

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 293/87 198X
~~P.A. No.~~

DATE OF DECISION _____

Shri P. Muthu Swamy Applicant (s)

Shri V.K. Khurana Advocate for the Applicant (s)

Versus

Union of India & others Respondent (s)

M.L. Verma, Central Govt. Advocat for the Respondent (s)
Standing Counsel.

CORAM :

Mr. N.D. Batra, for R.4 & 5.

The Hon'ble Mr. S.P. Mukerji, Vice Chairman

The Hon'ble Mr. J.P. Sharma, Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? ☒
2. To be referred to the Reporter or not ? ☒
3. Whether their Lordships wish to see the fair copy of the Judgement ? ☒
4. To be circulated to all Benches of the Tribunal ? ☒

JUDGEMENT

(Hon'ble Mr. S.P. Mukerji, Vice Chairman)

In this application dated 6.3.87 filed under Section 19 of the Administrative Tribunals Act, the applicant who has been working as Senior Analyst in the Staff Inspection Unit of the Ministry of Finance has prayed that the impugned order dated September 2, 1986 indicating the tentative seniority/gradation list of Senior Analysts as on 1st September, 1986 and inviting objections thereto by 15th September, 1986 be set aside and the applicant declared as Senior Analyst with effect from September, 1978 on a regular basis with all consequential benefits of seniority confirmation, promotion and arrears of salary. The brief facts of the case are as follows.

2. The applicant is a member of the Scheduled Caste and was appointed as Junior Analyst in August, 1974. His next promotion was to the cadre of Senior Analyst to which he was to be eligible after completing three years of regular service as Junior Analyst. In September, 1974 two regular vacancies of Senior Analyst were available and on the recommendations of the D.P.C. which met on 23.10.74 two Junior Analysts were promoted out of a panel of five in which respondent Nos. 4 and 5 were in ^{the} third and fourth positions in the panel. Since the applicant had not completed three years of service he was not considered at that time and accordingly the first point of the 40 point roster for the Scheduled Caste was de-reserved and released for the general candidate. The applicant's grievance is that on completion of three years of service, he became eligible for promotion on 1.9.77 and the reserved vacancy at point 1, which was to be carried forward for a period of three years should have been given to him. But, by disregarding his claim the respondent No.1 promoted, respondents 4 and 5 as Senior Analysts on adhoc basis from 3.1.75 onwards. They were later regularised from 27.11.75 and 7.6.76. The applicant's contention is that as there were no regular vacancies during 1975/1976 and the validity period of the panel of 1974 had expired, the adhoc and regular promotions of respondents 4 and 5 were illegal. His further contention is that he should have been promoted as Senior Analyst at least from September, 1978 when three regular vacancies occurred. His further claim is that ^{against} the reserved point 4 meant for Scheduled Tribe Candidate, he could also have been accommodated by exchange against that point as a Scheduled Caste candidate. But according to him the

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respondent Nos. 1, 2 and 3 illegally de-reserved point 4 also. The respondent 1 by not calling the meeting of the D.P.C. after 1974 in violation of the Govt. instructions has deprived him of his legitimate and timely promotion. His various representations remained unresponded except by the Memorandum dated 11.11.1977 (page 28 of the Paper Book) in which his representation dated 16.8.77 for promotion as Senior Analyst was rejected on the ground that he had not completed three years of service till 31.8.1977; and there was no post vacant at that time and also by the O.M. dated 11.10.82 (Page 50 of the Paper Book) stating that the matter was under consideration. The applicant was finally promoted as Senior Analyst from 1982 on adhoc basis and regularised in that grade with effect from 30.5.1985. His seniority has been fixed with effect from 30.5.85. He has indicated that he has been representing on 16-8-77, 18-9-78, 1-5-80, 17-9-80, 25-10-80, 1-12-80, 6-1-82, 23-1-82, 9-2-82, 23-3-82, 11-5-82, 10-6-82, 14-7-82, 30-8-82, 5-10-82, 9-12-83 and 6-2-87. The latest reply was received on 11-10-82.

3. The respondents 1 to 3 while accepting generally the factual position have indicated that in accordance with the Department of Personnel & Administrative Reforms ^{could} O.M. of 20.7.74 there ^{be} no carry forward of reservation ^{point} from year to year. Hence the question of carrying forward the point No.1 which was de-reserved in 1974 for three years [✓] did not arise. They have conceded that respondents 4 and 5 who were in the 1974 panel were promoted as Senior Analysts though on an adhoc basis against short-term/deputation quota vacancies and were absorbed in the regular vacancies when the same were available in 1978 due to creation of some new posts. On the representation of the

