

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1703/2000
MA 2089/2000

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New Delhi this the 3rd day of January, 2002

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

1. Braham Prakash
S/O Shri Pale Ram
R/O Village & P.O Mundhela Kalan,
New Delhi-110073

2. Rattan Lal
S/O Shri Nannu Ram
R/O B-188, Sangam Park,
Rana Pratap Bagh,
New Delhi.

..Applicants..

(By Advocates Dr. D. C. Vohra with
Shri Kulbir Parashar)

VERSUS

1. Union of India through the
Secretary, Ministry of Commerce
and Industry (Department of
Commerce), Udyog Bhawan, New Delhi.

2. Deptt. of Personnel and Training,
through its Secretary, Central
Secretariat, North Block, New Delhi.

3. The Under Secretary,
to the Govt. of India, E-III Section,
Deptt. of Commerce, Udyog Bhawan,
New Delhi-110011.

..Respondents

(By Advocate Shri N. K. Aggarwal, Senior Counsel)

O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

In this application, the applicants, two in number, have
impugned the seniority list issued by the respondents dated
9.6.2000 whereby the earlier seniority lists issued by them
have been revised to their dissatisfaction, by lowering their
seniority vis-a-vis other Peons.

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2. We have heard Dr. D.C. Vohra, learned counsel for the applicant and Shri N.K. Agarwal, learned senior counsel for the respondents and perused the documents on record.

3. We note from the impugned O.M. dated 9.6.2000 issued by the respondents regarding the seniority list of Group 'D' staff that they have stated that on receipt of certain representations from sections of Group 'D' Staff in the Department in respect of fixation of their seniority, they have after consultation with the Department of Personnel and Training, taken a decision to revise them. In Paragraph 2 of the O.M., they have stated that they have accordingly revised the seniority list as on 1.5.2000 which has been circulated among all the concerned persons. Admittedly, on this list, the applicants have made the representations on 28.6.2000 and 29.6.2000 and thereafter, filed this O.A. on 31.8.2000. During the pendency of this O.A., these representations have been considered and rejected by the respondents by order dated 20.9.2000. The main reasons why the respondents have stated that they have revised the seniority list on receipt of the representations from certain sections of Group 'D' staff was, according to them, as per the advice of the DOP&T whose observations are quoted below:

".....among those appointed on regular basis on the same date since all of them were already working on ad hoc basis, their date of continuous ad hoc appointment may be taken into account for the purpose of fixing their inter se seniority. If more than one persons has been appointed on ad hoc basis on the same date, their date of birth may be taken into account for deciding their inter-se position".

The above reasons have also been referred to in the impugned O.M. dated 9.6.2000.

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4. Apart from the fact that Dr. D.C. Vohra, learned counsel, has assailed the impugned O.M. dated 9.6.2000 on merits, he has also submitted that no show cause notice had been issued to him prior to preparation of the seniority list. However, we note that this is a provisional seniority list and the applicants had been given opportunity to represent against the same, which has also been done by them. Thereafter, the same has been rejected after consideration by the respondents.

5. On the merits of the case, we are unable to agree with the decision of the respondents based on the advice they have received from the DOP&T, as this would appear to be contrary to the settled position as laid down by the Hon'ble Supreme Court in the **Direct Class II Engineering Officers Association and Ors. Vs. State of Maharashtra & Ors.** (JT 1990 (2) SC 264 - 5 Judges). The relevant portion of the judgement of the Hon'ble Supreme Court reads as follows:

(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 according to the date of his 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. It is also relevant to note that the respondents had embarked on the revision of the five seniority lists issued by them w.e.f. 19.11.1992 till 12.9.1997 apparently on receipt of a representation from certain other Group 'D'

employees in their Department dated 24.11.1999. Shri Hari Om and nine others have, inter alia, stated in their representation that they have been able to lay their hands on the seniority lists of Group 'D' which were prepared in "1989" and "1987". The respondents had immediately thereafter, considered the representation of these persons in consultation with DOP&T ^{who} ~~who~~ had given them the above quoted advice. In the light of the pronouncement of the Hon'ble Supreme Court in **Direct Recruit's** case (supra), we are unable to understand how the respondents could take the initial appointment of these persons, including their ad hoc service of about one year into account while refixing their seniority. It is also relevant to note that in the same judgement, the Hon'ble Supreme Court has also cautioned that "it is not in the interest of service to unsettle the settled position". In this case, even before issuing the revised provisional seniority list vide O.M. dated 9.6.2000, the respondents did not even issue a show cause notice to other persons, like the applicants who are likely to be affected by the proposed revised seniority which had remained in existence for more than a decade. In the facts and circumstances of the case, we have no doubt that the respondents have, therefore, flouted the principles of natural justice. In this context, Para 7 of the DOP&T O.M. No. 35014/AT/Estt.(D) dated 7.2.1986 which has been relied upon by the learned counsel for the applicants is also relevant and should have been noted by the respondents. In case the respondents wanted to revise any existing seniority list, they ought to have followed the law, including the

principles of natural justice which they have failed to do in the present case. Therefore, the impugned action of the respondents in issuing O.M. dated 9.6.2000 for revision of the seniority list of Group 'D' staff, cannot be supported as legal.

7. In the result, for the reasons given above, O.A. is allowed and the impugned order dated 9.6.2000 is quashed and set aside. No order as to costs.

(Govindan S. Tampi)
Member(A)

"SRD"

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)