

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

R.A. 260 of 1995 and MA 1139 of 1998 in
O.A./TXX. No. 925 of 1995

Decided on: 3/29/86

K. NeelakandanApplicant(s)

(By Shri None Advocate).

Versus

U.O.I. & Others Respondent(s)

(By Shri P.H.Ramchandani Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI T.N. BHAT, MEMBER (J)

1. Whether to be referred to the Reporter *yes* or not?
2. Whether to be circulated to the other Benches of the Tribunal? *K*

(K. MUTHUKUMAR)
MEMBER (A)

(16)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

R.A. No. 260 of 1995 and MA 1139/98 In
O.A. No. 925 of 1995

New Delhi this the 3rd day of December, 1998

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)
HON'BLE MR. T.N. BHAT, MEMBER (J)

K. Neelakandhan
S/o Late Shri P. Krishna Iyer,
R/o B-12/G-3, Dilshad Garden,
Delhi-110 095

.....Applicant

None for the applicant.

Versus

1. Union of India through the Secretary,
Ministry of Law, Justice & Company Affairs,
4th Floor, Shastri Bhawan,
New Delhi.

2. Shri S.P.N. Bhambi,
Superintendent (Legal),
Ministry of Law, Justice and Company
Affairs,
Central Agency Section, Room No. 122,
Supreme Court Compound,
New Delhi-110 001.

3. Shri J.K. Dass,
Registrar,
Foreign Exchange Appellate Tribunal,
4th Floor, Janpath Bhawan,
New Delhi-110 001.

4. Shri P.M. Mishra
Superintendent (Legal),
Assistant Director of Estates,
Nirman Bhawan,
New Delhi-110 001.

5. Shri B.K. Bhargava,
Superintendent (Legal)
Ministry of Law, Justice and
Company Affairs,
Central Agency Section,
Supreme Court Compound,
New Delhi-110 001.

6. The Secretary, —
U.P.S.C.,
Dholpur House,
Shahjahan Road,
New Delhi-110 011. .. Respondents

By Advocate Shri P.H. Ramchandani.

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(P)

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

Applicant's OA 925/95 was rejected under Section 19(3) of the Administrative Tribunals Act, 1985 as follows:-

.....Therefore, on a careful perusal of the application and the connected material on record, we do not find any substance in the application. For his grievance, if at all the remedy has been barred by limitation. The application is therefore, rejected under Section 19(3) of the AT Act".

2. The applicant moved SLP before the Hon'ble Supreme Court in Civil No. 17259/95 against the aforesaid order and the Apex Court passed the following order:-

" The petition filed on behalf of the petitioner before the Central Administrative Tribunal has been dismissed on the ground of delay. During the hearing of the SLP it was pointed out that the new seniority list which is being challenged by the petitioner is of May 12, 1994 and he had filed the petition before the Tribunal within one year from the date of publication of the new seniority list. According to us, in that situation the petitioner should file a review application before the Tribunal which shall be disposed of in accordance with law. We make it clear that we are not expressing any opinion on the merit of the grievance.

3. The Special Leave Petition is dismissed as withdrawn."

3. In pursuance of the aforesaid direction, the applicant has moved this Review Application. Although notice was issued on the RA, this could not come up for hearing due to reconstitution of Benches from time to time. The applicant moved MA 1139/98 praying that although he had been appearing on the earlier dates, due to the reconstitution of the Benches, the matter could not be heard and as he was appearing in person he had to check the list every day. He, therefore, desired to submit written arguments and prayed that the

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tribunal should dispose of the case on the basis of his written submissions. Written submissions were also annexed to the above MA. Thereafter, he moved another petition for transfer of the Review Application to the Chennai Bench of the Tribunal consequent on his transfer which was not allowed by the Tribunal's order dated 20.2.1998 and the case was listed on 17.4.98. However, in the interest of justice notice was issued to the applicant at his place of posting at Chennai informing him that the RA 260/95 would be taken up for hearing on 29.5.98. In response to this notice, applicant filed reply praying that as it was extremely difficult for him to travel all the way from Chennai to Delhi and he was also not in good health, the case should be disposed of on the basis of the written submissions already filed by him. The case came up again on 7.6.98. The respondents have also filed reply to the RA. The respondents also filed their written submissions in reply to the written submissions filed by the applicant. The RA was again listed on 16.10.98 and the learned counsel for the applicant agreed that the RA could be considered on the basis of the written submissions of the parties. Accordingly, the orders on the above RA was reserved.

