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CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench, New Delhi.

O.A. No.11/1989

New Delhi, This the 8th Day of March 1994

Hon'ble Shri C.J. Ray, Member (J)

Hon'ble Shri P.T.Thiruvengadam, Member (A)

Shri Mahesh Kumar Saluja, son of
Shri G.D. Saluja, working as
Lower Division Clerk in the office of
Director (Medical) Delhi,
E.S.I. Scheme, Hospital Complex,
Basai Darapur,

NEW DELHI-110 015 APPLICANT
By Advocate Shri K.P. Dhore
V E R S U S

- Deputy*
1. Delhi Administrative Officer,
Directorate (Medical) Delhi,
E.S.I. Scheme, Hospital Complex,
Basai Darapur,
NEW DELHI-110 015
 2. Director (Medical) Delhi,
E.S.I. Scheme,
E.S.I. Hospital Complex,
Basai Darapur,
NEW DELHI-110 015
 3. Director-General,
E.S.I. Corporation,
Kotla Road,
NEW DELHI-110 002
 4. Chairman, Standing Committee,
E.S.I. Corporation,
Kotla Road,
NEW DELHI-110 002

cont..2/-

RESPONDENTS 5 to 30 c/o Director (Med) Delhi

1. Shri Anand Kumar Sharma
2. Shri Sukhviri Singh
3. Shri Rohitash Singh
4. Sh. Rajeshwar Minj
5. Shri Madan Singh
6. Shri Ran Kumar
7. Sh. Karan Singh
8. Ms. Asha Rani
9. Sh. S.C. Upadhyaya
10. Sh. Sumari Ram
11. Sh. Damodar Pd. Sharma
12. Sh. Rajinder Kumar
13. Smt. Sunita Sachar
14. Smt. Nishi Anand
15. Sh. Babu Singh
16. Sh. Satish Kumar
17. Km. Vidhya
18. Sh. Sumesh Kumar
19. Mukhtar Singh
20. Sh. Raghubir Singh
21. Sh. Bal Kishan
22. Sh. Bal Kishan Bhardwaj
23. Sh. Jagdish Singh
24. Smt. Sharada Soni
25. Sh. Yog Raj
26. Sh. Ashok Kumar Gupta

.....Respondents

By Advocate Shri G. R. Nayyar

O R D E R

Hon'ble Shri P.T. Thiruvangadam, Member(A)

1. The applicant joined service in March 1975 at Jaipur (Jaipur Region) and had been working as LDC (Lower Division Clerk). He applied for transfer to Delhi some time in 1979 and was transferred to the office of Director (Medical) Delhi, ESI Scheme where he joined on 1.9.1977. The applicant had accepted the terms and conditions relating to transfer of employees from one region to another at his own request. The seniority list was issued vide memorandum dated 20/25 April 1979 bringing out the seniority list of lower division clerks of Director (Medical) ESI Scheme Delhi as on 31.1.1978. In this seniority list the applicant was shown against serial No.167 and was immediately placed above one Shri Anand Prakash Sharma at serial No.168.

2. Another seniority list was issued vide memorandum dated 17.12.83 bringing out the seniority of lower division clerks in the same office as on 30.11.83. In this seniority list the applicant figures at serial No.138 and Shri Anand Prakash Sharma who figured one position lower to the applicant in the earlier seniority list now figured at serial No.112. It is the case of the applicant that not only Shri A. P. Sharma but 25 others who were earlier shown junior to him have now been shown senior to him in the seniority list as on 30.11.83. The applicant in this OA has mentioned that he filed a representation against the seniority list of 20.10.87 to which a reply was given on 13.1.88 (Annexure -2) which reads as under:-

"Reference his representation dated 20.10.87 on the subject noted above addressed to Director General, ESI Corporation, Kotla Road, New Delhi.

Shri Mahesh Kumar Saluja, LDC is informed that his aforesaid representation has been thoroughly examined at Hqs office, but the decision remains same as already communication to him vide this office Memo. of even number dated 31.8.1987 and 12.10.1987.

Shri Saluja, LDC is also informed that since the seniority list was finalised as long back

as in 1983, there is no justification on his part to send a representation at such a late stage.

3. This OA has been filed with the prayer to quash the respondents memorandum DMA-24/14/1-86-Estt.I(M) 329 dated 13.1.1988 and for a direction to the respondents to include the name of the applicant at serial No.112 of the seniority list as on 30.11.1983. The applicant has also prayed for consequential benefits viz a viz Anand Prakash Sharma.

4. During the arguments, the learned counsel for the applicant advanced the following grounds:-

(a) The applicant came to know about the revised seniority list only in the year 1987 and hence he could not represent earlier. ^{The reply to} His representation dated 20.8.87 should be treated as final order.

(b) No show cause notice was served on him before the seniority was changed adversely.

(c) The learned counsel for the applicant relied on a number of citations. He stressed that show cause notice has to be given before disturbing the seniority.

5. The learned counsel for the respondents raised preliminary objections regarding limitations. It is contented that the applicant had given a number of representations, The first one on 20.8.87 followed by 5.10.87, 20.10.87 and one more on 22.3.1988. The first representation dated 20.8.87 was disposed of by a memorandum dated 31.8.87 which reads as under:-

" Reference his representation dated 20.8.87 through IMO Incharge, ESI Dispy. C.C. Colony endorsement No. 2(20)/87-CCC-578 dated 20.8.86 on the subject noted above.

