

12

M.L. Zutshi . . . . APPLICANT

V/s.

Secretary, Deptt. of  
Statistics, Ministry of  
Planning and Others . . . . . RESPONDENTS.

CORAM: Hon'ble Mr. B.S. Sekhon, Vice Chairman (J).  
Hon'ble Mr. P.C. Jain, Member (A).

Applicant in person.  
Shri P.N. Ramchandani, Sr. Counsel for the respondents.

P.C. JAIN, MEMBER:      JUDGMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who at the time of filing this application on 19.11.86 was employed as Data Processing Supervisor in Data Processing Centre, National Sample Survey Organisation and has since been promoted as Superintendent with effect from 1.5.1987, has challenged Office Memorandum dated 22.7.1986 (Annexure-C) by which a provisional seniority list of Data Processing Supervisors as on 23.12.85 was circulated, Office Memorandum dated 27.8.1986 (Annexure-E) by which the representation of the applicant dated 29.7.1986 was rejected, and Office Memorandum dated 1.9.1986 (Annexure-F) by which the final seniority list of Data Processing Supervisors as on 23.12.1985 was circulated. The applicant has prayed for a direction to the respondents to prepare seniority list as per the orders of this Tribunal dated 8.7.86 passed in O.A. 61 of 1985 and that the final seniority list dated 1.9.1986 (supra) be quashed so that he is assigned his proper position in the seniority list. He has further prayed that a direction be issued to the respondents to promote him as Superintendent with effect from February, 1982 or earlier and give him notional seniority therefrom as also arrears of the

pay and allowances which would accrue to him on his promotion as Superintendent.

2. The facts of the case, in brief, are that the applicant had filed O.A. 61/1985 before this Tribunal in which he had, inter-alia, prayed that his seniority on the basis of his officiating as Computing Supervisor with effect from 17.8.1974 be restored . The applicant was appointed as a Computing Supervisor on that date. The designation of the post was changed to that of Data Processing Supervisor with effect from 1.9.1977 . The respondents issued a seniority list on 13.12.1978 placing the applicant at Sl. No.39 on the basis of his appointment as Computing Supervisor with effect from 17.8.1974. That seniority list was modified by another provisional seniority list issued on 5.12.1977 in which the applicant was shown at Sl. No.81 based on his date of appointment to the grade of Computing Supervisor from 5.12.1977 and ignoring more than three years of his officiation from 17.8.1974. His representations against the provisional seniority list were rejected and the provisional seniority list of 5.12.1977 was finalised on 26.4.1982. The said O.A. 61/1985 was decided by a Bench of this Tribunal on 8.7.1986 with the following directions: -

"6. In the facts and circumstances of the case we have no hesitation in allowing the petition with the direction that the impugned seniority of the petitioner in the seniority list be quashed and the petitioner be given seniority on the basis of his continuous officiation as Computing/Data Processing Supervisor from 17.8.1974. There will be no order as to costs."

In implementation of the orders dated 8.7.1986 in the aforesaid O.A. No.61 of 1985, Department of Statistics, vide Office Memorandum dated 22.7.1986 (Annexure-C), cancelled the earlier seniority list and circulated a fresh provisional seniority list of Data Processing Supervisors as on 23.12.85, in which the name of the

Cu

applicant appeared at Sl. No.38. The applicant made a representation against the same, vide his letter dated 29.7.86 (Annexure-D), which was rejected by the Department of Statistics, vide Office Memorandum dated 27.8.1986 (Annexure-E). Department of Statistics circulated the final seniority list of Data Processing Supervisors as on 23.12.1985 (Annexure-F), in which the name of the applicant appeared at Sl. No.13. The applicant has challenge the seniority list inasmuch as it has not been framed on the formula of 'Continuous Officiation' as directed in the order passed in O.A. 61/1985 (supra), and some of the persons whose date of continuous officiation as Computing/ Data Processing Supervisor was later than that of the applicant, have been shown senior to him. He has since been promoted to the post of Superintendent with effect from 1.5.1987, but he claims that once his seniority is restored as per the judgment of the Tribunal in O.A. 61/85, he becomes eligible for promotion to the post of Superintendent as early as February, 1982.

3. We have carefully gone through this case and heard the applicant who appeared in person and the learned counsel for the respondents.

