

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

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O.A. No. 290

1986

T.A. No.

pronouncement of
DATE OF DECISION 30.10.87

B.S. Bedharak Petitioner

Sri M.R. Bharadwaj Advocate for the Petitioner(s)

Versus

Union of India & others Respondent

Mrs. Rajkumari Chopra Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.P. Mukerji, Member (A)

The Hon'ble Mr. Ch. Ramakrishna Rao, Member (J)

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

Ch. Ramakrishna Rao

(Ch. Ramakrishna Rao)
Member (J)

S.P. Mukerji

(S.P. Mukerji)
Member (A)

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

REGN.NO. O.A. 290/1986

^{pronouncement of}
Date of decision : 30.12.87

Sri B.S. Bedharak

... Petitioner

Vs

Union of India & others

... Respondents

Coram : Hon'ble Mr. S.P. Mukerji, Member (A)
Hon'ble Mr. Ch. Ramakrishna Rao, Member (J)

For the Petitioner

... Sri M.R. Bharadwaj, Advocate

For the Respondents

... Smt. Rajkumar Chopra, Advocate

(Judgement of the Bench delivered by Hon'ble
Mr. Ch. Ramakrishna Rao, Member (J))

JUDGEMENT

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985 ('Act', for short).

2. The facts giving rise to the application are, briefly, as follows. The applicant, who belongs to the Schedule Caste, was appointed as Upper Division Clerk ('UDC', for short) in 1963 in the Ministry of Works & Housing ('the Ministry', for short). His name was included in the common seniority list of UDCs and placed at serial No. 84 of Annexure I of O.M. No. 11/12/71-CS.II (Vol.II) dated 24.5.1973 of the Department of Personnel & A.R. ('DP & AR', for short). As the chances of promotion for UDCs in the Ministry to the posts of Assistant were bleak, options were invited on 20.12.72 from 14 UDCs, amongst whom the applicant was one, for intimating their willingness to go over to other cadres, on promotion as Assistants, on long term basis under the Zoning Scheme. The applicant conveyed his willingness on 21.12.72 which was duly communicated by the Ministry to DP & AR, who in their turn nominated on 24.9.73 to the Department of Science & Technology ('Dept. S & T', for short) for appointment as Assistant in long term vacancy. He was relieved by the Ministry

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on 10.10.73 and he took charge of the post of Assistant in the Dept. of S. & T. on 11.10.73. He was later confirmed as Assistant on 25.4.82 w.e.f. 16.12.79 in the Dept of S & T. His name was, ~~xxx~~ however, not included in the select list of Section Officers ('SOs', for short) grade for the year 1981. According to the applicant, he fulfilled all the requirements for inclusion of his name in the aforesaid list. He, therefore, made ^a representation on 24.8.83 to the competent authority for inclusion of his name in the select list of SOs for 1981. This was rejected on 21.11.83. His subsequent representations ~~xx~~ from 22.11.83 to 3.6.85 were rejected on 31.7.85. On 27.11.84, he made a representation to the Commissioner, ~~for~~ Schedule Castes & Schedule Tribes which was rejected on 11.10.85. The final representation to the competent authority on 7.11.85 was also turned down on 17.12.85. Aggrieved, the applicant has filed this application.

3. Mrs. Rajkumari Chopra, learned counsel for the respondents, raised a preliminary objection that the application is barred by limitation. ^{According to} ~~her~~ the applicant has assailed in this application the non-inclusion of his name as Assistant in the Select List of 1973 and questioned ^{ed} the validity of the memorandum No. 7/9/75-CS II dated 16.12.75, which ~~is~~ is not permissible at this distance of time. The application should, therefore, be dismissed in limini on grounds of delay and laches.

4. Shri M.R. Bharadwaj, learned counsel for the applicant, submits that the subject matter of challenge in this application is the non-inclusion of his client's name for select list of SOs in 1981; that his client had made a representation on 24.8.83 which was rejected on 21.11.83 and subsequent representations were finally rejected on 3.6.85. According to Sri Bharadwaj, Section 21(i)(a) ^{of the Act} prescribes a period of

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one year from the date of the final order for filing the application. So reckoned, the period of one year will expire only on 17.12.86 and the application was filed in April/May 1986.

