

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH: DELHI

O.A NO. 708 OF 1988

DATE OF DECISION: 12-9-1991.

Khusia Singh.

.. Applicant.

Vs.

Union of India and others.

.. Respondents.

Shri G.D.Bhandari, counsel for the applicant.

Shri M.L. Verma, counsel for the respondents.

CORAM:

Hon'ble Mr.G.Sreedharan Nair, .. Vice-Chairman.

Hon'ble Mr.S.Gurusankaran, .. Member(A)

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JUDGMENT

Hon'ble Mr.S.Gurusankaran, Member(A):-

The case of the applicant is that he was appointed as a Sorter in Delhi R.M.S. on 1-7-1953 and was working as L.S.G.Sorting Assistant Supervisor in grade Rs.1400-2300 with a special pay of Rs.40/- per month attached to the post at the time he filed this application. The Ministry of Home Affairs issued O.M.dated 22-12-1959 superseeding the earlier policy of fixing seniority on the basis of length of continuous service and laid down that seniority shall be fixed on the basis of the date of confirmation. The confirmation in the case of the applicant depended on his passing the confirmation examination within a limited number of chances. Those of the staff, who failed to pass the confirmation examination or passed it beyond the limited number of chances permitted, were denied the benefit of counting officiating service for seniority. This was challenged by one aggrieved employee of the Department of Post in the case of Dev Dutt Sharma vs. Union of India by filing a case in No.C.W.P.678 of 1982 in the High Court, which was later transferred to this Bench and numbered as T.A.783 of

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1985. In that case, the Tribunal allowed the petition on 29-5-1986 and directed the respondents that the seniority of the applicant in that case should be fixed in the grade of clerk on the basis of the length of continuous officiation from 20-11-1951 with such consequential benefits to which he may be entitled in accordance with the law. The applicant vide Annexure-A1 made a representation dated 13-7-1987 to the respondents to refix his seniority as per the orders of the Tribunal in T.A.No.783 of 1985 (Supra) & give him all consequential benefits like retrospective promotion, fixation of pay and arrears. He had also requested that he should be promoted to H.S.G.II in place of one Sri Hardwarilal promoted erroneously. He submitted 2 further representations dated 6-8-1987 and 28-12-1987 (Annexures-A2 and A8) for which also no reply was given. The applicant has stated that the respondents issued a circular dated 20-5-1987 (Annexure-A5) deleting paras 2(b) and 2(2) of the letter No.45-1/74-SPB II dated 12-4-1978 and stating that the general principle of fixing seniority on the basis of length of service for persons appointed during the period 22-6-1949 to 21-12-1959 will also be applicable to persons who failed to pass the confirmation examination within the period and chances ^{prescribed} presented in the Rules. The respondents also issued a revised gradation list dated 30-11-1987 (Annexure-A5(1)), wherein the applicant's name is shown at Sl.No.5 revising his seniority from earlier position of 347 to 140-E. The applicant has alleged that the respondents have not included in that list the names of the juniors promoted to H.S.G.II superseding the applicant. He, therefore, made another appeal dated 3-2-1988 requesting the respondents to assign him correct seniority in view of the judgment of the Tribunal, which is being implemented by them. Finally on 12-4-1988, another revised gradation list was issued showing the applicant at Sl.No.4 above one Sri Hardwari-Lal with revised position as 135C. The applicant has submitted

that he has been given the correct seniority position, but he has not been given the promotion with retrospective effect along with refixation of pay and arrears. The applicant has, therefore, prayed for directing the respondents to promote him to the grade of H.S.G.II in Rs.1600-2600 with special pay of Rs.9C/- p.m. from the date his juniors Hardwari Lal and Gulab Singh were promoted and pay him all the arrears and retiral benefits.

2. The respondents in their reply have taken a preliminary objection stating that the application is barred under ²¹ Section 29 of the Administrative Tribunals Act and the applicant has not availed of all the remedies available to him. They have also stated that no cause of action has accrued in favour of the applicant against the respondents and the applicant has already retired from the service w.e.f. 30-4-1988. The application is bad for non-joinder of proper parties viz., Hardwari Lal and Gulab Singh. The respondents have also mentioned that the judgment of the Tribunal in T.A. No.783 of 1985 (supra) was a decision in personem and not in rem and hence is not applicable to the applicant. They have submitted that the implementation of the judgment of this Tribunal took time as revision of seniority was involved and a number of representations were received. The final seniority list was issued only on 12-4-1988, while the applicant retired on 30-4-1988. They have also added that the applicant's claim for promotion to the next higher grade on the basis of revised seniority arose only on 12-4-1988 and his notional promotion to H.S.G.II is being placed before the Departmental Promotion Committee shortly and the recommendations of the DPC will be implemented. They have also specifically pointed out that no official junior to the applicant has been promoted from L.S.G. grade to H.S.G.II Grade.

3. We have heard the counsel for the applicant and perused

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the records. During the arguments the counsel for the applicant stated, as mentioned in his rejoinder to the counter-affidavit filed by the respondents, ^{that} the respondents by their Memo No.B-11/2/88-89 dated 11-4-1989 issued after filing of this application, have promoted the applicant to H.S.G. II grade. However, they have failed to give arrears of pay and allowances consequent to such promotion to H.S.G. II Grade and have also not refixed his pay and also have not revised the pension and other retiral benefits of the applicant. The preliminary objections raised by the respondents have to be rejected. The question of the judgment of this Tribunal in T.A.No.783 of 1985 (supra) being a judgment in personem and not in rem does not at all arise as the respondents have already taken action to delete the concerned paras in the letter dated 12-4-1978 (supra) and revised the seniority of the applicant and all similarly placed persons as the applicant in T.A.No. 783 of 1985. We also observe that already 5 years have passed from the date of judgment of this Tribunal in T.A.No.783 of 1985 and all the benefits due to the applicant consequent to his revision of seniority have not yet been given to him. Even after issuing the promotion of the applicant to H.S.G. II Grade vide order dated 11-4-1989, he has not been paid the arrears ^{not} of pay and also/revised the pension and pensionary benefits. Since the seniority list has been revised only on 12-4-1988, the applicant is entitled to arrears of pay from the date of his promotion to H.S.G. II Grade till the date of his retirement. Copy of the order has not been produced by the counsel for the applicant and while the respondents have stated that no body junior to the applicant in L.S.G. grade have been promoted to H.S.G. II Grade and the counsel for the applicant has not also raised any objection against the order dated 11-4-1989 (supra), the only reliefs that are claimed by the applicant which are yet to be granted by the respondents are the arrears of pay and allowances from the date of his promotion to H.S.G. II Grade till the date of his retirement on 30-4-1988

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and consequent revision of his pension and arrears of pensionary benefits. The applicant is definitely entitled to these reliefs.

4. In the result, we allow the application and -

(i) direct respondent-1 to refix the pay of the applicant in H.S.G. II Grade from the date of his promotion as per their order dated 11-4-1989 (supra) and pay him all the arrears of pay and allowances from the date of such promotion to the date of his retirement on 30-4-1988;

(ii) On such refixation of pay his pension should also be revised suitably and arrears of pension and pensionary benefits should also be paid.

(iii) The above direction shall be complied with by the respondents within 2 months from the date of receipt of the copy of this order.

Harishankar
12/9/1991
MEMBER (A)

Sh. Soj
12-9-1991
VICE-CHAIRMAN.