

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 675/89
T.A. No.

199

DATE OF DECISION 6.3.1991.

Shri K.L. Mehta & Ors.

Petitioner

Shri J.P. Verghese

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri J.P. Singh

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓

(AMITAV BANERJI)
CHAIRMAN
6.3.91.

(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

REGN. No. OA-675/89

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SHRI K.L. MEHTA & ORS. APPLICANT

VERSUS

UNION OF INDIA & ORS. RESPONDENTS

CORAM:

THE HON'BLE JUSTICE MR. AMITAV BANERJI, CHAIRMAN

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANTS SHRI J.P. VERGHESE, COUNSEL

FOR THE RESPONDENTS SHRI J.P. SINGH, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY
HON'BLE MR. I.K. RASGOTRA, MEMBER(A))

Shri K.L. Mehta and four others all working as Assistants in Indian Council of Agricultural Research (ICAR) have filed this application under Section 19 of the Administrative Tribunals Act, 1985, aggrieved by the impugned seniority list issued vide circular letter No. 27/9/86 Estt.II dated July 1, 1986. The applicants joined the Central Secretariat Clerical Service (CSCS) as Lower Division Clerks (LDC) and their seniority was fixed prior to decentralisation of CSCS cadre in accordance with the Ministry of Home Affairs OM No. 91155/RPS dated 22.12.1959. In 1966, the Government decided to convert the Secretariat of Indian Council of Agricultural Research which was then functioning as an attached office of the Department of Agriculture into an Autonomous Organisation. Consequent to the above decision the Government employees holding posts in the said Secretariat would have been rendered surplus. The ICAR agreed to take over the staff holding these posts subject to their exercising option to

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join ICAR on the terms and conditions specified in the circular dated 1967. The said circular provides that the inter-se seniority of the staff in the ICAR shall be determined "in accordance with the rules to be framed for the purpose taking into account among others the principles governing the seniority under the Central Government." On 20.4.1970 the Department of Agriculture decided that the inter se seniority of the ministerial staff in the ICAR will be regulated on the basis of the "date of appointment to the grade on a regular basis as on 1.4.1965" and accordingly the inter se seniority of the employees was fixed as far back as on 8th August, 1972. The memorandum of 20.4.1970 also brings out that the date of exercise of option for the staff has been extended from time to time and "at present it has been extended upto 30th July, 1970." The date of exercising option was extended from time to time so as to enable the staff to "fore-see" their future prospects and scope in the Council by opting for the Council service.

2. The case of the applicants is that the Department of Agricultural Research and Education which was set up in pursuance of the recommendation of the ICAR Enquiry Committee appointed under the Chairmanship of Former Chief Justice of India, Mr. P.B. Gajendragadkar finalised the revised rules of the ICAR as an Autonomous Organisation on April 3, 1975. It was only thereafter that the ICAR authorities took up the matter of amalgamation of staff who joined ICAR on the basis of options offered to them in 1966. The applicants who had opted for the ICAR Service and had filled up the vacancies

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in higher grade on adhoc basis along with others pending finalisation of the rules, represented for protection of their service/seniority as stated by them in their option document. The ICAR, however, did not take any decision regarding the seniority of the applicants as a few writ petitions filed by some original employees of the ICAR in the High Court of Delhi were dismissed only sometime in 1979. It was at this point of time that applicant No.1 Shri K.L. Mehta made a representation to ICAR on 5.2.1979 requesting them to settle the matter pertaining to protection of the relative seniority in the grade of LDC for the purpose of promotion to the higher grades. The occasion for filing/^{the}present application has been provided as the ICAR has revised seniority of about 15 Scheduled Caste (SC)/ Scheduled Tribe (ST) Assistants belonging to the original ICAR service in July 1986. The applicants submit that they filed a representation on 19.9.1986 against the seniority placement of 15 SC/ST Assistants.

The ICAR circulated a provisional seniority list of Assistants in 1976 inviting objections, if any. In the meantime, the vacancies in higher grades continued to be filled up on adhoc basis. The grievance of the applicant is that their seniority has adversely affected as some of their juniors in the original Department of Agriculture/^{Research} have now become senior to them in the grade of Assistants disturbing the relative seniority to the disadvantage of the applicants. Some of these persons allegedly junior to the applicants e.g. S/Shri K.C. Arya, E.D. Robinson and A.K. Bhatnagar after enjoying promotion in the higher grade posts have even retired from service whereas the applicants

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are still working as Assistants. The applicants further aver that the matter regarding protecting their seniority was referred by the respondents to the Department of Personnel who have advised the ICAR that the seniority in the Central Secretariat Clerical Service prior to decentralisation appears to have directly a close relationship with the date of confirmation and those confirmed earlier had to rank senior to those confirmed later. The respondents have also not responded to their representations. The applicants rely on the judgement of the honourable Supreme Court in R.L. Gupta & Anr. Vs. UOI & Ors. JT 1988 (1) SC 556 to fortify their case.