4. From the order of the Apex Court it is seen that the applicant had tried to show to the Apex Court that his OA was not barred by time as he had challenged the seniority list of the year 1994 well within one year from the date of publication of the seniority list. It was on this ground that the Apex Court allowed the petitioner to file this Review Application. Although the respondents aver in their counter-reply that there was no error apparent on the face of

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the order passed by the Tribunal in the aforesaid OA, taking into account the directions of the Hon'ble Apex Court, we proceed to dispose of the Review Application on merits.

(i) Applicant's case is that respondents have overlooked his claim for seniority and accorded the benefit of retrospective confirmation and consequent seniority to respondent No. 2.

(ii) Similarly respondent No. 3 was confirmed earlier to the applicant even though he was junior to the applicant.

(iii) Respondent Nos. 4 and 5 joined the post after the applicant was confirmed and, therefore, the applicant had to get seniority over respondent Nos. 4 and 5 also. After the decision of the Apex Court in Direct Recruit. Class-II Engineering Officers Association and Others Vs. State of Maharashtra, AIR 1990 SC 1607 seniority will have to be reckoned from the date of initial joining in the appointment and not from the date of confirmation and by this, he would rank senior to respondent Nos. 2 to 5.

(iv) The applicant also has averred that he had been representing from April, 1983 and he was advised in April, 1985 that his representation will be considered and, therefore, despite pending the decision on these representations, the respondents have published the seniority list before 12.8.94 and aggrieved by this, he had filed OA 925/95.

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5. In the Review Application, the applicant has averred that he was confirmed with effect from 30.9.85 as per the seniority list of August, 1987 and after 1987, the seniority list was issued in the year 1994 which showed that the respondent No.2 was confirmed from 1977 onwards. In other words, he was confirmed with retrospective effect. The applicant also claims the same relief and the said fact came to the notice of the applicant only when the seniority list of 1994 was circulated in August, 1994 as it was his averments in the OA also. The applicant further asserts that even the seniority list of 1987 was only provisional as also the seniority list of 1994 and, therefore, avers that the application was not barred by limitation if his representations from 1983 onwards were taken into account.

5. Respondents in their counter-reply have averred that the applicant has based his claim only on the ground that the respondent No.2 was confirmed as Assistant (Legal) with retrospective effect, i.e. 2.9.77 and, therefore, claims that he should also be given the similar treatment. The respondents further aver that the applicant's case was distinguishable from that of respondent No.2 inasmuch as he did not submit any representation to his adverse CRs nor was the same expunged. It is stated that respondent No.2 was considered by the DPC in the grade of Assistant (Legal) from time to time but was not found fit for confirmation in view of the certain adverse remarks recorded in his ACR. He was also found unfit for confirmation in 1985 when the applicant was confirmed. Therefore, the applicant became senior to respondent No.2 because of his confirmation and because of the

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non-confirmation of respondent No.2. This was reflected in the seniority list circulated in the year 1987. The applicant was also promoted to the grade of Superintendent (Legal) with effect from 1.9.1987 whereas the respondent No.2 was promoted in the said grade w.e.f. 21.2.1991. However, respondent No.2 had filed OA 333/1989 before the Central Administrative Tribunal, Mumbai against the non-expunction of his adverse remarks in his ACR and for confirmation and all consequential benefits. Since the adverse remarks were expunged by the respondents, he was confirmed as Assistant (Legal) with effect from 2.9.1977, during the pendency of the case before the Tribunal and the Tribunal disposed of his case directing that his case should be considered by the review DPC for promotion. As a result of this, his case was considered by the review DPC for promotion but DPC did not find him fit for promotion by an earlier date. In view of the retrospective confirmation in the grade of Assistant (Legal) w.e.f. 2.9.77 he became senior to the applicant and the changed position was reflected in the seniority list circulated in the year 1994. Respondents aver that no other benefits accrued to respondent No.2 in service as his date of promotion was not changed by the review DPC and, therefore, he continued to be junior to the applicant in the higher grade of Superintendent (Legal). The respondents also aver that the applicant had accepted the seniority position as reflected in the seniority lists circulated in the years 1983, 1987, 1989 and 1994. They have also submitted that although it was through this seniority list (1994) of Assistant (Legal) which gave a higher position to respondent No.2, this did not affect the position of the applicant because the consequential benefit of earlier promotion had not

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been given to respondent No.2 who continues to be junior to the applicant in the next higher grade and, therefore, the applicant cannot have any cause of action on the basis of 1994 seniority list.

