

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 228/86
T.A. No.

198

DATE OF DECISION 21.12.80

I.J. Nirdosh

Petitioner

Shri R.K. Mehra

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri M.L. Verma

Advocate for the Respondent(s)

CORAM

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

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

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *Y*
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 (J)

P. C. Jain
(P.C. JAIN)
MEMBER (A)

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Central Administrative Tribunal
Principal Bench: New Delhi.

DA 228/86

Date of decision: 21.12.90.

Shri I.J. Nirdosh

... Applicant.

vs.

Union of India & Ors.

... Respondents.

For the applicant

... Shri R.K. Mehra,
Advocate.

For the respondents

... Shri M.L.Verma,
Advocate.

CORAM: Hon'ble Shri P.C. Jain, Member(Administrative)
Hon'ble Shri J.P. Sharma, Member(Judicial).

JUDGEMENT

(delivered by Hon'ble Shri J.P. Sharma)

The applicant, an adhoc Section Officer, Ministry of Information and Broadcasting, filed this application under Section 19 of the Administrative Tribunals Act, 1985 assailing the orders dated 7th October, 1985 by which one Shri N.N. Sharma, respondent No.3 was appointed as Section Officer in the Ministry of Information and Broadcasting on regular basis; order dated 13th June, 1975 appointing the applicant as officiating Assistant in the Central Secretariat Service Cadre on regular basis and order dated 1st August, 1978, the seniority list of Assistants of the Central Secretariat Service Cadre, Ministry of Information and Broadcasting and constitutional validity of Rule 13 and 18 of the Central Secretariat Service Rules, 1962. The applicant claimed the following reliefs:

- i) The the order dated 7th October, 1985 be declared as invalid, inoperative, unconstitutional and grossly discriminatory of the applicant.
- ii) The order dated 13th June, 1975 (Annexure-I) and seniority list (Annexure-II) as well as Rule 13 and 18 of the CCS(Rules), 1962, as amended vide O.M.No.10/3/69-CS-II dated 26th November, 1969 (Annexure VII) be declared illegal and unconstitutional and contrary to the principles of natural justice.
- iii) That the applicant is senior to respondent No.3.

2. The applicant has since retired from service on superannuation on 31st May, 1987.

3. During the course of the arguments, the learned counsel for the applicant referred to the rejoinder filed by the applicant to the reply of respondents No.1 and 2, where it has been stated that the vires of Rule 13 and 18 is already subject-matter of a Civil Writ Petition filed by Shri Raghunath Rai and Others against the respondents herein before the Hon'ble Supreme Court of India and the decision that shall be pronounced in due course by the Hon'ble Supreme Court shall be binding on this Tribunal. It is further stated that the vires of the said Rules have been challenged in this petition herein by way of abundant caution in view of the above. The learned counsel for the applicant did not press this relief 'B' of the application.

3. The facts of the case in brief are that the applicant joined as L.D.C. in Director-General of Supplies and Disposals on 8.5.1948 and confirmed as L.D.C. on 1.5.1954 in the Ministry of Finance to which place he was transferred in 1950. The applicant was promoted in the same Ministry as U.D.C. in 1957. The applicant was transferred in 1958 to the Ministry of Works, Housing and Supplies, where he was confirmed as a U.D.C. in the year 1964. The applicant was promoted as an Assistant in 1969 and was transferred to the Ministry of Information and Broadcasting. The applicant was confirmed in December, 1978 and he was given an adhoc promotion as Section Officer on 15.7.1985. After the promotion as Assistant in the Ministry of Information and Boradcasting, the seniority of the applicant was not fixed on the basis of U.D.C. grade. The applicant was placed under other persons who were junior to him and whose seniority number in the combined seniority list was much lower than that of the applicant. The applicant's name

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in the aforesaid combined seniority list appeared ~~at~~ serial No.263. Even persons who were at serial No.646 onwards in the aforesaid combined seniority list, were placed as senior to him. The applicant has filed the seniority list of June, 1975 and August, 1978 (Annexure-I and II). The applicant has compared himself with respondent No.3 ~~promoted as Section Officer~~ Shri N.N.Sharma on regular basis with effect from 1.10.1985, though the respondent No.3 joined the Central Secretariat Service as L.D.C. on 1.4.1950 and was confirmed in the grade on 15.9.1957. Shri Sharma was promoted as U.D.C. after the applicant in January, 1962 and was also confirmed as U.D.C. after him in February, 1968. Shri Sharma was also promoted as Assistant after the applicant in June, 1970 in the Ministry of Defence but he was confirmed earlier to the applicant in November, 1975 in the same Ministry and was given chance of adhoc Section Officer in March, 1983 and on regular basis was promoted as Section Officer in October, 1985 and transferred to Ministry of Information and Broadcasting. Thus, according to the applicant a junior in service was imposed upon him as a regular Section Officer in the same Ministry in which the applicant was working as adhoc Section Officer.

