

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 651/88

Date of decision: 26.08.1993.

Smt. Indira Lal

...Petitioner

Versus

Union of India through the
Foreign Secretary, Govt.
of India, Ministry of
External Affairs & Anr.

...Respondents

Coram:-

The Hon'ble Mr. I.K. Rasgotra, Member (A)
The Hon'ble Mr. B.S. Hegde, Member (J)

For the petitioner

Miss Kiran Singh, proxy
counsel for Mr. D.C. Vohra,
counsel.

For the respondents

None.

Judgement(Oral)
(Hon'ble Mr. I.K. Rasgotra)

We have heard the learned proxy counsel for the petitioner. The petitioner is aggrieved by the seniority assigned to her by the respondents in the seniority list issued on 31.3.1987. The seniority has been assigned to her on the basis of the date on which she was appointed as Lower Division Clerk (LDC) on 15.12.1980. The case of the petitioner is that she was working as a Telephone Operator since 18.7.1968 and her services as Telephone Operator ought to have been reckoned for the purpose of assignment of seniority. For this purpose she relies on paragraph-5 of Department of Personnel and Training's OM No.12/4/83-CS.II dated 7.11.1985, according to which:

"All the Telephone Operators appointed in 1971 or earlier may be inducted to Lower Division Grade of the Central Secretariat Clerical Service without their requiring to pass a qualifying examination. They would be assigned seniority en bloc below the Lower Division Clerks appointed through the Open Competitive Examination, 1971."

The learned counsel further stated that there is no specific rule to meet such a situation in the IFS (B)-RCSP Rules, 1961 but she would be covered by the enabling/saving provision made therein as under:-

"28. Other conditions of service -(1) The condition of service of the members of the Service in respect of matters for which no provision exists in these rules or for which no specific rules have been made separately, shall be the same as are applicable from time to time to officers of the Central Civil Service Classes I to III."

2. By way of relief the petitioner has prayed that the respondents be directed to fix her seniority in terms of Department of Personnel and Training OM dated 7.11.1985 readwith Rule 28 of the IFS (B)-RCSP Rules, 1964 and that she should be granted all consequential benefits.
3. The respondents in their counter-affidavit have submitted that the Department of Personnel and Training's OM dated 7.11.1985 is not applicable to the case of the petitioner. This has been confirmed by the Department of Personnel and Training to whom a reference was made in this behalf. In paragraph-6.4 of the counter-affidavit the respondents have stated that:-

"On 26.5.79, the applicant requested that she be given the job of an L.D.C. as she could no longer work as Telephone Operator because of her throat problem. She sought the change on compassionate considerations (Annexure R-II & III). The staff side was opposed to her request, because they felt that she was being given undue consideration of one compassionate appointment after the other. Finally taking a sympathetic view the Ministry of External Affairs decided to offer her the job of an L.D.C. on the conditions that:-

- 1) her initial appointment will be against a purely temporary ex-cadre post of LDC. Her absorption against a cadre post in Grade VI of IFS 'B' will be from a date later than the date of appointment of the last compassionate ground recruits of 1980.
- 2) She will be placed at the bottom of the Seniority List below the last compassionate grounds recruit of 1980 for absorption in Gr.VI of IFS 'B'.
- 3) She will forfeit her quasi-permanency status as Telephone Operator on the expiry of 2 years from the date of appointment as LDC. She may revert to the post of Telephone Operator within 2 years of her joining as LDC, provided the post of Telephone Operator vacated by her existed then.

4)

She accepted the conditions laid down in the OM dated 21.11.1980 unconditionally. She also confirmed voluntarily that she will not claim any higher seniority than assigned to her.

4. We have considered the submissions made by the learned counsel for the petitioner and perused the record. We are of the opinion that the cause of action in this case arose in November, 1980. The cause of action, therefore, arose prior to 1.11.1982, i.e., three years prior to the establishment of the Tribunal. The learned counsel for the petitioner submitted that the petitioner has been submitting representations repeatedly and the last such representation was made on 13.4.1984. This, however, does not detract us from the question of jurisdiction in the matter. We also observe from page 64 of the paperbook that the representation made by the petitioner was finally rejected by the respondents on 29.7.1987, while this O.A. has been filed on 18.4.1988. Since first we do not have jurisdiction on the cases where the cause of action arose prior to 1.11.1982, we cannot go into the matter for want of jurisdiction. The petitioner should have agitated the matter at the appropriate time in the appropriate forum. Accordingly, the O.A. is dismissed for want of jurisdiction and as barred by limitation. Secondly the petition is also barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. No costs.


(B.S. HEGDE)
MEMBER(J)


(I.K. RASGOTRA)
MEMBER(A)

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