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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH NEW DELHI

O.A.No.1363/88

Date of decision: 10.4.92.

Krishan Gopal .. Applicant  
Shri V.P.Gupta .. Counsel for applicant

Vs.

Union of India through Secretary  
Ministry of Agriculture and .. Respondents  
others

Shri K.C.Mittal .. Counsel for respondents.

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Hon'ble Shri SP Mukerji, Vice Chairman  
Hon'ble Shri T.S.Oberoi, Member(Judicial)

JUDGMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 22.7.88 the applicant/<sup>an</sup>employee in the Delhi Milk Scheme has prayed that the respondents be directed to revise the Seniority List of Dairy Managers/Assistant Managers and place him above/respondent No.3.

2. The brief facts of the case are as follows. The applicant on being sponsored by the Employment Exchange was interviewed on 9.10.69 for the post of Dairy Supervisor/Assistant Manager and was appointed and took over as Assistant Manager on 3.12.69, substantively against the permanent post. When the Seniority List of Dairy Supervisors/Assistant Managers was published in 1976, he found that he was placed junior

to respondent No.3 who had joined the DMS later, on 29.6.70. He represented and reminded the respondents till he received a memorandum dated 27.7.87 (Annexure-I) rejecting his representation dated 8.12.84.

3. In the counter affidavit, the respondents have stated that the candidates sponsored by the Employment Exchange for the post of Dairy Supervisors/Assistant Managers were interviewed on 8.10.69, 10.10.69 and 9.4.70. On the basis of the interviews held on 8.10.69 and 10.10.69, offers of appointment were issued in two batches of four each till November, 1969. The applicant figures in the list of four to whom offers were sent in November, 1969. It appears that a few more candidates remained to be interviewed and it was decided to have a third batch for interview on 9.4.70. Based on the three interviews, a list was drawn up in which the applicant was placed at Sl.No.13 and Respondent No.3 who had not been included in any of the two lists issued in November, 1969 was placed at Sl.No.7. The inter-se seniority of the incumbents who were selected was fixed in accordance with the instructions of the Ministry of Home Affairs dated 22.12.59 which lays down that in case of selection, seniority in the cadre has to be fixed on the basis of merit. It is admitted that Shri S.P.Singh joined in DMS <sup>later</sup> on 29.6.70 but placed above the applicant because of his position in the merit list.

4. In the rejoinder the applicant has challenged the higher seniority given to Respondent No.4 also stating that no explanation was given by the respondents in that regard.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The preliminary objection raised

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by the learned counsel for the respondents that the application is time barred cannot be accepted because the representation of the applicant dated 8.12.84 was rejected by the respondents vide the communication at Annexure.A.1 dated 27.7.87 by a reasoned order. This application was filed on 22.7.88 and is thus within time. It is established law that seniority amongst candidates selected on merits normally is determined by the order of merit. In the present case however, it appears that after the <sup>two</sup> interviews in October, 1969, 8 candidates were appointed. The applicant was one of them who took over on 3.12.69. Therefore, when the ~~second~~ <sup>third</sup> interview took place in April, 1970 the applicant was no more a candidate but a regular employee of the DMS. For the interview of April, 1970 therefore, the question of drawing up a merit list between the applicant and others who had not been appointed by then, did not arise. The interviews of October, 1969 and that of April, 1970 cannot be taken to be a part of the same selection process because the results of the interviews held in October, 1969 had already been given effect to, by the appointment of the applicant and others in December, 1969 and in any case before April, 1970. It is also established law that persons who are selected by an earlier selection and appointed are to be senior to those who are appointed by a later selection.

6. As regards respondent No.4 who was also offered appointment along with the applicant in

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November 1969, inter se seniority between the applicant and respondent No.4 will be governed by the comparative assessment made by the Selection Committee in the interviews of 8.10.69 and 10.10.69.

7. In the facts and circumstances we allow the application with a direction that the applicant shall be placed above Respondent No.3 and the inter-se position between the applicant and respondent No.4 will be governed by the grading of merit done by the Selection Committee which met on 8.10.69 and 10.10.69. There will be no order as to costs.

*10.4.92*  
(T.S.OBEROI)  
MEMBER (JUDICIAL)

*10.4.92*  
(S.P.MUKERJI)  
VICE CHAIRMAN

10-4-92

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