

Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. OA-2087/88

Dated: 6-2-89

Shri M.L. Nijhawan Applicant

Versus

Union of India through Respondents
Secretary, Department of
Personnel & Another

For the Applicant Shri R.L. Sethi, Advocate.

For the Respondents Shri P.H. Ramchandani,
Advocate.

CDRAM: Hon'ble Sh. B. N. Jayasimha, Vice-Chairman (Admn.)
Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.).

1. Whether Reporters of local papers may be allowed to
see the Judgement? *Yes*

2. To be referred to the Reporter or not? *Yes*

(Judgement of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice-Chairman)

The applicant, who retired as Deputy Director
in the Directorate General of Supplies and Disposals,
filed this application under Section 19 of the Administra-
tive Tribunals Act, 1985 praying for the following
reliefs:-

- i) that Respondents be directed to ante-date
applicant's promotion and seniority in
Grade I of Central Secretariat Stenographer's
Service from 17.9.1963, i.e., the date from
which vacancy occurred and non-eligible
person Shri S.S. Gupta belonging to Ministry
of Home Affairs was inducted to the Department
of Supply in total disregard of Rule 9 of the
CSSS Rules 1962 or from 1.10.1964 when the
applicant was approved in the Select Panel and
vacancy was available or alternatively, from
30.6.1965 when applicant's junior Shri Satya Pal

.....2....

was promoted to the exclusion of the applicant with consequential benefits from the date these became due from 17.9.1963 or 1.10.1964 or 30.6.1965; and

- ii) that applicant, as a consequence, be considered for promotion to Grade I of Central Secretariat Service from the date it became due with consequential financial benefits from the date it becomes due and any other benefits that may further arise out of it.

2. The applicant retired on attaining the age of superannuation on 31st December, 1984.

3. The application came up for admission on 30.1.1989, when Shri P.H. Ramchandani, the learned counsel for the respondents, strongly opposed the admission on the ground that the application is barred by limitation. Shri R.L. Sethi, the learned counsel for the applicant, contended that the application was filed within time.

4. The facts of the case in brief are that the applicant was approved for appointment to Grade II of the Central Secretariat Stenographers' Service and he was assigned to the Department of Supply vide the Office Memorandum issued by the Ministry of Home Affairs on 20th May, 1959 (vide Annexure-A9).

5. Rule 9 of the Central Secretariat Stenographers' Service Rules, 1962 provided, inter alia, that every duty post in a cadre is to be held by the cadre officer of the appropriate grade of that cadre. On decentralisation, the seniority list of Personal Assistants in the cadre of the Ministry of Works, Housing, Supply and Rehabilitation was issued, according to which the applicant ranked senior

to S/Shri K.K. Malik and Satya Pal. In 1963, a Select Panel for promotion to the grade of C.S.S.S. was drawn, according to which, the applicant was shown senior to Shri Satya Pal.

6. On 1.10.1964, another Select Panel for promotion to the post of Grade I of the C.S.S.S. was approved, according to which, the applicant was shown senior to Shri Satya Pal.

7. According to this panel, the applicant figured as Sl. No.2 in the merit list.

8. It has been alleged that in contravention of Rule 9 of the C.S.S.S. Rules prohibiting induction of non-cadre officers, one Shri B.B. Gupta of the Home Ministry was inducted into the Department of Supply w.e.f. 17.9.1963. Further, the person at Sl. No.3 was promoted on 30.6.1965, overlooking the claims of the applicant who was at Sl. No.2 of the Panel.

9. The applicant became eligible for promotion to Grade I of C.S.S.S. on 1.10.1964. He has contended that he was due for promotion either from 17.9.1963, when an officer of the Ministry of Home Affairs was illegally inducted into the cadre of the Department of Supply, or from 1.10.1964, when the applicant was approved on the Select Panel and vacancy was available, or at least from 30.6.1965, when his junior at Sl. No.3 was illegally promoted w.e.f. 1.7.1965.

10. The applicant has further alleged that in the personal interview/discussion held with the applicant on 23.11.1987 and on 22.4.1988, in accordance with the direction issued in the respondents' letter dated 27.10.1987, the respondents had conceded informally the

85

applicant's case but no final decision thereon has yet been communicated.

11. We have carefully gone through the records and have heard the learned counsel for both the parties. The learned counsel for the applicant stated that the respondents had issued an Office Order on 23rd March, 1987 whereby the respondents had notionally ante-dated the appointment of the applicant as Deputy Director to 3.9.1980 from 26.11.1981. However, by the said office order, it was stipulated that by ante-dating, the applicant will not be entitled to arrears on account of re-fixation of pay from 3.9.1980 to 25.11.1981, when he did not actually work as Grade I of the C.S.S.S. On receipt of the aforesaid order, he has made representations to the respondents. A copy of the representation has not been produced before us. It is also pertinent to mention that the applicant has not impugned the aforesaid office order dated 23rd March, 1987 in the present proceedings.

