

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A.No. 73/89.

DATE OF DECISION 24.8.93.

SHRI JAGA RAM TANWAR

Petitioner

SHRI K.L. BHATIA,

Advocate for the Petitioner(s)

VERSUS

UNION OF INDIA & OTHERS

Respondent

SHRI K.C. MITTAL,

Advocate for the Respondent(s)

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The Hon'ble Mr. N.V. KRISHNAN, VICE-CHAIRMAN (A)

The Hon'ble Mr. B.S. HEGDE, MEMBER (JUDICIAL)

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 ?

JUDGEMENTDelivered by Hon'ble Shri B.S. Hegde, Member (Judicial) 7

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 challenging the order of reversion and sought for the following reliefs :-

(1) Respondents No. 1 and 2 be directed to withdraw

and set aside the order No. 4-1/84-Admn. II, dated

1.11.1985 in which the applicant had been treated as junior to Shri Ram Chander and Shri Jit Ram Respondents No. 3 and No. 4 after a lapse of 23 years.

(2) Respondents No. 1 and 2 be directed to quash the impugned order No. 6-22/74-Admn.II, dated 14.1.1986 in which the applicant had been reverted from the post of Head Clerk-cum-Accountant to that of Store Keeper and his junior Shri Ram Chander has been promoted as Head Clerk.

(3) The applicant may be deemed to be holding the post of Head Clerk-cum-Accountant with effect from 11.1.1986 without any break and he may given pay and allowances along with the arrears of the post of Head Clerk-cum-Accountant in continuation of his holding the post of Head Clerk-cum-Accountant from 11.1.1986 and also prayed for interim order that the Respondents No. 1 & 2 may be directed to reinstate the applicant to the post of Head Clerk-cum-Accountant.

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2. The brief facts are that the applicant is employed in the Safdarjang Hospital, New Delhi under the Director General of Health Services as Store Keeper which is filled by way of direct recruitment as against the vacancy accrued in the year 1962. The name of the applicant was sponsored by the Employment Exchange as a direct recruit and the Respondents No.3 & 4 were considered as departmental candidates. A D.P.C. was convened for the purpose of filling up of the three posts of Store Keeper. The Selection Committee of the D.P.C prepared a panel of the selected candidates and accordingly the applicant was empanelled at S.No.3, respondent No.4 at S.No.8 and respondent No.3 at S.NO.9. The applicant was further confirmed as Store Keeper w.e.f. 1st July, 1967 and the respondent Nos.3 and 4 were confirmed on 15.4. 1972 and 1.2.1972 respectively (Annexure 2) vide dated 8-12-1977.

3. The applicant, on receipt of the seniority list of Store Keeper as on 31.12.1978 noticed that he was shown at S.No.4 and respondents No.3 and 4 were shown at S.Nos 5 & 6. In that list it was mentioned that any body who feels aggrieved by the seniority list may make representation to the

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competent authority within 15 days of the receipt of the list. In that list, since seniority was rightly shown as per the date of confirmation, no representation was made and, therefore, it became final. Thereafter, the applicant was appointed to the post of Head Clerk-cum-Accountant w.e.f. 1.9.1982 for six months till recruitment rules were finalised. The said ad hoc appointment was extended from time to time which he held for more than three years without any break. Subsequently, on 1.11.1985, the respondents issued a fresh seniority list of Store Keepers in which the seniority of the applicant was unilaterally down-graded placing his name below his juniors i.e. respondents No.3 and 4 which is at Annexure VI, dated 1.11.1985. In that O.M. also it was stated that if any body has got any objection, they were directed to send their objections along with the supporting evidence on or before 15.11.1985. The applicant submitted his representation on 15.11.1985 placing serious objections of disturbing his

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seniority stating that though the applicant was confirmed as on 1.7.1967 and the respondent No.3 and 4 were confirmed later on, they could not be treated as senior to him. He further states that consequent upon issue of the fresh seniority list, respondent No.3 was promoted to the post of Head-Clerk-cum-Accountant and the applicant was reverted to the post of Store Keeper w.e.f. 11.1.1986 (Annexure I). Despite repeated reminders to the competent authorities, no reasons have been assigned by the respondents. Accordingly, he has filed this application for the required reliefs.

4. The stand of the respondents in their reply is that in 1962 three posts of Store Keeper were to be filled by direct recruitment. In that, both the direct recruits as well as departmental candidates were considered. On the whole, nine candidates were considered for the posts. The applicant was outside candidate and the respondents No.3 and 4 were departmental candidates. It is conceded that the Selection Committee recommended the names of the following three candidates along with others :--

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(i) the applicant.

(ii) Respondents No 3 & 4 in the order of seniority-cum-merit.

It is also stated that no merit list was prepared by the Selection Committee as the candidates were not found possessing the required standard as is evident from the remarks of the Selection Committee i.e. " we have to select figures amongst cyphers as such we recommend S.Nos 3,8 and 9 for recruitment".

