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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 982/86

Decided on : 29.9.1992

Shri K. J. Rao ... Applicant

Vs.

Chief Election Commissioner of
India & Ors. ... Respondents

CORAM : THE HON'BLE MR. T. S. OBEROI, MEMBER (J)
THE HON'BLE MR. P. C. JAIN, MEMBER (A)

1. Whether to be referred to the Reporter ? Yes.

2. Whether reporters of local newspapers may
be allowed to see the judgment ? Yes.

3. Whether Their Lordships wish to see the fair
copy of the Judgment ? No.

4. Whether to be circulated to other Benches ? *No*.

C. C.
(P. C. Jain)
Member (A)

T. S. Oberoi
(T. S. Oberoi)
Member (J)

(11)

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THE HON'BLE MR. P. C. JAIN, MEMBER (A)

Applicant in person

Shri P. H. Ramchandani, Sr. Counsel for
official respondents

Respondent No.4 in person

JUDGMENT

Hon'ble Shri P. C. Jain, Member (A) :

The applicant while posted as Section Officer in the Election Commission of India, has filed this application under Section 19 of the Administrative Tribunals Act, 1985. He is aggrieved in the matter of fixation of his seniority in the cadre of Assistants in the Election Commission vis-a-vis Shri B. N. Chawla, who has been arrayed as respondent No. 4. The applicant has prayed for the following reliefs:-

- "(i) Cancel its Memorandum No. 206/1/80 dated 21.5.80 (Appendix-VIII) refixing the seniority of Assistants adversely affecting the applicant;
- (ii) issue a revised order of Seniority restoring the status quo ante prior to the issue of the Order dated 21.5.80; and
- (iii) allow the applicant all the incidental benefits, if any, as a result of the restoration of seniority, viz. promotion to the post of Section Officer by creation of a supernumerary post w.e.f. 1.4.1980, the date on which Shri Chawla was promoted as Section Officer."

2. The case of the applicant is that he was appointed as an Assistant in the Election Commission of India w.e.f. 14.11.1966 on the basis of the results of Assistants' Grade Examination, 1965 held by the Union Public Service Commission. Later on, w.e.f. 16.1.1967 he was appointed against a permanent vacancy and was placed on probation for a period of two years w.e.f. 14.11.1966. During the period of probation, he was deputed for training course for Assistants (Direct Recruits) conducted by the Secretariat Training School and passed the examination held in June, 1968. He was confirmed on the post of Assistant w.e.f. 22.12.1970.

3. Respondent No.4, namely, Shri B. N. Chawla, had qualified the Assistants Grade Examination, 1963 and was nominated to the Intelligence Bureau (for short 'IB'). He did not join the IB as being a physically handicapped person he was not in a position to go on transfers from one place to another and his request for an undertaking by the IB that he would not be moved out of Delhi, was not accepted. However, vide letter dated 24.10.1968 he was offered appointment as an Assistant in the Election Commission on temporary basis. He joined in the Election Commission on 1.11.1968. Before joining the Election Commission he gave a written undertaking to the Secretary, Election Commission of India on 19.9.1968 to the effect that in the event of his appointment as Assistant in the Election Commission, he was agreeable to his seniority in the grade of Assistant being fixed below all the direct recruits from the Assistants Grade Examinations, 1962 to 1965 who had already been appointed in the Commission's office.

4. The applicant was shown senior to respondent No.4 until memorandum dated 21.5.1980 by which a seniority list of Assistants in the Secretariat of the Election Commission as on 12.5.1980 was circulated. In this impugned list, the applicant is shown at S. No.23 but respondent No.4 is shown at S. No. 15, and in the remarks column against respondent No. 4, it is stated that he was "Granted notional seniority." Here it may be mentioned that after his appointment in the Election Commission, respondent No.4, Shri B. N. Chawla, continued to make representations for claiming seniority on the basis of 1963 Examination but all these representations were rejected. It was only in 1980 that the Election Commission decided to assign a notional seniority to him on the basis of his selection in 1963 instead of his actual appointment in 1968. While doing so, the Commission, however, maintained the seniority of S/Shri Ghanshyam Kohar and R. K. Bansal who had been confirmed in 1967 before Shri Chawla joined the Commission in 1968. In other words, Shri Chawla was placed junior to the 1964 candidates, but above those of 1965 who were yet to be confirmed. It was in these circumstances that Shri Chawla became senior to the applicant by the Commission's order dated 17.4.1980 which was reflected in the impugned seniority list of Assistants circulated on 21.5.1980.

