for the purpose of promotion to the post of Inspector.

10. Therefore, taking into account the facts and circumstances of the case and also the decision of the Apex court in the case of Direct Recruit Class II Engg.case (supra), we find merit in the OA. The application succeeds and is allowed with the following directions:

(i) Respondents shall extend to the applicants the benefit of the Tribunal's order dated 17.11.89 in OA 487/88 and OA 488/88

(Allahabad Bench) with regard to the nature of their appointment and length of service, as given to the two applicants in those cases;

(ii) Respondents shall accordingly revise the seniority lists of the applicants, taking into account their date of initial appointment. This shall be done within a period of four months from the date of receipt of a copy of this order;

(iii) Applicants shall be entitled to all consequential benefits in acordance with law and relevant rules, including promotion to the post of Inspector.

There shall be no order as to costs.

(S.P. Biswas)
Member(A)

(Mrs.Lakshmi Swaminathan)
Member(J)

/gtv/