

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 861/89

New Delhi this the 5th day of August, 1994.

CORAM:

THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

THE HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

S. K. Rhode S/O Late Mulkh Raj,
Retired as Section Officer,
Research & Analysis Wing,
Cabinet Secretariat,
New Delhi, and
R/O E-1177, Netaji Nagar,
New Delhi - 110023.

... Applicant

By Advocate Shri B. B. Raval

Versus

1. Union of India through
Cabinet Secretary,
Government of India,
Rashtrapati Bhawan,
New Delhi - 110001.

2. Shri A. K. Verma,
Secretary,
Research & Analysis Wing,
Cabinet Secretariat,
Room No. 8-B South Block,
New Delhi - 110011.

3. The Director,
Intelligence Bureau,
Ministry of Home Affairs,
Government of India,
North Block, New Delhi.

... Respondents

By Advocate Shri M. K. Gupta

O R D E R

shri S. R. Adige, Member (A) -

In this application Shri S. K. Rhode, retired
Section Officer, Research & Analysis Wing (for short
R.A.W), Cabinet Secretariat, has prayed that the
Respondents be directed to restore him his seniority
and promotion under N.B.R. vide FR-22-C, which he
claims is due to him consequent to a judgment of the

Hon'ble Supreme Court dated 30.9.1986 in Civil Appeal Nos. 2925-26/81 - K. R. Mudgil & Ors. vs. R. P. Singh & Ors. together with consequential benefits including promotion to the next higher rank of Under Secretary, as well as interest at the rate of 12% for delayed payment of financial benefits.

2. According to the applicant, he joined service as an LDC in the Intelligence Bureau (for short IB), Ministry of Home Affairs, New Delhi, on 6.3.1950 and was confirmed as LDC as well as UDC on 13.6.1961. He was promoted as Assistant w.e.f. 16.11.1969, and upon the bifurcation of IB, his services were allotted/ transferred to RAW w.e.f. 21.9.1968 along with his lien. He was confirmed as Assistant w.e.f. 1.2.1983 and was promoted as SO in RAW w.e.f. 8.2.1984. He superannuated on 28.2.1989.

3. According to the applicant the ministerial posts in the IB were re-organised w.e.f. 1.2.1954 into three categories, viz., (a) Administrative Officer and the Assistant Director (Non-Police); (b) Superintendents and Assistant Superintendents; and (c) Assistants. All duty posts in category (c) were required to be filled by Assistants or UDCs placed in charge of such posts. The posts of Assistants were classified as belonging to Grade-IV in the IB, and the mode of initial constitution of Grade-IV, confirmation of existing Assistants or departmental candidates, and the future requirement to Grade-IV consisting of Assistants were regulated by the reorganisation scheme.

The principle of fixation of seniority which was followed was laid down in MHA's O.M. dated 14.5.1940, according to which, if a vacancy arose in the cycle meant for a direct recruit, that direct recruit would rank senior to the departmental candidate even though the direct recruit joined the post after the departmental candidate had been promoted and confirmed. This principle was subsequently superseded by MHA's O.M. dated 22.6.1949 which provided that seniority would be determined on the basis of the length of service, and the seniority of the Assistants in the IB was accordingly fixed on the basis of this 1949 O.M. According to the applicant, some directly recruited Assistants in the IB filed Civil Writ Petition No. 638/76 in the Delhi High Court challenging the appointment and seniority of certain other Assistants, who had been appointed before 1.2.1954. This writ petition was dismissed by a single Judge, against whose judgment, LPA No. 6/78 was filed, which was allowed and the Single Judge's order was set aside vide judgment dated 19.12.1980, besides giving some other ancillary directions, resulting in disturbance in the seniority of the promotee Assistants. Aggrieved by that decision, the promotee Assistants filed Civil Appeal Nos. 2925-26/81 - K. R. Mudgil & Ors. vs. R. P. Singh & Ors. : 1987 (1) AIR 1, and the Hon'ble Supreme Court by their judgment dated 30.9.1986 set aside the Delhi High Court's judgment dated 19.12.1980 and directed that promotions made in the IB be reviewed in accordance with the impugned seniority

M
list dated 28.1.1976. Meanwhile, in June, 1975 itself a seniority list of Assistants had been prepared and circulated by the IB and had been finalised in 1976 having regard to the decision in the case of Union of India & Ors. Vs. M. Ravi Verma & Ors. - 1972 (2) SCR 992. Subsequently, this seniority was circulated with Cabinet Secretariat's memorandum dated 29.11.1978 in which the applicant figured at Sl. No. 55.