3. By way of relief the applicants have prayed that the seniority list dated 1.7.1986 be quashed as violative of Article 14, 16 & 21 of the Constitution of India and that the respondents be directed to place the applicants at due places of seniority with all consequential benefits.

4. The learned counsel for the applicant Shri J.P. Verghese submitted that he was not pressing for the first relief viz. quashing of the seniority list dated 1.7.1986. He is only seeking relief to the extent that the applicants be given their due seniority with consequential benefits.

5. The respondents in their written statement have raised some preliminary objections. The first objection is that the application is barred by limitation in terms of Sections 20 and 21 of the Administrative Tribunals Act, 1985. Secondly the seniority was fixed as far back on 8th August, 1972 after the option was exercised by the applicants voluntarily for joining the service of the ICAR on the terms and conditions

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contained in memorandum dated 20.4.1970. They are therefore now estopped from challenging the same and that too after 17 years. Thirdly the applicants have not impleaded the persons who are likely to be affected if the reliefs prayed for are granted to the applicants. the application is, therefore, bad in law for misjoinder of parties.

6. Pursuing the preliminary objection, Shri J.P. Singh, the learned counsel for the respondents submitted that the applicants cannot be allowed to rake up the issue of seniority after 17 years after the cause of action arose. He cited the decision of the Hon'ble Supreme Court in State of Orissa Vs. Sri Pyarimohan Samantaray & Ors. AIR 1976 SC 2617 in support of his case. Their Lordships of the Supreme Court in the said case held that:

"The fact therefore remains that the petitioner allowed some 11 years to go by before making a petition for the redress of his grievances. In the meantime a number of other appointments were also made to the Indian Administrative Service by promotion from the State Civil Service, some of the officers received promotions to higher posts in that service and may even have retired. Those who continued to serve could justifiably think that as there was no challenge to their appointments within the period prescribed for a suit, they could look forward to further promotion and higher terminal benefits on retirement. The High Court therefore erred in rejecting the argument that the writ petition should be dismissed because of the inordinate and unexplained delay even though it was "strenuously" urged

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for its consideration on behalf of the Government of India."

"In the view we have taken, we do not think it necessary to examine the controversy on the merits. The appeal is allowed, the impugned judgement dated April 11, 1975 is set aside and the writ petition is dismissed."

The learned counsel further submitted that the cause of action arose in 1972 and the first representation submitted by Shri K.L. Mehta, applicant No.1 was made only on 5.2.1979. The applicants should have made a representation in 1972 if they were aggrieved when the cause of action arose and after waiting for a reasonable period should have agitated the matter in the appropriate legal forum. They cannot now at this distance be allowed to raise the issues which are already well settled. In S.S. Rathore Vs. State of M.P. 1989(4) SCC 282 their Lordships of the Supreme Court explaining the implications of Section 20 of the Administrative Tribunals Act, 1985 have held that:

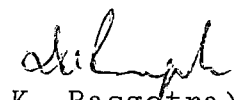
"It is proper that the position in such cases should be uniform. Therefore, in every such case only when the appeal or representation provided by law is disposed of, cause of action shall first accrue and where such order is not made, on the expiry of six months from the date when the appeal was filed or representation was made, the right to sue shall first accrue. Submission of just a memorial or representation to the head of the establishment shall not be taken into consideration in the matter of fixing limitation."

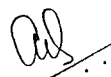
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We are, therefore, of the view that the application is barred by limitation under Section 20 of the Administrative Tribunals Act, 1985 and there is no sufficient ground for us to go into the case on merits. Restoration of seniority of some SC/ST candidates at certain places - which is not challenged - cannot be construed as having provided the cause of action. Further the Constitution Bench of the Hon'ble Supreme Court in Direct Recruit Class II Officers' Ass. V. State of Maharashtra JT 1990 (2) SC 264 has held:

"(J) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. It is not in the interest of Service to unsettle a settled position. (Para 47)"

The OA is also bad in law for misjoinder of parties. In the facts and circumstances of the case, the application is barred by limitation under Section 20 of the Administrative Tribunals Act, 1985 and accordingly the same is dismissed with no order as to costs.


(I.K. Rasgotra)
Member(A) 6/10/91

 6.3.91
(Amitav Banerji)
Chairman