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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 11
T.A. No.

1986.

DATE OF DECISION 29.7.1987

Shri Surinder Singh Dang

Petitioner

Sri B.S. Bindra,

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri M.L. Verma,

Advocate for the Respondent(s)
No.1 & 2.

Ms. Anita Sachdeva,

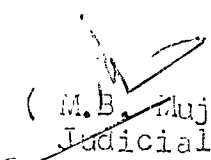
Advocate for Respondent
No.3.


CORAM :

The Hon'ble Mr. S.P. Mukerji, Administrative Member.

The Hon'ble Mr. M.B. Mujumdar, Judicial Member

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*


(M.B. Mujumdar)
Judicial Member


(S.P. Mukerji)
Administrative Member

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: DELHI

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Regn.No.OA-11/86

Date: 29.7.87

Shri Surinder Singh Dang

.. Applicant.

Vs.

Union of India & Ors.

.. Respondents.

For Petitioner

.. Shri B.S.Bindra,
Advocate.

For Respondents
No.1 & 2.

.. Shri M.L.Verma,
Advocate.

For Respondent
No.3.

.. Ms.Anita Sachdeva
Advocate.

CORAM: Hon'ble Shri S.P.Mukerji, Administrative Member
Hon'ble Shri M.B.Mujumdar, Judicial Member

JUDGEMENT

(Delivered by Shri S.P. Mukerji)

The applicant ^{who} is working as a Radiographer in the Safdarjang Hospital, New Delhi moved the Tribunal under Section 19 of the Administrative Tribunals Act by application dated 31.12.85 replaced by the amended application dated 6th March, 1986 ^{finally} praying that he should be placed above respondent No.3, ~~Respondent No.3~~ ^{who is senior} Shri P.C.Chopra/in the seniority list of Radiographers and ^{that he should be} secondly promoted to the selection grade of Radiographers prior to the date of such promotion of that respondent.

2. The material facts of the case which are ^{not} in dispute are as follows:

The applicant was promoted as X-Ray Assistant on 26.12.62 whereas respondent 3 was recruited in that grade as a direct recruit on 31.9.64. The next higher grade is that of Radiographer. The recruitment ^{rules} for the post of Radiographer were issued on 17.9.1958 (Annexed ^{as R-1} ~~now~~ to the Written Statement of respondent No.3) and were replaced by the notified recruitment rules in 1973. In accordance

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with the 1953 recruitment rules, the post of Radiographer were to be filled up by direct recruitment. Accordingly, names were invited from ^{the} Employment Exchange in December, 1964 and a circular was issued to the Departments on 6.1.1965 and on receipt of no objection certificate from the Employment Exchange, an open advertisement was issued in March, 1965. The applicant and respondent No.3 along with another departmental officer applied for the post and as admitted by the applicant he appeared in a written test, practical examination and interview. The Selection Committee graded respondent 3 as No.1 and the applicant as No.3 in the select list. Then both of them were appointed as Radiographer on the same date of 27.4.65. In the seniority list of Radiographers published for the first time as on 31.7.70, the respondent ³ was shown at serial No.6 and the applicant at serial No.10. ^{and the applicant represented} Objections were invited against his being shown below ~~the~~ respondent ³ but his representation was rejected and he was informed on 16.12.1970. The applicant denies ~~his~~ having received any information but admits that he did not make any representation until 1979. He made two representations in 1979, one in 1980 and thereafter ^{on} to the Health Minister in June, 1985 and to the Prime Minister in May, 1985. ^{one} During the course of the arguments, learned Counsel for the applicant fairly conceded that he had received the order of rejection of the 1979 representation. He moved the High Court of Delhi in Civil Writ 193/1985 which was dismissed in limine on 18.1.1985. On the basis of the impugned seniority, respondent No.3 was further promoted to the selection grade of Radiographer on 1.6.84 whereas the applicant was so promoted later on 1.1.86. His representation against the promotion of respondent No.3 to the selection grade was also rejected.

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3. We have heard the arguments of learned Counsel for both the parties and of respondent No.3 and gone through the documents carefully. The learned Counsel for the Union of India took preliminary objection that the application is hopelessly time barred as the applicant^{is} is challenging the seniority list which was published in 1970 again published in 1974, 1978 and 1981 in all of which respondent 3 had been shown senior to the applicant. The applicant's representations were rejected in 1970 and again in 1979. The learned Counsel for the applicant has argued that the present application is based on the rejection^{of} of his representation by ~~the~~ respondents 1 and 2 vide their letter of 1st June, 1985, a photostat copy of which is annexed with original application dated 31.12.1979. We have gone through this letter of 1.6.85 and find that the letter quotes from the original rejection letter dated 2.12.70 rejecting the applicant's representation, a copy of which was sent to him by the Safdarjang Hospital authorities on 16.12.1970. The letter of 1.6.85 ends as follows:

"In this connection Shri S.S.Dang is informed that inspite of Directorate's letter communit^{ed} to him on 16.12.70 he is representing again and again casting aspersions over head of the Department and thus behaving himself unbecoming of a Government servant. He is therefore, warned."

From the above it is clear that the letter of 1.6.85 does not give any ^{fresh} decision on reconsideration of the rejection of his representation given in March, 1970 and therefore, the cause of action cannot be taken to have arisen in 1985 but in 1970 when the seniority list was first published, objections were invited and the applicant's objection was rejected. It has been held by the Supreme Court in Gian Singh Mann Vs. High Court of Punjab & Haryana and Anr. 1980(3)SLR-18 that "successive representations during this

period can hardly justify our overlooking the inordinate delay. Relief must be refused on that ground."