5. We have carefully perused the material on record and also heard the applicant and respondent No.4 who themselves presented their case and the learned sr. counsel for official respondents.

6. The main contention of the applicant is that when Shri Chawla, respondent No.4, did not join the IB in pursuance of the offer given to him by the date fixed, i.e.

the offer of appointment given to him was cancelled. On account of this as also on account of the undertaking given by him before joining the Election Commission to the effect that in the event of his appointment as Assistant in the Election Commission he was agreeable to his seniority being fixed in the grade of Assistants below all the direct recruits from the Assistants Grade Examination 1962 to 1965 who had already been appointed in the Commission's office, Shri Chawla could not be given the seniority above him. The case of the official respondents, on the other hand, is that as Shri B. N. Chawla was a physically handicapped person, the Ministry of Home Affairs requested the Commission that he might be considered for appointment against one of the vacancies of Assistants which were then available in the Commission and Shri Chawla was granted appointment in the Commission. The fact of having taken a written undertaking from Shri Chawla as already referred to above is not disputed. It is also not disputed that the earlier representations of Shri Chawla were not accepted by the Commission. However, the whole matter is said to have been reconsidered on his representation dated 21.3.1980 and the facts which have weighed with the Commission in revising their earlier decision are stated to be as below :-

"(i) That Shri Chawla was a qualified candidate of 1963 examination.

(ii) That it was not correct to hold that Shri Chawla had lost his right of being appointed as a direct recruit Assistant by not joining duty in the Intelligence Bureau to which organisation he was initially allotted in 1964. In view of the directives of the Government of India that the cases of handicapped persons seeking employment in public services should be viewed with utmost sympathy, Shri Chawla's case was taken up by the Ministry of Home Affairs for absorption in other offices.

(iii) That the offer of appointment made to Shri Chawla did not contain any stipulation that he would rank junior to other direct recruit Assistants who had already joined the Commission.

(iv) That the undertaking obtained from Shri Chawla had no validity in law and was non est as it was not contemplated either in the recruitment rules of the Election Commission or in the rules and orders of the Government regulating the recruitment through the Union Public Service Commission.

(v) That as per seniority rules governing direct recruits, the persons appointed as a result of earlier selection would be senior to those appointed on the result of subsequent selection. This rule speaks only about selection through Union Public Service Commission Examination and not about the actual offer of appointment. In view of this Shri Chawla who was selected in 1963 examination should rank senior to those selected after him in subsequent examinations notwithstanding the fact that the offer of appointment to him was delayed for any reason...."

The case of respondent No.4, i.e., Shri B. N. Chawla, briefly stated, is that he is a physically handicapped person; that he was appointed as a LDC w.e.f. 29.5.1959 in the Government of India Press, Minto Road, New Delhi, in which post he was declared quasi permanent w.e.f. 1.7.1963; that later on he did his M.A., but after his graduation he submitted his application for appearing in the Assistants Grade Examination, 1963 in which he was declared successful, but in the meantime he was appointed as UDC w.e.f. 14.8.1964 in the Pay and Accounts Office, Ministry of Food and Agriculture, New Delhi on the basis of an open competitive examination held by the Chief Pay & Accounts Officer; that the offer to him by the IB was initially delayed but when it came he requested for an undertaking that he would not be moved out of Delhi; that finally on 29.1.1967 the IB offered him an appointment in New Delhi and asked him to join by 31.1.1967 with a categorical understanding that there was no commitment that

he would not be transferred outside Delhi; that as his request for change of his nomination to some other department was already pending with the Ministry of Home Affairs he did not join the IB and the Ministry of Home Affairs informed him in March, 1967 that since he did not join the IB by 31.1.1967, he had lost his claim to appointment; that he was given by Shri Roshan Lal, the then Under Secretary (Admn), Election Commission, a typed letter for signatures which he had to sign; and that as per the relevant seniority rules of appointment in the Election Commission, he was entitled to seniority on the basis of 1963 Examination.

7. General Principles for determination of seniority in the Central Services were circulated as Annexure to the Government of India, Ministry of Home Affairs O.M. No. 9/11/55 RPS dated 22.12.1959. Principles Nos. 3 and 4, as extracted below, are relevant for our purpose :-

"3. Subject to the provisions of para 4 below, permanent officers of each grade shall be ranked senior to persons who are officiating in that grade.