4. The grievance of the applicant is that during the year 1983 to 1985, even though several posts were available for appointment as Section Officer on adhoc basis and regular posts in other Ministries, the applicant was not appointed to any of the said posts. on adhoc/regular basis. On the contrary, the department of Personnel and Training had transferred some persons who were working as Section Officers on adhoc basis in various Ministries, to the Ministry of Information and Broadcasting on regular basis, governing the basic principle of decentralisation that the Government has itself propounded, namely, giving promotion to the eligible officers within the cadre as and when the vacancy occurred therein. The applicant made a representation but to no

effect and the present application has been filed for the above mentioned reliefs.

5. The respondent No.3, Shri N.N.Sharma, has also filed a separate reply. He has stated that he was promoted as Assistant on adhoc basis with effect from June, 1970 in the Central Water and Power Commission under the Ministry of Irrigation and Power. The applicant, however under the zoning scheme by the Department of P & I was transferred to the Ministry of Defence and was included in the select list of Assistant and as a regular Assistant with effect from 12.8.1970. He was confirmed as Assistant with effect from June, 1975 in the Ministry of Defence. The applicant, Shri Nirdosh belonged to the cadre of Ministry of Information and Broadcasting and was confirmed as Assistant in the Ministry of Information and Broadcasting and was confirmed as Assistant in the Ministry of Information and Broadcasting with effect from 1.1.1973. Since the date of confirmation of the answering respondent is earlier to that of the applicant, so he was senior to the applicant. The applicant was included in the select list of Section Officers Grade in the year 1984 against seniority quota and nominated to the Ministry of Information and Broadcasting by the Department of Personnel and Training on the basis of the date of confirmation as Assistant, and in accordance with the position assigned to him in the common seniority list of Assistants issued by that department. The select list are issued by the Department of Personnel and Training on the basis of a common seniority list of permanent Assistants maintained by the department and not on the basis of seniority in the grade of LDC/UDC. According to the answering respondent, there cannot be any comparison with the applicant as both belonged to different cadres and the seniority list of Assistants, which are the basis of confirmation in the grade of Assistants, are maintained

by each cadre separately keeping in view the position obtaining in each Ministry. According to the answering respondent even there are other officers and they may be junior to the applicant regarding the seniority of LDC and UDC but now they are senior and posted in various Ministries as given out in the reply in para XVI. According to the private respondent, the applicant has no case.

6. The official respondents No.1 and 2 have also contested the application and said that the application is barred by Section 20 and 21 of the Administrative Tribunals Act, 1985. The applicant has challenged the seniority list of 1975 and 1978 by filing the present application on 7.4.1986 and such belated matters cannot be agitated before the Tribunal on merits, it is stated that the Central Secretariat Clerical Service was decentralised with effect from 1.10.1962 so Central Secretariat Service. Accordingly, CSS Rules, 1962 and the CSCS Rules, 1962 came into force. In terms of Rule 7 of the CSCS Rules, 1962, the permanent/temporary officers in each grade, in each cadre on the appointed day, were communicated to the respective cadres by the then Department of Personnel and Administrative Reforms. The seniority of the members of the service, in each cadre from the appointed day onwards was to be regulated per se. the members allocated to each cadre. The all Secretariat Seniority of the members of the service as indicated in the aforesaid civil list became redundant. A zoning scheme was introduced in 1968 by amending the CSS Rules, 1962 and CSCS Rules, 1962. Under the zoning, a range of seniority is prescribed by the Department of P & T from time to time and the officers covered by the range of seniority and otherwise eligible for promotion can be promoted to the higher grades by the cadre authorities against the vacancies arising in each cadre. If in any cadre, adequate number of officers

covered by the range of seniority are not available, surplus officers covered by the range of seniority from other cadres are nominated by the Department of Personnel and Training to the deficient cadres for promotion to the higher cadres. The seniority of the officers, who are transferred to the deficient cadre for promotion, in the transferred cadre is regulated by seniority of Transferred Officers Regulations, 1973. According to sub-Rule (5) of Rule 2 of the CSS (Seniority of transferred officers) Regulations, 1962, the members of the service appointed to the Assistant's grade of any cadre on transfer from another cadre under the second provision to Rule 13(7) of the CSS Rules, 1962, i.e. under the zoning scheme, shall be assigned seniority in the Assistants' grade of the new cadre, below all existing temporary officers of the grade in that cadre. Thus, since the applicant was confirmed as Assistant much after the respondent No.3, because the applicant was transferred from the then Ministry of Works, Housing and Supplies to the Ministry of Information and Broadcasting under the zoning scheme. The respondent No.3 was included in the select list for promotion from Assistant to Section Officer's grade in the year 1984. The range of seniority for drawing up this seniority list was prescribed by the department of Personnel and Training vide O.M. No.5/11/85-CS(1) dated 20.4.1985 and 5.7.85 by which the permanent Direct Recruit Assistants appointed to the grade on 1974 examination and permanent Departmental Assistants interpolated therewith were covered. The applicant was not covered by this range of seniority while the respondent No.3 was covered by the range of seniority. There were six vacancies in Section Officers grade reported by Ministry of Information and Broadcasting to be filled on regular basis through the select list of 1984 and there was one Assistant of that cadre covered by the range of seniority. The Ministry of Information and Broadcasting

was thus deficient to the extent of 5 officers. The respondent No.3 who was covered by the range of seniority was surplus to the cadre of the Ministry of Defence for want of vacancies and he was accordingly nominated to the cadre of the Ministry of Information and Broadcasting to make up the short fall in that cadre by the Department of Personnel and Training vide O.M. dated 9th September, 1985 (Annexure-I). The applicant, therefore, was not covered by the range of seniority and was not eligible for promotion as Section Officer on regular basis against the seniority list of vacancy for the year 1984. In view of the above facts, the official respondents stated that the applicant is not entitled to any relief.