4. The applicant's case is that consequent upon the Hon'ble Supreme Court's judgment dated 30.9.1986 he filed several representations for fixation of seniority as Assistant as well as S.O., seeking promotion as S.O. w.e.f. 16.10.1975, the date on which his junior was promoted and was informed that his representation had been forwarded to IB and the decision as and when received would be communicated to him. However, when no reply was received for quite some time, the applicant sent reminders. Eventually, he was informed on 13.7.1987 that promotions as S.O., already made in the IB on the basis of seniority list of Assistants drawn in accordance with the High Court's judgment, were being reviewed and that the matter was yet to be finalised. Thereafter, he states that he submitted several more representations and sought a copy of the seniority list prepared on the basis of the Hon'ble Supreme Court's judgment dated 30.9.1986, but in spite of several reminders thereafter received no satisfactory reply. Ultimately, on 10.4.1989 he was informed that his representations had been rejected (Annex. A-7). Meanwhile, he secured a copy of the part 2 of the

seniority list of the Assistants working in the IB and transferred to RAW, prepared in accordance with the Supreme Court's judgment dated 30.9.1986, according to which he figures at sl. no. 129, one Harpal Singh at sl. no. 141, and one Ambika Prasad at sl. no. 144. The applicant's contention is that as he figured at sl. no. 129 in the seniority list, while his junior Ambika Prasad figured at sl. no. 144, he is entitled to be promoted as S.O. w.e.f. 16.10.1975, the date on which Ambika Prasad was promoted as S.O. under NER vide FR#22-C.

5. The respondents in their reply have resisted the claims advanced by the applicant, and stated that although he was promoted as Assistant in the IB w.e.f. 16.11.1967 (and not on 16.11.1969 as alleged by him), his services were transferred to RAW along with his lien w.e.f. 21.9.1968 where he was confirmed as Assistant on 1.2.1983 and promoted as S.O. on 8.2.1984. They further state that his name along with others who were transferred to RAW continued to be shown in the seniority list of Assistants maintained by IB in view of the pending court cases and also to correctly project the position according to the quota-rota system, but consequent to his transfer to RAW together with his lien, he was not governed by the IB seniority list, and his claim for promotion as S.O. w.e.f. 16.10.1975, instead of 8.2.1984 with reference to the promotion of his junior, Ambika Pd. in the seniority list of Assistants issued on 10.11.86 had no basis. They state that his seniority in that

list was only provisional, subject to confirmation whereas the seniority of Ambika Prasad had been refixed in the order of date of confirmation. They further state that Ambika Prasad was a direct recruit Assistant appointed on the basis of the 1959 UPSC examination and was in fact senior to the applicant who was promoted as Assistant on 16.11.1967, but due to refixation of Ambika Prasad's seniority he became senior to the applicant. The applicant's turn for confirmation came only on 1.7.1970, by which and he would have become junior to Ambika Prasad. They maintain that the applicant's seniority in IB was only provisional as he was not confirmed in that grade in IB and had no claim for promotion on the basis of provisional seniority. Once transferred to RAW along with his lien he cannot claim seniority in RAW on the basis of a seniority list issued by IB which only shows his hypothetical position.

6. We have heard Shri B. B. Raval for the applicant and Shri M. K. Gupta for the respondents.

7. Shri M. K. Gupta also produced the relevant file for our inspection containing the correspondence regarding seniority of Assistants in RAW. In that file is placed memorandum dated 3.10.1970 from IB to RAW containing a list of Assistants transferred from IB to RAW in the order of their inter-se seniority. The applicant's name is at sl. no. 357 in that inter-se seniority list, and he was the last but three. The respondents have filed an affidavit stating that none of the Assistants junior to the applicant were either

confirmed prior to 1.2.1983 or promoted as S.O. prior to the applicant's promotion as S.O., on the basis of that seniority list. In fact, Shri Gupta informed us during the hearing that two out of three, namely, Harpal Singh and Ramji Dass retired as Assistants, while the third, namely, Shri Bakshi changed his cadre to that of Interpreter in 1975 itself.

8. Shri Raval has argued that the applicant was confirmed in RAW as Assistant in 1983, in accordance with the initial constitution of the ministerial cadre in RAW, consequent upon the Promulgation of RAW (RCS) Rules, 1975, as a result of which he was deprived of ^{and continuation of} _{his} 16 years of service (1967 to 1983). If he had been left in the IB and his services had not been transferred to RAW, he would have been confirmed in 1970, or at any rate, by 1975 and would have been eligible for consideration for promotion as S.O. in 1975 itself, but the transfer of his services to RAW has resulted in the deferment of his promotion as S.O. by eleven years.

9. As a Tribunal, we cannot go into the hypothetical question as to what might have happened if the applicant's services had not been transferred to RAW, and he had continued to remain in the IB. It is not denied that the applicant's services were transferred to RAW along with his lien, and the applicant has an enforceable right only if he can demonstrate that persons junior to him in RAW were confirmed as Assistants or promoted as S.O.s ^{and before him,} _{adequate and} ~~genuine~~ reason. The applicant has failed to demonstrate

that any person who was junior to him in R.A.W. was confirmed as Assistant or promoted as S.O. prior to him.

10. Under the circumstances, no grounds have been made out to warrant interference in this matter, and this application fails. ^{It is} ~~which~~ is accordingly dismissed. No costs.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member (J)

Adige
(S. R. Adige)
Member (A)

/as/