

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHIO.A. No. 265/88
T.A. No.

198

DATE OF DECISION 23. 11. 90Shri Laxmi Narain, PetitionerShri Sant Lal, Advocate for the Petitioner(s)

Versus

Union of India & Ors. RespondentShri O.N. Moolri, Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.C. Jain, Member (Administrative)

The Hon'ble Mr. J.P. Sharma, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. Whether it needs to be circulated to other Benches of the Tribunal? *no*

MGIPRRND-12 CAT/86-3-12-86-15,000

J.P. Sharma
(J.P. Sharma)
Member (Judl.)*P.C. Jain*
(P.C. Jain)
Member (Admn.)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO.265/88

DATE OF DECISION: 23.11.90

LAXAMI NARAIN

....APPLICANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

SHRI SANT LAL

..COUNSEL FOR THE APPLICANT

SHRI O.N. MOOLRI

...COUNSEL FOR THE RESPONDENTS

CORAM:

HON'BLE SHRI P.C. JAIN, ADMINISTRATIVE MEMBER

HON'BLE SHRI J.P. SHARMA, JUDICIAL MEMBER

J U D G E M E N T

(DELIVERED BY HON'BLE SHRI J.P. SHARMA)

The applicant, since dead, while working as Assistant Superintendent in the office of Chief Engineer Construction, Northern Railway, New Delhi this filed application under Section 19 of the Administrative Tribunal Act, 1985, being aggrieved by the seniority list (Annexure II) of Head Clerks, Bikaner Division, Northern Railway, circulated vide letter ^{11/85} dt.19.12.85 and Divisional Personnel Officer, Northern Railway, Bikaner letter dated 4.9.1985 and also by the seniority list (Annexure A-XII) of the Head Clerks of the Construction Organisation, Northern Railway, Kashmere Gate, Delhi dated 22.4.1987 alleging that the placing of the applicant in the said seniority list has not been correctly shown and the persons who were junior to him have been shown senior in the aforesaid seniority list of Bikaner Division as well as of Construction Organisation, Northern Railway.

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2. The applicant claimed the reliefs for (a) direction to the Divisional Personnel Officer, Northern Railway, Bikaner to fix his seniority of Head Clerk according to the passing of his suitability test of senior Clerk in Bikaner Division and further seniority of Assistant Superintendent (Works) accordingly.

(b) Direction to the Chief Engineer/Construction Northern Railway, Delhi to fix his seniority of head clerk Assistant Superintendent (Works) according to rules prevailing in the Construction Organisation.

(c) Direction be also issued for payment of arrears of dues which become due in connection with re-fixation of seniority.

(d) Further direction to Chief Engineer/Construction, Northern Railway, Kashmere Gate, Delhi to arrange payment of officiating allowance for the period the applicant officiated as Superintendent (Works) in the office of Deputy Chief Engineer, Construction, Northern Railway, Shivaji Bridge, New Delhi.

3. The case of the applicant, in short, is that he joined as Clerk in Bikaner Division on 4.2.1953. He passed the suitability test of senior clerk on 23.4.1964. Before that the applicant had gone on deputation, in 1959, to the Construction Organisation, Northern Railway, New Delhi. The contention of the applicant is that he, having passed the suitability test held on 25.1.1964, should have been assigned seniority as senior clerk from that date. No seniority list of senior clerks was ever circulated either in 1975 or 1981 in the Department where the applicant had been working. When the applicant learnt about his

position in the seniority list, he made a representation on which he was informed by the DRM Office, Bikaner by the letter dated 27.6.1984 (Annexure III) that the applicant would have been promoted as Head Clerk w.e.f. 22.11.1983 in Bikaner Division but for his deputation in the Construction Organisation. In the impugned seniority list (Annexure II) dated 4.9.1985 the applicant was shown at serial number 25 and the date of his promotion as Head Clerk is shown as 1.1.84 and as senior clerk on 19.7.1972 and according to the applicant, the same are incorrect. The applicant claims seniority as senior clerk from the date he qualified in the written test ^{held} on 25.1.1964 and as Head clerk from 22.1.1983 ^{the date shown in Annexure III.} The applicant made a representation for correction of the aforesaid seniority list on 14.2.1986 (Annexure IV) and also another representation on 12.11.1987 (Annexure V). The applicant, however, received a reply by the letter dated 19.11.1987 sent by DRM, Bikaner Division to Chief Engineer, Construction Organisation, New Delhi where it was communicated that in the seniority list of grade 330-560 of 10.9.1975 and 10.2.1981, the position of the Applicant Laxami Narain was shown junior to that of Sawal Singh and since the matter is about 32 years old and due to non-availability of the old records, no alteration can be made in the seniority list.