applicant against the regularisation of respondents 4 and 5 the whole matter was reconsidered and respondents 4 and 5 were de-regularised and reverted back to their adhoc status. They have ^{also} conceded that three promotion quota vacancies became ⁶available in 1978 and if the D.P.C. meeting had been held then the applicant would have been considered for promotion but no D.P.C. was held during the said period. The next D.P.C. was held on 30.5.85 and the 4th point was actually given to him. ⁶They have also conceded that when the vacancy became available in 1982 after the applicant became eligible for promotion as Senior Analyst he was promoted on an adhoc basis with effect from 31.10.82. As regards the impugned Senior List, ~~XXXXXXXXXX~~ ⁶they have clarified that on the basis of their seniority and assessment of their merit ~~xxx~~ ⁶respondents 4 and 5 were placed above the applicant. The applicant did not submit any representation against the tentative Seniority List circulated in September 1986 which shows that he was satisfied with the position assigned to him. They have also clarified that since respondent No.4 and 5 were included in the panel prepared in 1974 and have been continuously working as Senior Analyst without any break, they have to be reckoned as senior to the applicant.

4. In their reply respondents 4 and 5 have stated that the panel of 1974 was approved by the UPSC on 7.12.74 and accordingly it was valid for 18 months till 6.6.76. They were promoted as Senior Analysts in the available vacancies on adhoc basis with effect from 3.1.75 and on a regular basis with effect from 27.11.75/1.6.76 and accordingly it cannot be said that their promotion was invalid. They have challenged their reversion to adhoc status by the order of 1983 in another application O.A. 149/87. They have further contented that in the panel prepared on 30.5.85 respondents 4 and 5 were placed at positions 1 and 2 and the applicant was placed at No.3 and accordingly the applicant cannot be ranked as Senior to

respondents 4 and 5.

5. We have heard the arguments of the learned counsel for all the parties including respondents 4 and 5 and gone through the documents carefully. The applicant has challenged the tentative Seniority List dated 29.86 in which objections had been called for. The applicant did not file any objection and long after the deadline of 15.9.86 for filing objection had expired he rushed to the Tribunal by this application dated 6.3.87. This to us appears to be not a very sound way of getting the grievance redressed. The applicant has mainly based his claim on the ground that if the D.P.C. had met in 1978 or earlier he would have been promoted as Senior Analyst after he completed three years of service as Junior Analyst in August, 1977. So far as the filling of reservation point number 1 is concerned, since in 1974 when the vacancy arose the applicant admittedly had not completed three years of service he could not have been considered for promotion against that point. That point could not have been carried forward in accordance with the instructions of the Government of India. The applicant cannot by challenge the Seniority List which gives the factual position about the date of continuous regular appointment of Senior Analyst as 30.5.85 without challenging the order of his regular promotion only from 30.5.85. It is admitted that after 1985 he represented only on 6.2.87 and then filed this application not directly against the order of appointment but against the Seniority List. It is now established law that period of limitation cannot be extended by filing repeated representations. He kept quite for more than one and a half years and approached the Tribunal only in March, 1987 and that also without challenging his regular promotion as Senior Analyst

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made in 1985. On merit also we find that the applicant has no case of seniority against respondents 4 and 5. These respondents were included in the panel in 1974 itself and were promoted on adhoc basis as Senior Analysts years before the applicant became even eligible for being considered for such promotion. When the applicant became eligible in 1977 the D.P.C. which met in 1985 considered the applicant and others against the vacancies of 1978 and placed respondents 4 and 5 above the applicant. By no account can therefore the applicant claim seniority over respondents 4 and 5. We have pronounced judgment in D.A.149/87 filed by respondents 4 and 5 which was heard along with this application and in which we have declared them to be entitled to regular appointment as Senior Analyst with retrospective effect from the dates the first two vacancies of Senior Analyst in 1978 materialised. This is on the basis of the fact that the DPC which met on 30.5.85 included them as number 1 and 2 in the panel of three against the three vacancies of 1978. Since the applicant before us in this application was included as number 3 in that panel he is also entitled to be considered for notional promotion as Senior Analyst with effect from the date the third vacancy of Senior Analyst materialised in 1978. The applicant may if so advised, represent to the competent authority for getting similar benefits as in our judgment in D.A.149/87 in accordance with law. In any case the applicant will have to be always junior to the respondents 4 and 5 in the grade of Senior Analyst.

6. In the facts and circumstances we see no merit in the claim made by the applicant of seniority over

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respondents 4 and 5 and dismiss the application so far as this claim is concerned. As regards his claim for retrospective promotion as Senior Analyst, we direct that the applicant if so advised should file a representation to claim notional promotion with all consequential benefits on the basis of our judgment in O.A. 149/87 within a period of one month from the date of communication of this order and the respondents 1 to 3 shall dispose of the representation within a period of one month from the date of receipt of the representation, in accordance with law. There will be no order as to costs.

J. P. Sharma

(J.P.Sharma) : 24.8.90
Member (Judicial)

S. P. Mukerji / 24.9.90

(S.P.Mukerji)
Vice Chairman

Ksn.