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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH,
NEW DELHI.

O.A.No.2419 of 1989

New Delhi, this the 31st day of August, 1994

Hon'ble Mr Justice S.K.Dhaon, Acting Chairman
Hon'ble Mr B.N.Dhoundiyal, Member(A)

Anar Das,
Superintendent,
Directorate of Education,
Delhi Administration,
Old Secretariat,
Delhi. Applicant.
(through Mr S.M.Garg, Advocate).

vs.

1. Delhi Administration
through its Chief Secretary,
5, Sham Nath Marg,
Delhi 110 007.
2. The Secretary(Services)
Delhi Administration,
5, Sham Nath Marg,
Delhi 110 007.
3. Shri Chander Bhan,
Grade-I(Executive) Officer
Delhi Administration
Delhi.
4. Shri Lakhbir Singh
Grade I(Executive) Officer,
Delhi Administration
Delhi Respondents.

(respondents No.1 and 2 through Ms Avnish Ahalawat, Adv.)

(respondents No.3 and 4 through Mr P.P.Khurana, Adv.)

ORDER

Hon'ble Mr B.N.Dhoundiyal, Member(A).

The applicant challenges the revised seniority list of Grade-II dated 11.7.1989 and the seniority list of Grade-I dated 1.9.1989.

2. The applicant was appointed in Grade-II (Executive) in Delhi Administration on the basis of an open competition held in the year 1973 against a Scheduled Caste vacancy. Respondents No.3 and 4 were appointed through the same examination and all of them

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joined on 8.2.1974. On the basis of higher merit position in the competition, the applicant was placed senior to respondents No.3 and 4. In the seniority list issued on 27.12.1977, the name of the applicant appeared at serial number 551 and that of respondent No.3 at 555. In the year 1981, a list of confirmed employees in Grade-II executive was issued, but the name of the applicant was omitted. The applicant submitted a representation on 23.1.1982 and also met the then Secretary (Service.) He was assured that the order would be corrected. He asserts that there was nothing against him which could have prevented his confirmation. Respondent No.3 was promoted to Grade-I on regular basis vide order dated 15.4.1987 and the applicant and respondent No.4 vide order dated 22.6.1987. The applicant was placed at Serial No.1131 in the integrated seniority list of Grade-II while respondent No.4 was at No.1336. The applicant has no complaint against the seniority lists circulated on 7.3.1989 and 23.6.1989 where he was given his due position. However, on 11.7.1989, respondents No.3 and 4 were shifted from their placement in the seniority list dated 23.6.1989 from serial numbers 696 and 698 and shown at numbers 644-A and 644-B respectively. Thus, they are given a position much higher than the applicant who was at Serial Number 695. The applicant was given to understand that this was done because they had already been confirmed in Grade-II while his confirmation was still pending. On 1.9.1989, a tentative seniority list of officers appointed in Grade-I (Executive) was issued wherein respondents No.3 and 4 were shown at serial numbers 353 and 354, respectively and the assumed date of their appointment in the

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The applicant was not promoted grade was shown as 2.12.1980. A number of representations were made by him and on 6.10.1989 he received a reply from the Deputy Secretary(JSC) stating that as the applicant had not been appointed on regular basis in Grade-I(Executive) his name was not included in the said list. The applicant claims to have been promoted on regular basis by an order dated 22.6.1987. In another reply received on 27.10.1989, the following reasons were given:

"S/Shri Lakhbir Singh and Chander Bhan who were selected for appointment in grade II(E) on 8.2.1974 were confirmed in the grade from 1.10.1976. Being Scheduled Caste officials, it is the instructions on the subject when they are confirmed irrespective of their merit at the time of appointment, they will rank senior to other un-confirmed officials. Accordingly, they have been given seniority above the officials selected through the particular batch.

Since you are not confirmed alongwith S/Shri Chander Bhan and Lakhbir Singh, in the usual list of Grade-II(E), you have been placed at Sr.No.695 with date of appointment in grade-II(E) as 8.2.1974. You were nominated for appointment in the grade II(E) vide order No.F.10(II)/74-S.II dated 8.2.1974. Accordingly, you have been correctly placed at Sr.No.1405 with reference to your date of appointment being 8.2.1974."