4. It is further contended by the applicant that DRM office, Bikaner on 18.8.1986 notified a written examination for Assistant Superintendent (Works) (Annexure IX) and the applicant qualified in the said examination and was empanelled by the

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Office Order dated 11.5.1987 (Annexure X). The applicant continued to work there all this period in the Construction Organisation on deputation. On 22.4.1987, a seniority list was issued by the Construction Organisation of Northern Railway (Annexure XII) and the applicant was shown at serial No.22. The date of his promotion as Head-clerk is shown therein as 1.1.1984 and as senior clerk ^{from} 19.7.1972. The applicant made a representation (Annexure XIII) on 18.5.1987 against the aforesaid seniority list but he did not receive any reply and hence the present application was filed in February, 1988.

5. The applicant died during the pendency of the proceedings on 4.10.1988 and his widow Smt. Ravat Rani was substituted as L.R. who was authorised by other legal representatives to pursue this application.

6. The respondents contested the application and took the preliminary objection that the application is highly time barred as the cause of action arose as per allegation in the application, in the year 1964, when the applicant passed the selection test for senior clerk and that matter cannot be looked into at this stage, in view of the clear provisions of Section 21 of the Administrative Tribunal Act, 1985. The applicant did not file any objection to the seniority lists circulated in the year 1975 and 1981 in which the position of the applicant was shown junior to most of the persons who have been now alleged as junior. It is further stated that it is wrong that the seniority lists of 1975 & 1981 were not circulated to the applicant. Since the applicant did not file any objection to those seniority lists, he was now debarred from raising any objection for the first time to the seniority list of Head Clerks circulated by the order dated 4.9.1985.

The name of the applicant appears at serial No.25 on the basis of a seniority assigned to him as senior clerk. It is further said that the petition is bad for misjoinder of different causes of action, one arising in 1985 and the other in April, 1987. It is further said that the petitioner was on deputation to Construction Organisation in the year 1959 and he passed the test of senior clerk in 1964 while on deputation in the Construction Organisation. The applicant did not come back to the Bikaner Division and chose to remain in the Construction Organisation in the same grade and later on managed to get adjusted as a senior clerk in the Construction Organisation. Since the applicant was on deputation, he could be assigned seniority on the basis of next below rule when a junior Dwarka Prasad got promotion from 27.11.65 and not earlier to that. As regards the contention of the applicant that he was informed about promotion as Head Clerk from Headquarter from 22.11.1983, it has been stated that the applicant would have been promoted as Head Clerk 425-700 (RS) with effect from 22.11.1983 against a work charged post (and not against regular post) as is clear from DRM, Bikaner's letter dated 27.6.84 and such a promotion against the work-charged-post is a fortuitous one and not regular and hence the question of his counting seniority from 22.11.1983 does not arise. He has been assigned seniority as Head Clerk on restructuring posts w.e.f. 1.1.1984. As regards the seniority list of Construction Organisation, it is stated that the seniority

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is fixed on the basis of open line position and the Construction Organisation has nothing to do about the seniority position at the division level. As regards the promotion of Shri S.A. Zaidi as A.S., it is stated that he was promoted against a specialised job for which the petitioner was not considered suitable by the Competent Authority. The respondents have also filed the seniority list of 1981 and another seniority list circulated in 1985.