4. Direct Recruits. Notwithstanding the provisions of para 3 above, the relative seniority of all direct recruits shall be determined by the order of merit in which they are selected for such appointments, on the recommendations of the UPSC or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection.

Provided that where persons recruited initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment, seniority shall follow the order of confirmation and not the original order of merit."

As the applicant was appointed on the basis of the results of Assistants Grade Examination, 1965 and respondent No.4 was appointed on the basis of the results of similar Examination of 1963, first part of general principle No.4

and the proviso to that general principle are not relevant. Thus, the position is that on the basis of the above principle of seniority, respondent No. 4 shall be senior to the applicant. However, the matter does not end here. The applicant has drawn our attention to the provisions of Government of India, Ministry of Home Affairs (Department of Personnel and Administrative Reforms) memorandum No. 9/23/71-Estt (D) dated 6.6.1978 (Annexure-IV to the rejoinder to the reply of official respondents). It is stated therein that it has come to the notice of the Government that in certain cases, the candidates recommended by them for appointment take long time to join and there have also been cases where offers of appointment were revived by the departments after they had been cancelled and inspite of the long delay in joining the candidates were allowed the benefit of seniority on the basis of their initial selection. After consultation with the UPSC on the question whether in such cases it would not be desirable to depress the seniority of the candidates, the decision of the Government to follow the procedure as below was conveyed :-

"(i) in the offers of appointment issued by different Ministries/Departments, it should be clearly indicated that the offer would lapse if the candidates did not join within a specified period not exceeding two or three months.

(ii) If, however, within the period stipulated, a request is received from the candidates for extension of time, it may be considered by the Ministries/Departments and if they are satisfied, an extension for a limited period may be granted but the total period granted including the extension during which the offer of appointment will be kept open, should not exceed a period of nine months. The candidates who join within the above period of nine months will have their seniority fixed under the seniority rules applicable to the Service/post concerned to which they are appointed, without any depression of seniority.

(iii) If, even after the extension(s) if any granted by the Ministries/Departments, a candidate does not join within the stipulated time (which shall not exceed a period of nine months), the order of appointment should lapse.

(iv) An offer of appointment which has lapsed, should not ordinarily be revived later, except in exceptional circumstances and on grounds of public interest. The Commission should in all cases be consulted before such offers are revived.

(v) In a case where after the lapsing of the offer, the order is revived in consultation with the Union Public Service Commission as mentioned in sub-para (iv) above, the seniority of the candidates concerned would be fixed below those who have already joined the posts concerned within the prescribed period of nine months; and if the candidate joins before the candidates of the next selection examination join, he should be placed below all others of his batch. If, however, the candidate joins after some or all the candidates of the next selection examination have joined he should be :

- (a) in cases of selection through interview, placed at the bottom of all the candidates of the next batch.
- (b) in the case of examination, allotted to the next years batch and placed at the bottom."

Sub-paras (iv) and (v) of the above decision are relevant for our purpose. The contention of the applicant is that the offer of appointment in IB made to respondent No.4 had lapsed and as such, firstly, it could not be revived for purposes of his appointment in the Election Commission without consulting the UPSC, and secondly, the seniority of respondent No.4 could be fixed only below those who had already joined the post concerned.

8. In support of his contention that the offer of appointment in IB made to respondent No.4 had lapsed/cancelled, the applicant has strongly relied on two documents. One is the extract from counter affidavit filed by respondent No.4 in the High Court of Delhi in Civil Writ Petition No. 275 of 1975 which has been filed as Annexure-I (page 68 of the paperbook - rejoinder to the counter affidavit of official

respondents). A perusal of the same shows that respondent No.4 himself referred to cancellation of his appointment order in March, 1967. The second document is a D.O. letter No. 6/2/74-CS(I) dated 15.2.1974 from the Minister, Department of Personnel, Cabinet Secretariat, Government of India (copy at Appendix-VII to the OA). For proper appreciation, we consider it appropriate to reproduce the above letter as below :-

"Dear Shri Mukherjee,

Please refer to your letter, dated the 12th December, 1973, regarding the seniority of Shri B. N. Chawla, Assistant in the Election Commission.