The applicant claims that if the amended Rule 26 of the Delhi Administrative Subordinate Services Rules, 1967 is correctly applied, the applicant is entitled to a position higher to respondents No.3 and 4. The applicant was also apprehensive that while

respondents No.3 and 4 were being considered for future promotion to the posts in DANICS and NON-DANICS. The following reliefs have been sought:

- " (a) Pass an order directing the respondents No.1 and 2 to restore the applicant his original position in the seniority list of Grade-II(Executive) above respondent Nos. 3 and 4.
- (b) Direct respondents Nos. 1 and 2 to consequently re assign his seniority in Grade I above respondents No.3 and 4 disregarding their confirmation in grade II;
- (c) Direct respondent Nos. 1 and 2 to consequently consider the applicant for further promotion to higher grades in accordance with law, on the basis of the revised seniority in Grade-I.
- (d) Direct the respondents to forthwith issue orders of confirmation of the applicant in Grade II(Executive). "

3. In the counter filed by the respondents, it is admitted that the applicant was placed Sr.No.2 in the competitive examination held in the year 1973 in the merit list of 33 successful Scheduled Caste Candidates and that he joined duties in the Excise Department of Delhi Administration on 1.3.1974. By an order dated 21.11.1981, 45 grade-II officials of General and Scheduled Castes Category were confirmed. Two Scheduled Castes officials namely S/Shri Chander Bhan and Lakhbir Singh were also given benefit of reservation in the matter of confirmation. These officials were appointed initially as Grade-II(Executive) with effect

from 8.2.1974 alongwith Shri Amar Dass. However, by virtue of their substantive appointment to reserved vacancies both the officials were ranked to all other temporary officials appointed in Grade-II in the same recruitment year in the final seniority list of Grade-II issued on 23.6.1989. Shri Chander Bhan was placed at Sl.No.644-A, and Shri Lakhbir Singh at No.664-B through an amendment issued vide letter dated 11.7.89. Against this changed position in the seniority, Shri Amar Dass made a representation, which was rejected on the ground that ~~Shri Amar Dass~~^{he} was not confirmed alongwith S/Shri Chander Bhan and Lakhbir Singh in the new list of Grade-II(Executive) and he was informed by letter dated 17.10.1989.

4. In the additional affidavit filed by the respondents, it is stated that the representation submitted by the applicant 2.8.89 had been examined. As on 1.5.1990, there were 1196 officials eligible to be considered for confirmation in Grade-II of Subordinate Services. In the said list, the name of Shri Amar Dass appeared at Sr.No.359 at page 15. It is stated that the case of the applicant alone cannot be considered for confirmation and that it will be considered at par with others.

5. The applicant has filed with a Misc.application No.2259/93, a copy of the order dated 6.8.1992, whereby on the recommendations of the D.P.C., the Chief Secretary, Delhi Administration) has confirmed the applicant alongwith 454 others in Grade-I of the DASS with his date of confirmation as 21.3.1989.

6. A counter-affidavit has also been filed by respondents No.3 and 4. The main point raised by them relates to limitation. As the cause of

action arose on 1.10.1976 when they were confirmed and no such orders were passed in respect of the applicant. As the cause of action had arisen three years before the constitution of this Tribunal, it is contended that the matter is beyond its jurisdiction.

7. We have gone through the records and heard the learned counsel for the parties. It is clear that the cause of action arose in 1976 when respondents No.3 and 4 were confirmed and the applicant was left out. According to his own averment, he made a representation to the Under Secretary(JSC) on 23.1.1982. What has happened is that due to earlier confirmation, respondents No.3 and 4 have derived the advantage of the following provisions of O.M.dated 20.4.1961:

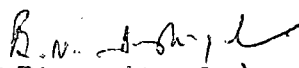
" Seniority of direct recruits who are confirmed in an order different from the original order or merit, including those belonging to Scheduled Castes/Scheduled Tribes..... In a case where a Scheduled Caste or a Scheduled Tribe candidate, occupying a lower position in the merit list is appointed permanently to a reserved vacancy, while candidates above him in the merit list are not appointed at that time, then, after confirmation, the Scheduled Caste/Scheduled Tribe candidates will rank senior to the temporary/officiating officers of the Grade and amongst the permanent officers of that grade their seniority will follow the order of their confirmation."


The subsequent developments are clearly a consequence of confirmation of respondents No.3 and 4 much earlier than the applicant and cannot be challenged on the

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ground that these have occurred within the period of limitation. No relief can be granted to the applicant unless the order of confirmation issued in the year 1981 is quashed and set aside. This Tribunal has no jurisdiction in such case in accordance with Section 20 of the Administrative Tribunals Act, 1985.

8. Accordingly, we hold that this application is hopelessly barred by limitation. It is hereby dismissed, leaving the parties to bear their own costs.


(B.N.Dhoundiyal)
Member(A)


(S.K.Dhaon)
Acting Chairman.

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