

(28)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI.

OA.1843/87

Date of Decision: 21-5-73

Shri Jagdish Kumar Applicant

Versus

Union of India & Ors. Respondents

Shri R.L. Bhatia Counsel for the applicant

Shri A.K. Sikri Counsel for the respondents

CORAM: The Hon. Mr. A.B. GORTHY, Member(A)

The Hon. Mr. C.J. ROY, Member(J)

JUDGEMENT

(delivered by Hon. Member(A) Shri A.B. GORTHY)

The claim of the applicant is that his seniority in the grade of Junior Stenographer should reckon from 19.9.67 and not from 9.12.69, as has been reflected in the impugned seniority list dated 11.8.87 and that he be given all consequential benefits.

2. The applicant joined the service on 7.8.59 as a Lower Division Clerk. In May 1964, he was appointed as a Steno Typist. On 19.9.67, the executive committee of the Central Road Research Institute (CRRI), approved conversion of 3 posts of Steno Typists to Junior Stenographers, without safeguarding the interests of the incumbents attached to the posts of Steno Typists. On 9.12.69, having

qualified in the proficiency test, he was appointed as a Junior Stenographer. In September, 1973, the seniority list of Junior Stenographers was circulated, wherein, the applicant was shown junior to the respondents No.3 to 6. Aggrieved by the same, he filed a civil suit in 1976, but the same was later on withdrawn by him in 1981. According to the applicant, the administration also did not wish to proceed further with the matter. This was because, the respondents vide their office order dated 27.12.80, showed that the applicant and 2 other employees as having been promoted as Junior Stenographers w.e.f. 19.9.67. In the said order, the name of the applicant was shown at ST.No.1, whereas, Shri S.D. Sharma and Shri G.B. Gyan Chandani, (respondents No.3), were shown at Nos. 2 and 3 respectively. The claim of the applicant is that on the strength of the said office order, he should be deemed to have been promoted as Junior Stenographer w.e.f. 19.9.67 and that he should be treated as senior to Shri D.B. Sharma and Shri G.D. Gyan Chandani. The respondents on 13.1.84, circulated a tentative seniority list, wherein, the applicant's seniority was correctly shown but when the said seniority list was finalised, he was surprised to find that his name was shown at ST.No.5, whereas, that of respondent No.3 was at ST.No.1. Moreover, the applicant's date of appointment as Junior Stenographer was shown once again as 9.12.69 as was shown earlier in the seniority list of 1973. The applicant is aggrieved by the final seniority list published on

11.8.87 and prays that his seniority should reckon from 19.9.67 on the authority of the office order dated 27.12.80.

3. The respondents in their reply affidavit have stated that although 3 posts of Steno Typists were converted to the posts of Junior Stenographers w.e.f. 19.9.67, the incumbents in the post of Steno Typists were not to be automatically promoted as Junior Stenographers. As per the recruitment rules, a candidate has to qualify in a proficiency test before he could be appointed/promoted as a Junior Stenographer. In 1968, the applicant appeared for the said test along with the respondent No.3. The applicant failed, but the respondent No.3 succeeded. The applicant once again appeared for the said test in 1969 and having qualified thereat, was promoted to the post of Junior Stenographer w.e.f. 9.12.69. The applicant's seniority can only reckon from the date of his appointment to the grade of Junior Stenographer i.e. 9.12.69. As regards the office order dated 27.12.80, which showed that the applicant as having been given the grade of Junior Stenographer w.e.f. 19.9.67, the respondents' contention is that at the relevant time, the applicant was the P.A. to the Director of the CRRI and hence not only a letter was issued to the effect that the suit filed by him would not be contested but also the office order dated 27.12.80 was issued contrary to the earlier decisions taken with regard to the conversion of the posts of Steno typists into Junior Stenographers.

4. We have heard the learned counsel for both parties and perused the documents on record.

5. The learned counsel for the applicant strenuously contended that the respondents cannot go beyond what has been stated in the office order dated 27.12.80. We cannot accept this contention. Firstly, because of the explanation offered by the respondents and secondly, because it is violative of relevant recruitment rules, under which, the passing of the proficiency test is mandatory for appointment /promotion ^{as} Junior Stenographer. It is apparent that the applicant appeared for the test in 1968, but could not qualify thereat. The respondents, therefore, promoted him w.e.f. 9.12.69, after he had qualified in the proficiency test.

6. In this context, we are of the view that the applicant having appeared in the proficiency test in 1968, and having failed thereat, cannot now ~~question~~ challenged his subsequent appointment in 1969, which he got because of his having qualified in the examination in 1969.

7. The learned counsel for the applicant placed reliance on the office order dated 27.12.80, as if it ~~was~~ a proper seniority list. A perusal of the said office order would make it evident that it cannot be treated as a seniority list. Therefore, merely because the applicant's name is shown above that of Shri Gyan Chandani in the said office order, the

applicant cannot be deemed to have been made senior to him. As already stated Shri Gyan Chandani passed the proficiency test in 1968, i.e. well before the date, the applicant qualified. The respondents have stated that when the 1973 seniority list was published, the applicant did not make any representation against the same, but after waiting for almost 3 years, he filed a civil suit which he later withdrew. In publishing the seniority list on 11.8.87, the respondents merely adhered to the 1973 seniority list.

8. The learned counsel for the applicant has contended that when the tentative seniority list was circulated on 13.1.84, the name of the applicant was shown at S1.No.2 above that of respondent No.3 and that the date of appointment of the applicant was shown as 19.9.67. The applicant was, therefore, under the impression that his seniority was being correctly fixed. However, in the impugned seniority list of 11.8.87, his name was shown below at respondent No.3 and his date of appointment also was reflected as 9.12.69. The respondents, thus, materially altered the seniority position of the applicant to his detriment, but without giving him any opportunity to represent or to be heard.

9. In the instant case, we are of the view that there has been no violation of natural justice in the publication of the impugned seniority list in 1987. The applicant knew, right from 1973, his position in the seniority list. He is also aware of

the fact that the respondent No.3 had passed the proficiency test before he could do so. In any case, the position shown in the seniority list ⁱⁿ 1987, is entirely based on the data contained in the seniority list of 1973. We have already stated that the office order dated 27.12.80 ^{not} cannot and ought to be treated as a seniority list or as an order giving the applicant, seniority over the respondent No.3, Shri Gyan Chandani.

10. In view of what is stated above, we find no merit in the application and the same is hereby dismissed.

11. There will be no order as to costs.

C.J. Roy
(C.J. ROY)
MEMBER(J)

21/5/93

H.S. Roy
(A.B. GORTHI)
MEMBER(A)

21 May 93

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