I have again looked into the case of Shri Chawla. The facts of the case are as follows :-

The 1966 Assistants' Grade Examination was held for recruitment of Assistants in the IFS(B), Railway Board, Central Secretariat Service and some attached offices like Election Commission, Department of Tourism, Department of Parliamentary Affairs, I.B. etc. The Ministries/Departments/Offices had reported vacancies available for recruitment of Assistants in that year to the Union Public Service Commission. The nominations of the qualified candidates were made by the Commission keeping in view the merit ranking/preferences of the candidates and availability of vacancies. Shri Chawla was nominated to the I.B. by the UPSC on the basis of his rank and preference. He was not covered for nomination to the Railway Board or CSS for which he had given higher preference.

The I.B. being a sensitive organisation, takes some time to verify the character and antecedents of candidates nominated to them before offering appointments. While they were in the process of verification of character and antecedents of Shri Chawla, he informed them of the fact that he was suffering from Poliomyelitis and of his inability to travel by buses because of physical disability. The I.B. therefore, took the question of his re-nomination to any other Service/Department in the Government. This, however, was not possible and the I.B. was requested that on compassionate grounds, they might appoint Shri Chawla at their Headquarters in New Delhi. Shri Chawla did not join but wanted an assurance that his appointment did not entail transfer out of Delhi at a later stage.

He was informed by the IB that such a guarantee about his posting at Delhi could not be given. He was asked to join duty by 31st January, 1967, failing which the offer would stand cancelled. Shri Chawla did not join the I.B. by 31.1.1967 and accordingly the offer of appointment made to him was cancelled. With this, Shri Chawla forfeited his claim for appointment as Assistant on the results of the Assistants' Grade Examination, 1963.

The Assistants' Grade Examination is held annually and vacancies remaining unfilled in any year are reported for being filled on the basis of subsequent examinations. Assistants' Grade Examinations were held by the UPSC during the years 1964 and 1965 and vacancies left unfilled on the basis of the 1963 Examination were filled through those examinations. Though Shri Chawla had forfeited his claim for appointment as an Assistant on the basis of the results of 1963 Examination, in the context of the general policy of the Government in regard to the placement of physically handicapped persons, it was decided, as a special case and in relaxation of the existing rules, to nominate Shri Chawla against one of the vacancies which were reported by the Election Commission for being filled on the basis of the results of 1968 examinations. Shri Chawla joined the Election Commission on 1.11.1968. Before that 2 Assistants who had joined that office on the basis of 1964 Examinations had already been confirmed. Four more persons had also joined that office on the results of the 1964 and 1965 Examinations. Shri Chawla who joined in November, 1968, was eligible for confirmation only after he satisfactorily completed the period of probation of two years from the date of his appointment in the Election Commission. As stated earlier, his appointment in the Election Commission was made on ad-hoc basis in relaxation of the existing rules. He had no claim for seniority as if he had been appointed on the basis of the results of 1963 Assistants' Grade Examination, because by refusing to accept the offer of appointment made to him by the I.B. he had forfeited his claim for appointment as an Assistant on the results of that Examination. Therefore, there was nothing wrong in having placed him below all the candidates who had already joined the Election Commission. Having secured an appointment, Shri Chawla cannot now agitate for a higher seniority against the undertaking given by him at the time of appointment. If he was not satisfied with the seniority position rightly offered to him at the time of appointment, he should not have joined the appointment in which event he would have lost all claims for appointment as an Assistant.

In the circumstances, I hope you will agree that there is no case for re-opening the question of his seniority."

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This letter also shows that as Shri Chawla did not join the I.B. by 31.1.1967, offer of appointment made to him was cancelled. Thus, it is clear that in terms of the instructions referred to earlier, respondent No.4 could not have been given the seniority on the basis of 1963 Examination. There is nothing on record to show that the UPSC was consulted before the offer was made to respondent No.4 for appointment in the Election Commission. Further, as per sub-para (i) of para 1 of the general principles for determination of seniority in the Central Services annexed to memorandum dated 22.12.1959, already referred to above, the Election Commission was required to consult the Ministry of Home Affairs who were to consult the UPSC in individual cases where principles different than the general principles laid down were proposed to be followed. On this ground also the Election Commission was not competent to revise the seniority of respondent No.4 without consulting the Department of Personnel and Training which took the place of Ministry of Home Affairs in service matters and to whom this subject was allocated under the Allocation of Business Rules. No such reference to the Home Ministry is stated or shown to have been made before revising the seniority of respondent No.4 by the Election Commission in 1980, i.e., after a period of nearly 12 years from the date of appointment. Another fact which needs to be mentioned is that the Ministry of Home Affairs in their letter dated 8-8-1968 on the basis of which the Election Commission proceeded to absorb respondent No.4 in the Election Commission clearly stated that he was to be considered for appointment against one of the vacancies of Assistants intimated by the Election Commission to the UPSC for the Assistants' Grade Examination, 1968. On this ground also

it can, therefore, be stated that Shri Chawla was not allocated by the Ministry of Home Affairs against a vacancy of 1963 Examination in the Election Commission.

