

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA 457/1986

Date of decision: 13.04.1992

Shri Ved Pal Sharma

...Applicant

Vs.

Union of India through
the Secretary, Ministry
of Information and
Broadcasting and Others

...Respondents

For the Applicant

...Shri Vijay Mehta,
Counsel

For the Respondents

...Shri M.L. Verma,
Counsel

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*
2. To be referred to the Reporters or not? *No*

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman(J))

The applicant who is working as Clerk Grade-I in the All India Radio, New Delhi, filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying for a declaration that he is Senior Clerk Grade-I and that respondent No.3 (Shri T.R. Sethi) is junior to him as Clerk Grade-I and the position given in the seniority list as on 1.5.1980 cannot be altered. He has sought for a further direction to the Union of India that he be treated as senior to respondent No.3 for all future promotions.

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2. On 2.7.1986 when the application was admitted an interim order was passed to the effect that further promotion should be stayed pending the orders on this application. On 15.7.1986, the aforesaid stay order was modified to the effect that it would not apply to the case of Clerk Grade-I/Store Keeper who are placed at S.Nos. 1 to 126 in the seniority list as on 1.6.1980 and would not preclude the respondents from considering their cases and promoting them. This was on the basis of the statement made by the learned counsel for the applicant that the applicant's name figured in the seniority list at S.No. 127.

3. On 3.2.1987, the learned counsel for the respondents stated that 5 posts of Head Clerks/Accounts/Store Keepers were lying vacant and both the applicant and respondent No. 3 could be appointed on the same day but due to the stay order made by the Tribunal, this could not be done. The stay order was further modified to the effect that there will be no objection to the applicant and respondent No.3 being appointed on the same day as Head Clerk. It was further stated that the promotions made will be subject to the result of the application.

4. The facts of the case in brief are as follows. The applicant was appointed as Clerk Grade-I on 8.10.1973 while respondent No.3 was appointed to the same post on 31.10.75. In the seniority list as on 1.6.1980 which had been published by the respondents, the applicant figured at S.No.127 while respondent No.3 figured at S.No.147.

5. The Recruitment Rules for the post of Clerk Grade-I were amended in 1972 by the All India Radio (Class III post) Recruitment (4th Amendment) Rules, 1972. The amendment was notified on 16.6.1972. According to the amended rules, the post of Clerk Grade-I/Store Keeper is to be filled by promotion. 75% was to be filled by promotion on the basis of seniority-cum-fitness from amongst Clerk Grade-II/Teleprinter Operator or Telephone Attendant with 5 years service in the Grade. 25% is to be promoted from amongst Clerk Grade-II/Telephone Operator or Telephone Attendant with minimum of three years of service in any of the grades, on the basis of a competitive examination which will be held by the respective Head of the major AIR Station in the State or group of States as the case may be.

6. The respondents held a departmental competitive examination in 1974 pursuant to the aforesaid provisions. The applicant did not appear at the said examination but respondent No.3 appeared and qualified in the said examination. The respondents have rejected the representation of the applicant for giving him seniority above respondent No.3 on the ground that the applicant did not appear in the said examination whereas respondent No.3 appeared and qualified in the said examination. The applicant has contended that he had been already promoted to the post of Clerk Grade-I and that the respondents did not ask him to appear in the departmental examination held in 1974,

in order to maintain his seniority.

7. The stand of the respondents is that the seniority list on 1.6.80 had to be altered in accordance with the provisions of the Recruitment Rules which provide that the relevant seniority of direct recruits shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules. Respondent No.3 belonged to the competitive examination held in the year 1975 and was appointed against the vacancies which had occurred in the examination quota. There was a ratio of 3:1 quota for the promotion and for examination respectively.

8. We have gone through the records of the case carefully and have considered the rival contentions. The applicant was promoted to the post of Clerk Grade-I with effect from 8.10.1973 on the basis of seniority-cum-fitness whereas respondent No.3 was appointed as such on 31.10.1975. By the time, the applicant came to be promoted, the amendment of the Recruitment Rules had come into force with effect from 16.6.1972. The Recruitment Rules, however, provide that the first method for filling up of the post of Clerk Grade-I/ Store Keeper is by promotion on the basis of seniority-cum-fitness and the second method is on the basis of competitive examination in the ratio of 3:1 respectively. The applicant had already been promoted much before

the respondent No.3. The respondents have not disclosed the basis for giving higher seniority to respondent No.3. In any event, there is no indication on the record to indicate that the revised seniority list was circulated and objections were invited from the persons concerned. In our opinion, the seniority of the applicant who was appointed on an earlier date could not be adversely affected by giving higher seniority to a direct recruit of a later date without giving him a show cause notice and considering his objections to the proposed revision of seniority.

9. The learned counsel of the respondents had stated at the Bar on 3.2.1987 that the applicant and respondent No.3 would be appointed on the same day. We, therefore, hold that in all fairness, the applicant should be held to be senior to respondent No.3. We order and direct accordingly. The applicant shall be considered for further promotion on the basis that he is senior to respondent No.3.

There will be no order as to costs.

B. N. Dholiyal
(B. N. DHOUDIYAL)
MEMBER (A) 17/12

P. K. Kartha
(P. K. KARTHA)
VICE CHAIRMAN (J)

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