7. We have perused the written submissions of the parties and have also perused the relevant files.

8. In the written submissions the applicant has disputed the contention of the respondents in the counter-reply to the OA that the applicant had not filed any representation against the adverse remarks. He submits that he had filed representations in 1983, 1984 and 1985 and thereafter he was confirmed in 1985 without answering his representations. The applicant has also pointed out that while the adverse remarks were brought to his notice he was not given an opportunity to represent against the same whereas respondent No.2 was asked to furnish representation on each and every occasion. He had made representations in 1983, 1984 and 1985 but was not responded to.

9. We have seen the following details of the applicant vis-a-vis the respondents as extracted from the impugned seniority list:-

S.No.	Name	Date of continuous appointment Govt. Service /post of Asstt.	Date of confirmation (Legal)	Remarks
1.	S.P.N. Bhambi (respondent No.2)	25.7.72	25.7.72	2.9.77 Officiating as Supdt. (L) w.e.f. 21.2.91.

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2.	J.K. Das (respondent No.3)	7.8.85	7.8.85	1.1.79, Officiating as Supdt. (L) w.e.f. 5.2.86.
3.	K. Neelakandan (applicant).	16.12.74	16.12.74	30.9.85 Officiating as Supdt. (L) w.e.f. 1.9.87.
4.	P.M. Mishra (respondent No.4)	19.11.77	19.11.77	30.9.85 Officiating as Supdt. (L) w.e.f. 5.10.86.
5.	B.K. Bhargava (respondent No.5)	9.2.79	9.2.79	30.9.85 Officiating as Supdt. (L) w.e.f. 29.1.89.

10. The applicant in the RA has prayed for the revision of his seniority in such a manner that he may be put just below respondent No.2 but above respondents No.3 to 5.

11. The respondent No.1 in their counter-reply to the Review Application has pointed out that the applicant was considered for confirmation in the post of Assistant (Legal) in the year 1979 by the DPC but the DPC did not recommend him for confirmation whereas 5 of his juniors were recommended for confirmation. The non-suitability of the applicant as well as the suitability of other juniors was also approved by the UPSC. As such 5 of the juniors were confirmed as Assistant (Legal) w.e.f. 1.7.79 and this was reflected in the seniority list of 1983 itself. The applicant did not dispute the aforesaid seniority position. Again the seniority lists were circulated in the years 1987 and 1989. Only in 1985 the applicant was considered for confirmation w.e.f. 30.9.85 and because of this delayed confirmation he was shown as junior to respondent Nos. 2 to 5 in the cadre of Assistant (Legal). Be that as it may, the applicant's claim to have his seniority revised so as to put him just below respondent No.2 taking into account his date of continuous officiation in the grade

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of Assistant from 16.12.74 cannot be accepted as we find in the seniority list that there are several other persons who are senior to the applicant in the post of Assistant (Legal) as they have been continuously officiating as Assistant (Legal), from dates earlier than the applicant even if the date of confirmation is not taken into account and date of continuous officiation is taken into account and these juniors are not parties before us.

12. As regards his representation stated to have been sent in 1983, 1984 and 1985, the applicant cannot raise this grievance as it was open to him to seek legal remedy at that point of time. Therefore, this belated plea at this stage cannot be accepted. Besides, even in the law laid down in the case of The Direct Recruit Class-II Engineering Officers' Association and Others Vs. State of Maharashtra and Others, AIR 1990 SC 1607, one of the prepositions laid down ~~prepositions~~ was that it was not in the interest of service to settle the unsettled position. The applicant had not disputed his seniority in the seniority lists of 1987 and 1989 which were circulated nor had he sought legal remedy at that point of time. Seniority lists of 1983 as well as of 1987 and 1989 cannot be challenged after a lapse of so many years. As laid down by their Lordships of the Apex Court in K.R. Mudgal and Others Vs. R.P. Singh and Others, 1986 (4) SCC 531, "it is essential that anyone who feels aggrieved by the seniority assigned to him should approach the court as early as possible as otherwise in addition to the creation of a sense of insecurity in the minds of the government servants there would

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also be administrative complications and difficulties." Their Lordships have further referred to the observations made by Constitution Bench of that Court in *Malcom Lawrence Cecil D'Souza Vs. Union of India* which are reproduced below:-

" Although security of service cannot be used as a shield against action for lapses of a public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one's position in the seniority list after having been settled once should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time".

13. In the conspectus of the above discussion, we do not find any merit in the Review Application. It is accordingly rejected on merits.



(T.N. BHAT)
MEMBER (J)



(K. MUTHUKUMAR)
MEMBER (A)

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