Shri Mahesh Kumar Saluja, LDC is informed that his seniority has been fixed in accordance with the instructions and the seniority list issued vide this office memo No.24/15/82-Estt.I dated 17.12.83 is in order."

6. In view of this the final order should be deemed to have been passed on 31.8.87 itself. However, memorandum

issued on 13.1.88 is merely a reproduction of the earlier memorandum of 31.8.87 and does not show any further re-consideration or application of mind. Accordingly as per the respondents the DA which has been filed on 12.12.88 should be deemed to be time barred and should not be entertained.

7. It ^{was} also pointed out ^{was} in the memorandum dated 17.12.83 where the seniority list (revised) was circulated, the following provisions were incorporated:

"The particulars in respect of the employees of his/her unit may please be got checked up and errors/emissions against any of the column may please be intimated to this office urgently.

Errors/objections, if any, pointed out by the individuals concerned may please be sent to this office within one month of the date of issue of this memorandum i.e. 19.1.1984, the latest, whereafter no representation will be entertained/considered and the seniority list will be treated as final.

The contents of this memorandum may please be brought to the notice of all concerned."

Copy of this memorandum was forwarded for circulation amongst ^{the concerned} ~~others~~ staff to various sections as per the endorsement made in the memorandum. The learned counsel for the respondents argued that the opportunity was available to the applicant to raise his objections if any against the seniority list enclosed to the memorandum of 17.12.83. The applicant had kept quiet for almost four years and only for the first time made ~~a~~ representations in 1987. In none of these representations as well as in the DA he had raised the issue that he had come to know of the seniority list circulated in 1983 for this first time in 1987. Reliance was placed on Supreme court orders in SLR 1993(66) Page 13 in SB Dogra Vs State of Himachal Pradesh and others DA 2016/87 decided on 24-9-1992. The relevant portion reads as under:-

If the employee concerned did not file his representation within the period prescribed after the date of the publication of the provisional graduation list, then his representation should have been rejected outright. It is erroneous to contend that the employee concerned should have waited for filing his representation

of objection untill the final gradation list was published. Therefore, the representation filed by the respondent long after the expiry of the time mentioned in the Gazette publishing the provisional gradation list was rejected as belated.

8. In view of the Hon'ble Supreme Court Order^{on the issue of} belated representations against provisional gradation list and the provision made in the memorandum of 17.12.1983 calling for objections if any from the employees^{Contention} of the assumption regarding show cause notice not having been given to the applicant can not be sustained.

9. Without prejudice to this, we went into the merits of the case. The respondents have filed additional affidavit bringing out the reasons as to how 26 employees who were earlier shown junior to applicant in the seniority list as on 31.1.78 were shown senior to the applicant in the later seniority list as on 30.11.83.

It has been brought out that the recruitment to the post of lower division clerk is made 75 per cent by direct recruitment through open competition test (category 1) and 25 per cent through qualifying closed competitive test confined to Class IV employees (Category II) and seniority accorded with reference to the position of the merit lists drawn on the basis of competitive examinations. The applicant has joined as LDC in Rajasthan and requested for transfer to Delhi which was accepted subject to the condition that the applicant shall rank junior in the seniority list of LDCs to all officials in this cadre on that date on which he joined the new region. The applicant joined the Delhi region on 1.9.1977. The learned counsel for the respondent mentioned across the bar that all the direct recruits among the 26 candidates who had been shown senior to the applicant in the revised list were selected from the same open competitive test. They are all inter-related along with the promotees by applying the rota-quota principle i.e. after every 3 candidates of category 1, one candidate of category II

had to be positioned. Cyclical, this distribution of 3 to 1 between direct recruit and promotees had to be continued and in the process the inter-se seniority among the candidates in each group had to be also maintained. Shri Ashok Kumar Gupta who is now shown as at Serial No.137 in the seniority list in 1983 is a promoted employee who got promoted on 29.5.77 and had to be stationed necessarily above ~~at~~ Serial No.138 i.e. above the applicant who had joined Delhi on transfer on 1.9.77. Some other candidates shown senior to Shri AK Gupta had to be given ~~place~~ ^{place} as per the rota-quota principle and the inter-se seniority in the two categories. ~~This~~ had to be maintained irrespective of the actual date of joining of some of the senior candidates being later to the date of joining to Shri AK Gupta. The seniority list in 1983 had to be revised incorporating the rota-quota principles and in the earlier seniority list which was ~~imposed~~ ^{passed} these principles were not followed. However, while revising the seniority list opportunity was given to all the candidates to raise objections if any.

8. We do not see any flaw in the argument advanced by the learned counsel for the respondents. The applicant was only relying on the condition of inter-regional transfer that ~~a~~ ^a transfer on request would rank junior to those already working on ~~where he joined~~ ^{the date which he joins}. We note that the applicant had been placed below Shri AK Gupta in the revised seniority list and it is not disputed that Shri AK Gupta a promoted candidate had been promoted even before the applicant got transferred to Delhi region. The reasons for some other candidates being shown as senior to Shri AK Gupta in view of the rota-quota principles can not be held as irregular. ~~hence assailed~~

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9. In the Circumstances, this DA is dismissed on ground of limitation as well as on merits. No costs.

P. T. Thiruvengadam

(P.T. THIRUVENGADAM)
Member (A)

/s/ Roy 8/3/96

(C.J. ROY)
Member (J)

LCP