

Central Administrative Tribunal
Principal Bench: New Delhi

(21)

OA No. 476/87

New Delhi this the 25th Day of March, 1994.

Shri N.V. Krishnan, Vice-Chairman (A).
Shri B.S. Hegde, Member (J)

Azizuddin Ahmed,
S/o Sh. Shabbir Ahmed,
11, Officers' Hostel,
Tis Hazari Courts,
Delhi-54.

...Applicant

(By Advocates Shri R.K. Kamal with Sh. S.K. Gupta)

Versus

1. Union of India through
Lt. Governor, Delhi
Territory, Raj Niwas,
Delhi.

2. Chief Secretary,
Delhi Administration,
Old Secretariat,
Delhi.

...Respondents

(By Advocate Mrs. Avnish Ahlawat)

O R D E R

Mr. N.V. Krishnan:

This applicant filed this O.A. on 3.4.87 in which he impugned the letter dated 9.1.87 of the second respondent (Annexure-I) under which the integrated seniority list as on 4.12.90 of officers appointed prior to 4.12.90 under Rules 5, 6 and 19 of the Delhi Administration Subordinate Service (DASS for short) Rules, 1967 was published. The applicant's prayer was to assign him his rightful place in this seniority list alongwith his batchmates i.e. the direct recruits of the 1973 examination, in order of merit. He claimed that his seniority should be fixed immediately below one Surinder Kumari.

2. In view of some subsequent developments that O.A. became infructuous, as was held by the order dated 23.4.92 of this Tribunal. It was

pointed out therein that, subsequently, a seniority list as on 4.12.90 of officers appointed on regular basis prior to 4.12.80 to Grade-II (Ministerial) of the DASS have been issued under the covering letter dated 20.10.89 by the second respondent under the DASS Rules, 1987 as amended in 1989. Hence, the O.A. as filed, has become infructuous in view of its having been replaced by another seniority list. However, in order to avoid hardship to the applicant, he was given permission to amend the O.A. and to challenge the new seniority list.

3. It is in pursuance of this direction of the Tribunal the applicant filed an amended O.A. on 19.6.92 which is under disposal.

4. The respondents have issued on 19.5.89 a notification (Annexure A-6) amending the DASS Rules, 1967 by the Delhi Administration Subordinate Service (First Amendment) Rules, 1989. Rule 26 was substituted by a new rule. The applicant stakes his claim for an earlier date of appointment to Grade II Ministerial on the rule, more particularly on the last sentence of clause (a) of sub rule (1). To understand his case Rule 26 is reproduced below:-

26.(1) The following Principles shall be followed for fixation of seniority of persons appointed on regular or officiating basis to various grades under rules 6 and 19 prior to 12th July, 1985, namely:-

(a) The inter-se-seniority of direct recruits, and promotees who have been appointed in the grade on the recommendation of duly constituted Departmental Promotion Committee, shall be determined from the date of appointment in the respective grade. For the purpose of determining the seniority in a grade the date of appointment in respect of officers appointed in Grade-I of the

Service will be construed as the date of the order of appointment and in respect of officers appointed in Grade II, or Grade III or Grade IV of the Service, it will be the date of nomination for appointment in the respective grade. If, for any valid reason, a person having secured higher merit in the select list was nominated/appointed later, in such cases the date of nomination/appointment of his immediate junior will be assumed as the date of his nomination/appointment. (emphasis supplied).

(b) In respect of officials inducted to the cadre from ex-cadre, the seniority, unless otherwise specified, will count from the date of notification through which the official was inducted in a particular grade of the service.

(c) In respect of persons appointed on compassionate grounds the seniority will count from the date of appointment in the grade.

(2) The seniority list of the officers of the Executive and Ministerial cadres of the service appointed against any post in the Cadres under rule 5, 6 and 19 prior to 4th December, 1980 shall separately be prepared showing the position of each officer in the respective grade as on 3rd December, 1980.