The learned Counsel for the applicant has argued that the rejection letter of 2.12.1970 had not been received by him. We have examined the original file and are satisfied that a copy of the rejection letter had been endorsed to the applicant. Even if, we presume that he had not received any letter, there is no reason why he should not have sent any reminder or gone to the court earlier. On the other hand, the applicant admits on page 13 of the amended application that he represented on 11.10.79, 27.12.79, 23.7.80, 19.1.85 and 14.6.86. Thus, it is clear that the applicant kept quiet between December, 1970 and October, 1979. He was again given a rejection letter on his representation of 1979. Again he kept quiet between 1980 and 1985 and instead of moving ^{the} court, he moved ^{the} the Health Minister and ^{the} Prime Minister. It is thus clear that the application is hopelessly time barred and cannot be entertained. It is true that he had moved the High Court in Civil Writ in 1985 but the same was dismissed in limine in January, 1985. But that will not justify our overlooking laches and delay on his part between 1970 and 1979 and between 1980 and 1985. In one of the latest rulings in K.R. Mudgal & Ors. Vs. R.P. Singh & Ors. 1986(3)SLR-752, where there was similar delay against seniority lists which were published from time to time. The Court held as follows:

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"It is essential that any one who feels aggrieved by the seniority assigned to him should approach the court as early as possible, as otherwise in addition to the creation of a sense of insecurity in the minds of the Government servants there would also be administrative complications and difficulties. Unfortunately in this case even after nearly 32 years the dispute regarding the appointment of some of the respondents to the writ petition is still lingering in this Court. In these circumstances we consider

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"that the High Court was wrong in rejecting the preliminary objection raised on behalf of the respondents to the writ petition on the ground of laches. The facts of this case are more or less similar to the facts in R.S. Makashi and others V. I.M. Menon and others. In the said decision this Court observed at page 100 thus:

"In these circumstances, we consider that the High Court was wrong in overruling the preliminary objection raised by the respondents before it, that the writ petition should be dismissed on the preliminary ground of delay and laches, inasmuch as it seeks to disrupt the vested rights regarding the seniority, rank and promotions which had accrued to a large number of respondents during the period of eight years that had intervened between the passing of the impugned Resolution and the institution of the writ petition. We would accordingly hold that the challenge raised by the petitioner against the seniority principles laid down in the Government Resolution of March 22, 1968 ought to have been rejected by the High Court on the ground of delay and laches and the writ petition in so far as it related to the prayer for quashing the said Government Resolution should have been dismissed."

It "§ We are in respectful agreement with the above observation.

It "§ We may also refer here to the weighty observations made by a Constitution Bench of this Court in Maloon Lawrence Cecil D' Souza Vs. Union of India and others, at page 413-414 which are as follows: -

"Although security of service cannot be used as a shield against administrative action for lapse of a public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. It is difficult to doubt to guarantee such security in all its varied aspects. It should at least be possible to ensure that matters like one's position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time."

It "10 We feel that in the circumstances of this case, we should not embark upon an enquiry into the merits of the case and that the writ petition should be dismissed on the ground of laches alone."

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4. In the instant case the impugned seniority lists were published on 31.7.70, 1.4.72, 28.3.74, 31.10.78 and 1.12.1981 and in all these seniority lists respondent 3 was invariably being shown as senior to the applicant. In the above context, the applicant's inaction between 1970-79 and 1980-85 even when his representations were rejected in 1970 and 1979, cannot be condoned. In view of the aforesaid rulings of the Supreme Court, we have to accept the preliminary objection of the Union of India and dismiss the application.

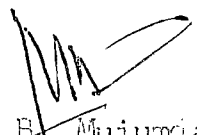
5. Even on merits, we do not find any element of miscarriage of justice or breach of fundamental rights to justify taking ~~the~~^a contrary view. It is admitted by the applicant that he appeared in the written test and interview. We have seen his original application also in response to a circular for recruitment to the post of Radiographer. We have seen the recruitment rules of 1958² which indicate that recruitment would be by only direct recruitment. ~~The~~^a rejection letter of 1970, a copy of which had been attached by the applicant with the original application itself states "that the posts of Radiographer were filled on the basis of direct recruitment in the year 1965". We have seen the original file of the respondents in which applications received in 1965 for the post of Radiographer in response to open advertisement have been docketed. We are fully convinced that the recruitment to the post of Radiographer was made by direct recruitment for which departmental candidates including the applicant^{the} and the respondent 3 were both considered through test and ^{the} Selection Board graded respondent 3 above the applicant. Even though, the original proceedings were not available, a perusal of the notings of the files of July, 1970 clearly establishes that the Selection Board


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placed respondent No.3 at Serial No.1 and the applicant at Serial No.3. Once the recruitment is made on the basis of selection by the established principles, the inter se seniority of candidates, even though, appointed on the same date, will abide by the merit list. Accordingly, respondent No.3 has been, to our mind, correctly placed above the applicant in the seniority list of Radiographer even though, in the lower grade of X-Ray Assistant, the applicant could be senior to respondent No.3.

6. In the facts and circumstances, we see no merit in the application and reject the same. There will be no order as to costs.


(M.B. Mujumdar)
Judicial Member


(S.P. Mukerji)
Administrative Member