7. We have heard the learned counsel of both the parties at length. Firstly, the applicant has not come at the proper time, for redressal of his grievances. After passing the suitability test for promotion as senior clerk, the applicant was asked about his willingness to revert to parent department for posting as senior clerk vide letter dated 23.4.1964 (Annexure I) but there is no averment in the Original Application that the applicant wanted to go to the parent department as senior clerk. Thus the applicant chose to remain on the deputation post in Construction Organisation, New Delhi. The learned counsel for the respondents placed reliance on Dr. Kumari K. Padmavalli Vs. U.O.I. reported in ATR 88(2) CAT p.148. It has been held by the Division Bench, Bombay, CAT that if no judicial proceedings within the prescribed statutory limit are taken even a void decision remains valid since it is not got set aside by the judicial pronouncement. The applicant for the first time made a representation in February, 1986. Assuming as correct, for the sake of arguments, that he has not been given any reply, as alleged by him and also that he had no knowledge

of the earlier seniority lists circulated in 1975 and 1981, even then, in any case, the applicant should have filed the application within $1\frac{1}{2}$ years from February 1986 that is by August, 1987 but the applicant filed the present application in February, 1988 and as such the contention of the respondents that the application is barred by time has force. The applicant in order to bring out the application within the limitation has to explain reasonably each day's delay in filing the application under Section 19 of the Administrative Tribunals Act, 1985 as held in MCD vs. Smt. Veena Mehta, Civil Division, 479/73 reported in ILR (1977) Vol.I, Delhi p.364. Section 21 of the A.T. Act, 1985 is the self-contained Act which provides for limitation within which the applicant has to come for redressal of his grievances. Though this OA was admitted on 16th February, 1988 but the applicant did not move any application for condonation of delay. In para 5 of the application at page 2, the averment has been made that the application is within the limitation prescribed in A.T. Act, 1985. However, during the course of the argument, the learned counsel for the applicant pointed out that the applicant was informed by the letter dated 19.11.1987 written by the Northern Railway, Bikaner Division to Chief Engineer Construction Organisation that the matter is pretty old and the record too is not available, so such an old matter cannot be considered regarding the seniority of the applicant in the grade of 330-560. In fact, the applicant has been on deputation in Construction Organisation and has assailed the seniority which was circulated on 4.9.1985 (Annexure II) because this is the main seniority list of Bikaner Division of Head Clerks as the applicant is still on

the roll of the Bikaner Division and was not absorbed in the Construction Organisation of Northern Railway. The seniority list of Construction Organisation (Annexure XII) is based on the incumbents drawn from various sources and is irrelevant for the promotion etc. of the applicant in the Bikaner Division as the applicant was not absorbed in the Construction Organisation. In the case of R.S. Minakshi 1982 AIR S.C. p.101, it has been specifically directed by the Hon'ble Supreme Court that a party has to come as early as possible for the reliefs in service matters to avoid administrative complexities. Another hurdle in the case is that the Tribunal cannot exercise jurisdiction in a matter where relief pertains to a period beyond three years prior to the coming into force of the A.T. Act, 1985. (See (1) 1986(1) ATR p.20. R.N. Singhal Vs. U.O.I. (2) 1987 (1) ATR 292 Bimla Mukherji Vs. U.O.I. (3) 1988 ATLT p.124 Dr. K. Padmanabhan Vs. U.O.I.). Further, there should not be inordinate delay in getting the seniority list revised as the matters which are settled far long ago should not be unsettled which will greatly prejudice the confidence of the officials regarding certainty of future and fortune in the service. The above view/Court in 1975(2)SLR Vol.II p.255. The same view has been taken by the Hon'ble Supreme Court in Dwarka Das Vs. U.O.I. Judgement Today 1989(3)(SC) p.373 and also Direct Recruits Engineers Association Vs. State of Maharashtra, Judgement Today 1990 p.264.

The applicant after such a long time has come to the Court for revising the seniority list both of Headclerks of Bikaner Division and of Construction Organisation, Northern Railway and that too without

impleading all those as respondents who are likely to be affected by such revision and as such the application is also barred for non-joinder of affected Parties as held in Ashok Singh Vs. State of M.P. 1988 (6) SLR p.446 SC and Ranga Reddy Vs. State of Andhra Pradesh reported in 1988 (1) SLR p.4 SC.

We therefore hold that the present application is hopelessly barred by time and also suffers from the defect of non-joinder of affected parties and as such, is not maintainable under Section 21 of the A.T. Act, 1985 and is accordingly dismissed, leaving the parties to bear their own costs.

J.P. Sharma

(J.P. SHARMA)
MEMBER (J)

Clear 23/11/90
(P.C. JAIN)
MEMBER (A)