5. In our view, the main challenge in this application is to the non-inclusion of the name of the applicant in the select list of SOs for the year 1981 and for subsequent years. The challenge to the select list of Assistants for the year 1973, in which his name was not included, arises only incidentally. The final representation made by the applicant against the non-inclusion in the select list of SOs for 1984 having been rejected on 17.12.85, the application is very well within time. We, therefore, overrule the preliminary objection raised on behalf of the respondents.

6. Turning to the merits, Sri Bharadwaj strenuously contends that his client was eligible for inclusion in the select list of SOs for the year 1981 but R1 & R2 omitted to include his name not only in the aforesaid list but also in the list subsequently prepared for the years 1982, 1983 and 1984.

As a result of this omission, the career prospects of his client were considerably jeopardised. Sri Bharadwaj has developed his argument thus : R2 fixed the zones of seniority of the UDCs for promotion to the Assistants Grade by OM dated 7.2.1972, according to which UDCs upto sl.no.395 in Part I of the common seniority list of UDCs enclosed with the OM were eligible for being placed in the select list of Assistants ('SL of Asstts', for short). The applicant was eligible since his name figured at sl.no. 84 in the aforesaid common seniority list. But due to want of vacancies in the grade of Assistants in the Ministry, he could not be promoted. On 24.5.73 fresh zones for inclusion of names in the SO of Asstts were formed, as a result of which the chances of the applicant for inclusion in the SL of Asstts brightened. On 24.9.73, R2 nominated the applicant for appointment as Assistant against a reserved vacancy in the Dept. of S & T. Prior

~~to 24.10.73, the direct recruitment quota was reduced to 50%~~

to 1.10.73 the element of direct recruitment to the grade of Assistants was 75% and the remaining 25% of the vacancies were filled by promotion from SL of Asstts. but after 1.10.73, the direct recruitment ^{quota} was reduced to 50% and the remaining 50% was filled from two sources viz: (i) by promotion of UDCs with 5 years service against 25% vacancies and (ii) by UDCs, who qualified in the Limited Departmental Competitive Examination ('DCE', for short) against the balance 25%, in the ratio of 1:1. The name of the applicant must, therefore, be deemed to have been included in the SL of Asstts for 1973. The applicant fulfilled the requirements of OM dated 20.10.82 issued by the DP & AR for inclusion of his name as SC candidate in the SL of SOs for 1981. The order dated 17.12.1985 issued by R1 ~~reflecting~~ ^{rejecting} his representation, is legally unsustainable.

7. Mrs. Rajkumari Chopra, learned counsel for the respondents, has not disputed the change brought about by the amendment made to the rules of 1.10.73. She has also not disputed that the name of the applicant appears at sl.no.84 in the common seniority list annexed to OM dated 24.5.73 issued by the DP & AR. The stress, however, in her argument is that since the applicant was appointed as Assistant in the Deptt of S & T w.e.f. 11.10.1973 against a long term reserved vacancy after the cut off date viz. 1.10.1973, his name was rightly included in the SL for the year 1975 giving effect to the clarificatory OM dated 16.12.75 issued by the DP & AR. She vehemently contends that the appointment of the applicant was not against the SL of 1973 but against the SL issued subsequently in 1975 and as such the representation of the applicant was rightly turned down by the Deptt of S & T on 31.7.1985.

8. The controversy of the parties, as appearing from the rival contentions, centres round the question whether the name of the applicant is to be treated as included in the SL of Asstts. for the year 1973. If appointments made upto end of September 1973 as Assistants should alone be taken into consideration for inclusion in the select list the name of the applicant would certainly not find a place. But the rules were amended w.e.f. 1.10.1973 making it imperative to include names from two sources i.e. 5

by promotion of UDCs with 5 years service and by appointment of UDCs qualifying in the DCE, in the ratio 1: 1. The first examination was held only in 1975 and, therefore, the exercise in the matter of preparation of the SL for the year 1973 had to be re-done by dovetailing the names of candidates who got through the DCE with the names of UDCs who possessed 5 years experience as UDCs and were already included in the SL. If the SL already prepared for the year 1973 was not revised in the manner aforesaid, it cannot be treated as SL conforming to the rules as amended in 1973. It is precisely for this reason that R3 issued the OM dated 16.12.1975 indicating the manner in which the SL of Assistants Grade was to be prepared. It is useful to reproduce paragraph 3 of this OM :