9. It is not in dispute that an undertaking was asked for from and given by Shri Chawla that in the event of his appointment to the Election Commission he was agreeable to his seniority in the grade of Assistants being fixed below all the direct recruits from the Assistants Grade Examinations, 1962 to 1965, who had already been appointed in the Commission's office. This was given by him on 19.9.1968 and a copy of the same is available at page 102 of the paperbook. A reference in this connection had also been made by the Election Commission to the Ministry of Home Affairs and in their reply dated 10.10.1968, the Ministry of Home Affairs had confirmed the Election Commission's presumption that Shri Chawla will rank junior to direct recruits already appointed in the Commission from earlier Examinations. A copy of this letter is available at page 70 of the paperbook. Shri Chawla has tried to resile from the above undertaking in his counter affidavit to the O.A. primarily on the ground that under the circumstances he had no other choice and that he was forced to give such an undertaking. However, he has not placed on record any document to show that immediately after his appointment in the Election Commission he had written either to the Home Ministry or to any other competent authority that he was forced to give such an undertaking. Even otherwise, he already being in the employment of the Government of India cannot be said to have been without a job with a view to securing employment and giving this undertaking for that purpose. In a way, he can be said to be estopped from

agitating this issue. Moreover, it needs to be stated that all his representations in the matter of seniority on the basis of 1963 Examinations had been rejected prior to his representation made in 1980. In the office order dated 1.11.1971 (copy at page 23 of the paperbook) by which the inter-se seniority of 21 Assistants directly recruited to the post of Assistant in the Election Commission, applicant's name was shown at S. No. 18 and that of respondent No. 4 below him at S. No. 20. The respondents have not disputed that till this seniority was revised in May, 1980, the applicant was treated as senior to respondent No. 4. The contention of the respondents in support of their action to revise the seniority of respondent No. 4 in 1980 does not bring out any new facts which were not in existence when his representations before 1980 were rejected at all levels.

10. Another material fact which needs to be mentioned is that while the stand of the official respondents is that respondent No. 4 was entitled under the rules to seniority on the basis of 1963 Examination, yet in the order which the Election Commission passed in pursuance of the representation made by him in 1980, this principle was not followed fully inasmuch as ^{two} persons appointed to the Election Commission on the post of Assistant on the basis of 1964 Examination, i.e., subsequent to 1963 Examination in which respondent No. 4 was declared successful, were still retained as senior to respondent No. 4. Thus, the Election Commission neither stuck to the position which had been taken until 1979 nor did it follow the rule which is said to have been followed by it. The averment in the counter affidavit is that two candidates appointed in the Commission on the basis of 1964 Examination had already been confirmed before

respondent No. 4 was appointed in the Commission. This contention, in our view, cannot be accepted to be as a legally valid basis for incomplete implementation of their stand otherwise. The relevant rules of seniority, as already extracted above, have no relevance to the fact of confirmation in such a case.

11. Before parting with this case a reference may be made to the preliminary objection taken by the respondents that the O.A. is barred by limitation inasmuch as the impugned seniority list was issued in May, 1980 but the O.A. was filed in 1986. This point was considered by a Bench of this Tribunal in the order dated 12.1.1987 and the delay was condoned.

12. In the light of the foregoing discussion, this O.A. is allowed in terms of the directions that the applicant as also those in the Election Commission who had joined as Assistants in the Election Commission as direct recruits on the basis of the Assistants' Grade Examinations, 1963, 1964, and 1965 shall be treated as senior to Shri B. N. Chawla, respondent No.4, who joined as Assistant in the Election Commission in 1968. They shall also be entitled to re-fixation of their seniority in pursuance of the above direction. However, in the matter of consequential relief, the applicant alone who had approached the Tribunal shall be allowed the same only for a period of three years prior to the date of filing of this O.A. No costs.

(Signature)
(P. C. JAIN)

MEMBER (A)

(Signature)
(T. S. OBEROI)

MEMBER (J)