7. We have heard the learned counsel for the parties at length and have gone through the record of the case.

8. As regards the relief 'B', regarding quashing of the impugned orders dated 13.6.1975 (Annexure-I) and Seniority list dated 1st August, 1978 (Annexure-II), the application is barred by time. Section 21 of the Administrative Tribunals Act, 1985 in sub Section 2(a), lays down that "where the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates, no application shall be admitted."

In the present application, the applicant wants redressal of his grievance which ^{has} arisen much before November, 1982. The cause of action to the applicant arose in the year 1975 and subsequently in the year 1978 and still the applicant did not make any representation or took any legal action. Moreover, the applicant was not confirmed as Assistant till December, 1978 while the respondent No.3 and many like him, who joined later as L.D.C. were confirmed earlier to him in the grade of Assistant. In K.R. Mudgal Vs. R.P. Singh and Ors. reported in 1987(1) ATLT SC page 129, the Supreme Court held that "the matters like one's position in the seniority list after

having been settled for once should not be allowed to be reopened after lapse of many years at the instance of a party who had, during the intervening period, chosen to keep quite." Again in R.S. Minakshi Vs. I.M. Menon, (1982) 2 SCR 69 at page 100 The Supreme Court held that a party has to come as early as possible to avoid administrative complexities. The matter has also been considered in a number of authorities R.N. Singhal Vs. Union of India, 1986 ATR (1) Page 20, Bimla Mukerji Vs. Union of India, 1987 (1) ATR page 292 and Dr. K. Padmawati Vs. Union of India, 1988 (2) ATLT page 124. Thus, the reliefs which the applicant has claimed are barred from the purview of the Tribunal and cannot now be considered at all. The applicant has since retired and has ^{also} not impleaded all those persons who are likely to be affected by any revision of the seniority list of 1978 (Annexure-II).

8. As regards the challenge to Central Secretariat Service Rule 1962 as amended by O.M. dated 26.11.1969, the matter is pending before the Hon'ble Supreme Court, where the vires of the Rule has been challenged and the learned counsel for the applicant also did not press the said relief before the Tribunal. Thus, the applicant is not entitled to the relief 7(b) claimed by him in the application.

9. Relief 7(a) and 7(c) are interconnected and both these reliefs relate to the impugned order of promotion dated 7th October, 1985 of respondent No.3 as Section Officer on regular basis. The applicant has urged in the application that since his date of joining as L.D.C. is earlier to respondent No.3 so he should be declared senior and he should have been given regular promotion as Section Officer earlier to respondent no.3 who admittedly was junior in the combined seniority list of Central Secretariat Clerical Service before ^{its} decentralisation with effect from 1.10.1962. However, the position is not as simple as argued by the learned counsel for the applicant. Firstly, the applicant had already got adhoc promotion as

Section Officer in July, 1985 and he retired in the same capacity on attaining the age of superannuation. In fact regarding the adjustment of seniority, the applicant is not at all a sufferer because the respondent No.3 was also working as Section Officer on adhoc basis since March, 1983, though he was in Ministry of Defence. He was transferred on regular basis in the Ministry of Information and Broadcasting in October, 1985. By regular promotion, the applicant would not have been any gainer regarding his retirement benefits as his further chance of promotion have been cut down by his own reaching the date of superannuation. Secondly, as discussed earlier the applicant was promoted as Assistant, in the Ministry of Information and Broadcasting, and was transferred from the Ministry of Works, Housing and Supplies under the zoning scheme. The applicant, therefore, cannot have any grudge from the scheme of decentralisation and zoning system. Since the applicant did not challenge his seniority in the grade of Assistant as and when cause of action arose to him in 1978, so now he cannot be in a better position to assail the promotion to the grade of Section Officer of respondent No.3, obviously because the applicant has been junior to respondent No.3 as Assistant having been confirmed much after the confirmation of respondent No.3 in that grade. The seniority in the grade of LDC/WDC will not be counted as the seniority list of Assistants was changed after the introduction of decentralisation scheme and zoning scheme. Thus, the impugned order dated 7.10.1985 cannot be said to be in any way invalid or discriminatory.

10. In view of the above discussion, we find no merit in the application and the same is dismissed with no order as to costs.

J. P. Sharma
(J.P. Sharma)
Member (J)

C. C. 21/1986
(P.C. Jain)
Member (A)