12. According to the learned counsel for the applicant, the grievance of the applicant is on account of the inaction/indecision of the respondents on his representation dated 4th August, 1987 (vide Annexure A-1) filed against the respondents' O.M. dated 22.6.1987. We have gone through the representation dated 4th August, 1987 which refers to numerous representations made by the applicant earlier to the Department of Personnel for re-fixation of his seniority in Grade I of C.S.S.S. In the said representation, a reference has been made to his earlier representation dated 31.8.1986 and the decision taken by the Department of Personnel thereon on 22.6.1987. The applicant has also filed a copy of the Memorandum issued by the Department of Supply on 30th June, 1987 (vide Annexure A-2), whereby the following decision taken by

On

the Department of Personnel in regard to the refixation of seniority in Grade I of C.S.S.S. was sought to be conveyed to the applicant:-

"that all the facts referred to in the representation of Shri M.L. Nijhawan, were duly taken into account while refixing his seniority in Grade I of C.S.S.S. w.e.f. 3.7.67. The Deptt. of Legal Affairs and the UPSC had also been consulted in this regard. Shri Nijhawan's claim for inclusion of his name in the select list of Grade I of CSSS for the year 1977 is based on the above determined seniority. According to his seniority, he became eligible for inclusion in the select list of 1979 and his name was so included. After accepting the position assigned to him in the 1979 select list of Grade I, Shri Nijhawan has chosen now to take up the issue further ante-dating his seniority in Grade I of CSSS. It may be stated that this chapter is already closed. Even otherwise, also it may be stated that Shri Nijhawan has no claim for ante-dating his seniority in erstwhile Grade I of CSSS w.e.f. 1.7.65 the date from which Shri Satya Pal was appointed to Grade I of CSSS in the Deptt. of Rehabilitation, as the latter was so appointed in a cadre other than the cadre of the Deptt. of Supply in which Shri Nijhawan was working at the relevant point of time, in view of the scheme of decentralisation of cadres."

13. It will be noticed from the aforesaid decision communicated by the Department of Personnel that all the facts referred to in the representation of the applicant dated 31.8.1986, had been duly taken into account while refixing his seniority in Grade I of C.S.S.S. w.e.f. 3.7.1967.

14. The learned counsel for the applicant contended that after the receipt of the Memorandum dated 30th June, 1987, the respondents wrote to him on 27th October, 1987 (vide Annexure A-3) to the effect that he may call on Shri D.P. Gupta, Joint Secretary (CS), Department of Personnel & Training "for explaining the position on your representation". Thereafter, the applicant had met the Joint Secretary concerned and explained his case to him but no decision has been taken by the respondents.

15. In view of the foregoing, the learned counsel for the applicant stated that the period of limitation should be reckoned from 4th August, 1987 and, accordingly, the application has been filed within time.

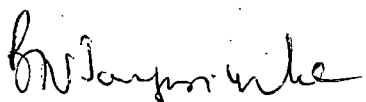
16. As against the above, the learned counsel for the respondents contended that the present application is hopelessly time-barred as the decision in regard to the notional seniority of the applicant in Grade I of C.S.S.S. had been taken by the Department of Personnel as early as 29th July, 1981, when the Department of Personnel issued an office memorandum (vide Annexure A-5) stating, inter alia, that "in exercise of the powers conferred by Rule 27 of the CSSS Rules, 1969 in relaxation of Rule 19 of the said rules, the Central Government has decided that Shri M.L. Nijhawan may be given notional promotion and seniority in Grade I w.e.f. 3rd July, 1967....." That being so, the learned counsel for the respondents contended that the present application wherein the applicant has sought relief for giving ante-dated seniority from 1963, or 1964, or 1965, is badly delayed. He had also contended that the applicant has not specifically impugned the office order dated 23rd March, 1987 (Annexure A-8).

17. In our opinion, the present application is not maintainable in view of the provisions of Section 21 of the Administrative Tribunals Act. The Tribunal has no jurisdiction to entertain an application in respect of a cause of action which arose prior to 1.11.1982 in view of the provisions of Section 21 of the Administrative Tribunals Act. In this context, reference may be made to the decision

of this Tribunal in Shri V.K. Mehra Vs. Secretary, Delhi, A.T.R. 1986 (1) C.A.T. 203 and in R.L. Bakshi Vs. Ministry of Defence, A.T.R. 1988 (1) C.A.T. 149. This Tribunal has no jurisdiction to entertain a grievance arising out of an order which was made more than three years immediately preceding the constitution of the Tribunal. In such a case, there is no question of even condonation of delay in filing the application. It would be a case of the Tribunal not having jurisdiction to entertain a petition in respect of a grievance arising prior to 1.11.1982. The reliefs claimed in the present application pertain to a period prior to 1.11.1982.

18. In the facts and circumstances of the case, we are of the opinion that the present application is barred by limitation. Accordingly, we dismiss the application in limine with no order as to costs.


(P.K. Kartha)
Vice-Chairman(Judl.)


(B.N. Jayasimha)
Vice-Chairman(Admn.)