4. The entire case of the applicant rests on the plea that the respondents have not implemented the order given by this Tribunal in O.A.61/1985 in the right perspective. He has pointed out that in the provisional seniority list as on 23.12.85, three persons viz., Shri I.D. Sharma, Smt. V.A. Deshpande and Shri S.K. Dhawan, whose date of regular appointment to the post was later than that of his own, have been shown at Sl. Nos35, 36 and 37 while his name appears at Sl. No.38. Out of these three, the one at Sl. No.36 (Smt. V.A. Deshpande) is a direct recruit while the remaining two are promotees. In the final seniority list of Data Processing Supervisors as on 23.12.1985, the names of the said Shri I.D. Sharma and Shri S.K. Dhawan appear at Sl. Nos11 and

- 4 -

12 respectively while that of the applicant at Sl. No.13. The name of Smt. Deshpande does not figure in the final seniority list as she had resigned from the post on 30.10.80. According to the applicant, seniority is to be calculated from the date of assuming charge of the post and, in accordance with the direction of the Tribunal, it is to be based on continuous officiation. The date of his assuming charge vis-a-vis the dates of the three persons, referred to by him, was as under: -

M.L. Zutshi (applicant promotee)	17.8.1974
I.D. Sharma (promotee)	19.8.1974
S.K. Dhawan (promotee)	14.10.1974
Smt. V.A. Deshpande (direct recruit)	11.6.76.

5. The case of the respondents, briefly stated, is that S/Shri I.D. Sharma and S.K. Dhawan were senior to the applicant in the feeder post of Computing Inspector for appointment as Computing Supervisor and they were also appointed as Computing Supervisor by the same order dated 26.7.1974. Further, in the select list for the post of Computing Supervisor, the names of S/Shri I.D. Sharma and S.K. Dhawan were above the name of the applicant. Accordingly in accordance with the general principle of inter-se seniority of the promotees, S/Shri I.D. Sharma and S.K. Dhawan were placed higher than the applicant in the seniority list, which has been impugned in this case. It was also specifically so stated by the respondents in the Office Memorandum dated 27.8.1986 (Annexure 'E'), which is in reply to the applicant's representation dated 29.7.1986. As regards Smt. V.A. Deshpande, who was appointed as a Computing Supervisor on 11.6.1976 by direct recruitment, it is stated that she was assigned seniority according to the Recruitment Rules which came into force with effect from 3.8.1974. Here it may be stated that Smt. Deshpande had resigned in 1980 and, as such, her name does not appear in the impugned final seniority list.

as on 31.12.1985. The respondents have also stated in their reply that the Tribunal in its judgment in O.A. 61/1985 neither directed that the seniority of promotees appointed from the select list should be determined in the order of the dates of their joining the post ignoring the well-established principle and law that inter-se seniority of the promotees shall be the order in which their names appear in the select list, nor set aside any provisions of the relevant Recruitment Rules under which the seniority to the direct recruits was assigned. The respondents, in their reply as well as in the oral submissions before us strongly emphasised that the case of the applicant in O.A. 61/1985 was against the action of the respondents in treating his appointment as Computing Supervisor from 17.8.74 to 5.12.1977 as not regular but only ad-hoc and that too by a corrigendum dated 22.12.1978 and that the applicant had not challenged in that O.A. the seniority accorded to S/Shri I.D. Sharma and S.K. Dhawan as well as Smt. V.A. Deshpande. In support of this contention, they drew our attention to a number of averments of the applicant in O.A. 61/1985.

6. In para 3(iv) - Subject in brief, the applicant herein, in O.A. No.61/1985 filed by him, stated as follows: -

"In the first provisional seniority list of Data Processing Supervisors dated 13.12.78 the applicant was correctly put at position no. 39 strictly as per established rules placing Srl. No.38 Sh. S.K. Dhawan above him as per the panel prepared by the Departmental Promotion Committee though he joined two months after him. ...."

Again in para 6(iv) relating to the facts of the case, the applicant in the aforesaid O.A. No.61/1985 stated as below: -

"That the respondent no.3 issued a provisional seniority list of Data Processing Supervisors vide his memo dated 13.12.78 in which the applicant is placed against Srl No.39, correctly so, as per his promotion order. ....This seniority

Clear

list is strictly prepared as per the established rules placing Srl. no.38 Sh S.K. Dhawan above the applicant as per the panel of the Departmental Promotion Committee though he joined as Computing Supervisor two months after the applicant."

