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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA 123/2000

New Delhi this the 16th day of January, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

1. Sh. V. K. Mitta S/O Sh. M. C. Mittal,
R/O Q. No. C-36/13, New Type-III
D. F. Estate, Raipur, Dehradun (UP)
2. Sh. S. K. Vasts
R/O Q. No. C-2/3, New Type-III
D. F. Estate, Raipur, Dehradun (UP)
3. Sh. Mahabir Parashad,
R/O Q. No. C-1/14, New Type-III,
D. F. Estate, Raipur, Dehradun (UP)
4. Sh. Rajeev Varshney,
working as Chargeman-II,
Sec. MIS, OPTO Electronics Factory,
Dehradun (UP).
5. Sh. Sanjay Kumar Goel,
working as Charge-II, Sec. Assembly-III,
OPTO Electronics Factory,
Dehradun (UP).

.. Applicants

(By Advocate Shri Yogesh Sharma)

Versus

1. Union of India through the Secretary,
Ministry of Defence, Govt. of India,
South Block, New Delhi.
2. The Director General/Chairman
Ordinance Factory Board, Govt. of India,
Ministry of Defence, 10-A Auckland
Road, Calcutta.
3. The General Manager,
OPTO Electronics Factory, Dehradun (UP)
4. Sh. Sanjay Sharma
Chargeman-I, through the General
Manager, OPTO Electronics Factory,
Dehradun (UP)

.. Respondents

(By Advocate Shri V. S. R. Krishna)

O R D E R (ORAL)

Hon'ble Shri Govindan S. Tampi, Member (A)

This application challenges the seniority list dated
1.9.1997 (Annexure A-2) of the Chargeman Grade-II issued by
Respondent 3 wherein Respondent 4 has been shown above the
applicants.

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2. The facts of the case as indicated in the application are that the applicants 1-5 and respondent 4 were initially appointed as Supervisor(Technical) in Electronics Trade in 1988 and thereafter they were confirmed on 14.12.1990 whereas the respondent 4 was confirmed w.e.f. 11.4.1991 and his probation period was extended upto 10.4.1991. They have submitted that before 4.11.1992, the seniority of the employees were fixed only from the date of their confirmation. In 1993, the respondents merged the Electronics trade with Electrical trade and all of them were transferred from the post of Supervisor(Tech.) to the post of ~~Chargeman~~ Grade-II vide order dated 10.5.1993 in which the name of the applicants were shown above the name of respondent 4. So their plea is that in 1993 the Respondent 4 was junior to them. The Govt.of India vide OM dated 4.11.1992, issued the instructions regarding fixation of seniority from the date of appointment and not from the date of confirmation and directed that the said OM shall take effect from the date of its issue and the seniority, determined according to the existing principles on the date of issue of these order were not ^{to} be reopened. On 1.9.1997, the respondents published the seniority list of Chargeman grade II, and when for the first time Respondent 4 has been shown at Serial No.13, above the name of the applicants who were fixed at Serial Nos 18,19,20,22 and 23. The applicants made a representation against the revision in seniority list. The same was rejected by the respondents vide their order dated 3.9.98

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referring to DOP&T OM No.596 dated 4.11.1992 by which confirmation has been delinked with the seniority and stating that earlier Govt.orders on the subject stood superseded. The seniority list circulated vide letter dated 1.9.1997, it was indicated, has been determined in accordance with the instructions contained in Govt.of India letter dated 4.11.1992 and therefore, correct. Hence this application.

3. We have heard the counsel for both the applicants and the respondents. Shri Yogesh Sharma, learned counsel for the applicants states that it was for the first time in 1997 that the respondent No.4 has been shown as senior to applicants. The respondents' plea that this has been done in accordance with the instructions contained in OM No.596 dated 4.11.1992 was not acceptable as the Government had issued the OM in 1992 and respondents have taken 5 years to change/modify the seniority list by assignaing higher place to respondent No.4 above the applicants. In fact even in May 1993, the applicants were ^{shown as} senior to him. This belated and incorrect action of the respondents has caused considerable harm to them and deserved to be rectified, urges Shri Sharma.

4. Shri V.S.R. Krishna, learned counsel for the respondents argues that Govt.of India OM dated 4.11.1992 has to be interpreted in view of the law laid down by the Hon'ble Supreme Court in the case of Direct Recruit Class II Engineering Officers Association Vs. State of Maharashtra (JT 1990(2)SC 264)

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wherein it has been held that the seniority is to be fixed according to the date of appointment and that the date of confirmation on the post was no longer relevant. To the specific query from the Bench, the learned counsel states that the respondents have a right to rectify the mistake at any stage. According to him, this rectification was ordered after the decision of the Hon'ble Supreme Court and the issue of OM dated 4.11.1992 and it was correctly done as at the time of the original recruitment respondent No.4 was above the applicant on merit and his delayed confirmation did not affect his seniority. In fact the determination of seniority was done only after the decisions of the Supreme Court and issue of OM dated 4.11.1992, on the basis of which respondent No.4 had to be assigned his rightful place above the applicant and the same cannot be assailed, urges Shri Krishna.

5. We have carefully considered the rival contentions in this regard. It is true that from the date of their appointment the applicants were being shown above Respondent 4. However, in 1997, on the respondent No.4 making a representation, the matter was re-examined by the respondents who issued the revised seniority list placing the Respondent 4 above the applicants. This was done in pursuance of the DOP&T OM dated 4.11.1992, issued following the decision of the Apex Court in Direct Recruit Engineers case (Supra) ordering that the date of appointment and not of confirmation

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was relevant in fixing the seniority. It is also ^{better} ~~but~~ressed by the fact that respondent No.4 was above the applicants on merit at the time of original recruitment. Therefore, the decision taken by the respondents cannot be faulted. Reliance placed by the applicant on the decision in the case of Vir Vikram Kumar Vs. UOI & Ors (1997(1)ATJ 10) to plead that principles once settled should not be re-opened, is without any basis as the determination of the seniority has been done after the Supreme Court decision and GOI's OM dated 4.11.1992, and no decision on principle has ~~been~~ taken earlier. In view of the above we are convinced that the decision taken and communicated vide impugned order dated 1.9.1997 is unassailable in law. The same does not call for any interference by us.

5. The application, therefore, fails and is accordingly dismissed. No costs. However, before parting with this case we would like to indicate that the respondents are guilty of inordinate delay and inaction in the matter which has given rise to this petition. During the years 1990, 1991 and 1993 (even after the Supreme Court order and the issue of OM dated 4.11.1992), the respondents were showing the applicants above respondent No.4 and only after the latter filed a representation in 1997, they woke up and rectified their mistake. This was clearly avoidable in the interest of administrative propriety and justice. Concerned authorities should note this and take necessary remedial action.

(Govindan S. Tampi)
Member(A)

(Smt. Lakshmi Swaminathan)
Vice Chairman(J)