Pursuant to selection, Respondent No.3 and 4 joined as Store Keeper on 25-9- 1962. He further contends that as per the existing rules, the seniority of the candidates were to be decided on the basis of the date of birth of the candidates if they happen to join the same day. Therefore, respondent No.3 became senior to Jit Ram, Respondent No.4, his date of birth being 10.1.1938. The applicant had joined only on 27.9.1962 and his date of birth is also 1.4.1940. Accordingly, he stands junior to the above two officials, by virtue of his date of joining subsequent to respondents No.3 and 4. So far as the facts mentioned by the applicant are concerned ; the same was not disputed.

5. The short point for consideration is whether the respondents are justified in revising the seniority without any notice to the applicant especially after issuing the confirmation order dated 8.12.1977 wherein the applicant has been listed at S.No.1 and is shown as senior to respondents Nos 3 and 4.

6. We have considered the pleadings and arguments of both the parties as well as respondent 3. The Learned counsel for the applicant has vehemently argued that reverting the applicant from the post of Head Clerk-cum-Accountant to Store Keeper without any notice is unwarranted and against the principle of natural justice, and his seniority should be maintained as at the time when the appointment to the post of Store Keeper was made. Even assuming that no recruitment rules existed at that time, Department of Personnel vide their O.M. dated 22nd December, 1959 had given instructions that seniority of Government servant should be determined as under:-

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Where recruitment is made on the basis of selection, the seniority of the said persons shall be made in the order in

which they have been recommended for such appointment".

7. In the instant case the applicant has been declared senior to respondents No.3 and 4 in the original order of appointment as Store Keeper and the respondents 3 & 4 did not raise any objection at that point of time hence they cannot be allowed to raise the seniority question after a lapse of so many years. In this connection, in support of his contention, the applicant relied upon the Supreme Court's decision in K.R.Mudgil and others vs. R.P.Singh & Ors. [1987 SCC Lab(6)] wherein it was held that the seniority cannot be disturbed after a long lapse of time to the detriment to the officer. It was specifically observed by the Hon'ble Court in that case that a Government servant who is appointed to any post ordinarily, atleast after a period of 3-4 years of his appointment, be allowed to attend to the duties to his post peacefully and without any sense of insecurity. Since the present revision of seniority has taken place after a lapse of three decades keeping in view of the observations of the Supreme Court, the same is not justified.

8. The Learned counsel for the respondents 1 and 2 was not able to give any concrete reason why the seniority list has been revised and nothing is evident in the reply given by the respondents. The impugned Annexure A-VII revised seniority list does not state clearly on what ground it was revised andt whose instance. The applicants representation both in regard to seniority and reversion is stated to be pending. The reply of the respondents does not also articulate the reason.

9. In the course of his arguments, the learned counsel for the respondent contended that at the time of selection no selection list grading the persons selected(i.e. applicant and respondents 3 & 4) on merits was published - This is clear from the selection Committee observation.

(Signature)
" We have to select figures from amongst cyphers. As such we recommended Nos 3, 8 and 9 for recruitment".

Thus the committee placed the applicant, Respondent No.3 and Respondent No.4 in that order but the learned counsel contends that this should not be treated as a list based on merit. In that case, seniority will be based on date of

joining only. Respondent Nos 3 & 4 joined earlier than applicant and hence they were senior to him. This correct position was restored in 1985.

10. Respondent No.3 also endorsed this stand.

11. We have considered all aspects:-

whatever be the merits or demerits of the candidate there was a selection on 21.9.62. Out of 9 persons, 6 were eliminated as they were found to be less fit than the applicants and Respondents 3 & 4. There was thus a process of selection. Therefore, it cannot be urged that the order in which the names were placed by the Selection Committee, does not represent a merit order. If it is a merit order, the seniority should be on the basis of that inter-se-order. Therefore, the applicant was rightly given a place above respondents 3 & 4. That should not have been reversed of the impugned annexure A-6 order dated 1.11.1985.

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12. That apart, the seniority should not have been revised to the detriment of the applicant without giving him an opportunity to show cause.

Further inter-se seniority of the applicant and the respondent No.3 and 4 which had been settled ever since they were recruited in 1962 should not have been reopened after 23-years, even if there was some irregularity. As stated above we find that there was no such irregularity.

13. In the conspectus of the case, we are of the view that the Annexure-VI revised seniority list in so far as it places the applicant below respondents and the 3 & 4 Annexure-I impugned order dated 14-1-1986 reverting the applicant from the post of Head Clerk-cum-Accountant to the post of Store Keeper are liable to be quashed. Accordingly, this O.A. is allowed and the applicant shall deemed to be holding the post of Head Clerk-cum-Accountant w.e.f. 11.1.86 and the Respondent shall pay consequential benefits to the applicant within four months from the date of receipt of this order. There shall be no order as to costs.

B.S.Hegde
(B.S. HEGDE) 24/6/93
MEMBER (J)

N.V.Krishnan
(N.V. KRISHNAN)
VICE CHAIRMAN (A)