At another place, he stated as below: -

"The applicant is governed by this clause which is also evident from the date of appointment of Srl. No.37, 38 & 39, S/Shri I.D. Sharma, S.K. Dhawan and the applicant (19.8.74, 14.10.74 & 17.8.74) which are strictly according to rules as per the panel prepared by the Departmental Promotion Committee (though both Sh. Sharma & Sh. Dhawan joined after the applicant) for the erst-while cadre of computing Supervisor later merged alongwith Machine Supervisor & Punching Supervisor into that of D.P. Supervisor."

The main grievance of the applicant in O.A. No.61/1985 was against the action of the respondents by which his appointment from 17.8.74 to 5.12.77 as Data Processing Supervisor was treated to be ad-hoc rather than regular. He stated in para 7 pertaining to reliefs sought in the aforesaid O.A. as below: -

"It is therefore submitted that the applicant along with S/Shri I.D. Sharma and S.K. Dhawan have been picked up for meeting out non-judicial treatment without any valid reasons whatsoever. The applicant submits that his proper place in the final seniority list (Annexure H) is at position no. 33 which should be restored to him and S/Shri Mazumdar, Sarkar & others should come below him as they were promoted after him on Ad hoc basis under the directions of Calcutta High Court (Annexure C)."

He prayed for a direction to respondents No.1 and 2 "to cancel the corrigendum (Annexure F) ( Issued by a subordinate authority to that of appointing authority) and restore the applicant's date of entry into the cadre of Computer Supervisor D.P. Supervisor, 17.8.74 and accordingly fix his seniority as per the prefact to the first provisional seniority list

Q.

(39th position) and (33rd position) as per the final seniority list. The dates of regularisation 5.12.77, 7.12.77 & 27.4.78 as per the final seniority list (Annexure H) with the exception of 5 direct recruits is ultra vires of the Constitution .....

In the provisional seniority list of D.P. Supervisors as on 1.11.1978, the name of Shri I.D. Sharma was at Sl. No.37, of Shri S.K. Dhawan at Sl. No.38 and of the applicant at Sl.No.39.

In the final seniority list, his name was shown at Sl.No.81 while the name of Shri I.D. Sharma was shown at Sl. No.65 and of Shri S.K. Dhawan at Sl. No.66. As already stated, the applicant wanted the 39th position as in the provisional seniority list and 33rd position in the final seniority list.

In both cases, his request meant that his name would appear lower than the names of S/Shri I.D. Sharma and S.K. Dhawan.

7. From the above averments, it is clear beyond any doubt that the reliefs prayed for by the applicant in O.A. No.61/1985 really related to his prayer that his appointment as Computing Supervisor in 1974 be treated as regular instead of ad-hoc and that in this regard, he had placed himself on par with S/Shri I.D. Sharma and S.K. Dhawan whose placement at higher places both in the provisional seniority list as well as in the final seniority list vis-a-vis his position was clearly accepted as correct. In view of this, the direction in the judgment in O.A. 61/1985 has to be read only in that context. Moreover, if he really wanted in O.A. 61/1985 a seniority higher than those of S/Shri I.D. Sharma and S.K. Dhawan, he should have specifically prayed for it. On the other hand, he accepted the higher position of both of them as correct in accordance with the position in the select list on the basis of which all the three were ordered to be promoted. Even otherwise, the doctrine of constructive res-judicata would come into play on the facts and circumstances of the case.

8. As regards the challenge to the seniority of Smt. V.A. Deshpande, direct recruit, she having resigned in 1980,

(C.L.)

her name not appearing in the final impugned seniority list as on 23.12.1985, this contention is not relevant at this stage, particularly when the real relief asked for by the applicant in this O.A. is for promotion to the higher post of Superintendent with effect from a date in 1982 when Smt. V.A. Deshpande was not in service at all.

9. In view of the above discussion, we hold that the decision of the Tribunal in O.A. 61/1985, as already reproduced above, cannot be taken to have directed giving a seniority to the applicant higher than that of S/Shri I.D. Sharma and S.K. Dhawan as also of the direct recruit Smt. V.A. Deshpande. It, in effect, means that the applicant's appointment to the post of Supervisor with effect from 17.8.1974 was treated to be regular rather than ad-hoc. Accordingly, we are of the view that the O.A. is devoid of any merit and the same is accordingly dismissed with costs on parties.

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

*B.S. Sekhon*  
(B.S. SEKHON)  
Vice Chairman (J)

6.12.1991.

*6-12-91*