"3. Since additions to the Select List as above is to be made with effect from 1.10.1973, all the U.D.Cs., whose names were incorporated in Annexure I and Annexure II appended to this Department's O.M. No. 11/12/72-CS(II)/Vol.II dated 24.5-1973 and were promoted as Assistants on regular basis against long term vacancies before 1-10-1973, would be deemed to have been included in the Select List of Assistants' Grade in their respective cadres in which they are working. However, the names of eligible U.D.Cs. who have either been promoted or may be promoted as Assistants on regular basis against long term vacancies after 1-10-1973 will be included in the said Select List along with the qualified candidates of Assistants' Grade Limited Departmental Competitive Examination held in April, 1975." (emphasis supplied)

In our view the phrase 'in the said Select List' can only refer to the select list of 1973 since the reference in the sentence preceding it is to that list, ~~because~~ ^{with} the rules were amended on 29.4.1974 ~~effective~~ from 1.10.1973, introducing a change in the manner and method of appointing Assistants from the promotion quota and unless this change was reflected in the SL for 1973, it would not be in conformity with the amended rules. We have no doubt that if the SL is not amended in the manner aforesaid, it would be a misnomer to call it the SL for the year 1973 in as much as the SL would contain only the names of persons appointed upto 30.9.1973 (AN) but not those appointed during the period 1.10. 1973 to 31.12.1973. In other words,

the SL for the year 1973 should cover the entire span commencing from 1.1.1973 and ending with 31.12.1973 but not merely a sector thereof i.e. from 1.1.73 to 30.9.73 since in the letter would only be a truncated list not conforming to the rules as amended in 1973. In fact the OM dated 16.12.75 has specifically called upon the Ministries of Finance and others to prepare their select lists for Assistants on the lines indicated therein and forward a copy of the same to DP & AR. This, in our view, means and implies that the selected list for the Assistants' grade already prepared for 1973 on the basis of the rules in vogue prior to 1.10.73 & should ^{have been} ~~be~~ recast for the period from 1.10.73 to 31.12.73 and the SL for the years 1974 and 1975 should also ^{have been} ~~be~~ prepared in the light of the position enunciated in the said OM.

9. In this connection, we may refer to the fact that the Deptt. of S & T sought a clarification in their OM dated 14.1.76 addressed to DP & AR (R2) regarding the fixation of seniority of Scheduled Caste candidate i.e. the applicant, who was promoted against a vacancy reserved for the Scheduled Caste candidates vis-a-vis the candidates qualified at the DCE. In this OM names of the promotees and DCE candidates were interpollated in the light of the contents of the OM dated 16.12.75 ~~issued~~ by R2 and concurrence of the DP & AR ^{was} ~~was~~ sought. That Department ^{stated} while concurring ~~in~~ their OM dated 9.2.76: ~~stated~~ :

"..... as Shri B.S. Bedharak has been nominated to the Department of Science and Technology for inclusion in the Select list of Assistants' Grade against the reserved vacancy, he should be included therein according to his position in the common seniority list irrespective of the date of his joining in that Department. This position has been indicated correctly in paragraph 3 of the OM dated 14.1.76."

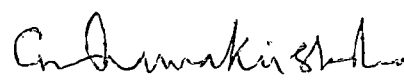
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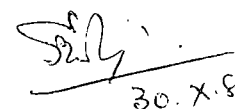
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After obtaining the clarification, it was incumbent on the Deptt. of S & T to take steps for revising the SL for 1973 and also prepare the SL for the subsequent years. But it appears that no SL of Assistants' was prepared. This not having been done, the omission to include the name of the applicant in the SL's prepared for the SOs grade for the years from 1981 to 1984 has vitiated the aforesaid SL's.

10. We therefore, direct Respondents 1 and 2 to take steps for including the name of the applicant in the SL's of SOs for the years 1981 to 1984 and consider the case of the applicant for promotion to the post of SO in accordance with the observations made above. Three months' time allowed for the purpose.

10. In the result the application is allowed. Parties to bear their own costs.


(Ch. Ramakrishna Rao)
Judicial Member


30.7.87
(S.P. Mukerji)
Administrative Member