(3) (a) The inter-se-seniority of officers appointed against various posts under rule 5, or rule 6 or rule 19 in the Executive and Ministerial cadres of the service prior to 4th December, 1980, shall be integrated on the basis of the date of their respective seniority as in the seniority list prepared under sub-rule (2) indicating the position of each officer in a particular grade of the service as on 4th December, 1980.

(b) The integration shall be made by rotating the names of the officers appointed under rule 5, or rule 6, or rule 19 of the Executive with that of officers appointed in the Ministerial cadre under rule 5, or rule 6 or rule 19. In the event of officers appointed under rule 5, or rule 6, or rule 19 in a particular cadre not being equal, the names of officers in excess shall be placed below the officers appointed under rule 5, or rule 6, or rule 19, as the case may be.

(4) The seniority of persons appointed against various posts in a grade of the Service by direct recruitment or by promotion in a regular or officiating capacity on or after 12th July, 1985 shall be determined in accordance with the principles laid down in the Delhi Administration (Seniority) Rules, 1965."

5. The applicant's case is as follows.

5.1 The applicant appeared in the competitive examination held in 1973 for filling up the vacancies of Grade II Executive/Ministerial in various offices of the Delhi Administration. He passed the said examination. He was offered appointment in Grade II Ministerial on 30.9.74 (Annexure A-4) which was accepted by him on 29.10.74. He was, therefore, nominated for appointment on 8.1.75. He joined on 8.3.75.

5.2 It is necessary to add here that the Grade II (Ministerial) cadre and the Grade II (Executive) cadres were merged w.e.f. 4.12.80. Therefore, a seniority list of Grade II (Ministerial) as on 3.12.80 was published in October, 1989 in pursuance of the relevant rule 26 of the DASS Rules, 1967 formulated on the basis of various judicial decisions rendered in the matter. Extracts of that seniority list have been exhibited by the applicant at Annexure A-2. Even though the extracts do not show the place assigned to the applicant, they show that Surinder Kumari has been assigned place at serial No.710 and G.R. Prasad, H.D. Mahi, Chander Pal and Kartar Singh, all scheduled castes, have been assigned places at serial Nos.711,713,714 and 715 respectively.

5.3 The applicant contends that in the examination he was placed at serial No.103 in the merit list of general candidates, while Surinder Kumari was at serial No.100. The persons in between having opted for the Executive cadre, the applicant claims that

he should have been offered appointment along with Surinder Kumari in February, 1974 and he should be placed immediately below Surinder Kumari. Instead, the four scheduled caste candidates mentioned in para 5.2 above, who were much lower in merit in the competitive examination, have been nominated from 23.2.74 and have been placed above him in the seniority list. This is the grievance in respect of the Annexure A-2 seniority list.

5.4 As the cadres of Executive and Ministerial Grade II were merged from 4.12.80, an integrated seniority list as on 4.12.80 has also been circulated under the cover of respondents memo dated 20.10.89. The extracts of that seniority list are at Annexure A-3. The relative positions of the applicant and the other persons are the same as in the Annexure A-2 seniority list, except for the change in the places assigned to them in the seniority list. Thus, Surinder Kumari is shown at serial No.1423 and the four SC candidates mentioned by the applicant are shown at serial Nos. 1425, 1429, 1431 and 1433. The applicant's name is at serial No.1587. The date of nomination of the applicant is shown as 8.1.75. It is alleged that this is arbitrary because vacancies were available in February, 1974 itself, as is evident from the fact that four SC candidates, who are junior to him in terms of merit in the competitive examination, have been given nomination in February, 1974. In his case, the offer of appointment was made only in September, 1974 which he accepted on 20.10.1974. Hence, assignment of 8.1.75 as the date of nomination was arbitrary.

5.5. The applicant strongly contends that in terms of Rule 26 (1) (a) as substituted by the Annexure A-6 notification in the DASS Rules, 1987 - reproduced in para 4 supra - he is entitled to the same date of nomination as his juniors by virtue of the provisions of sub clause (a) of that rule, which have been emphasized by us.

6. It is in this background that the applicant has prayed for a direction to the respondents to assign him 23.2.74 as the date of his nomination/appointment to Grade II of the DASS - i.e. the same as the date given to the four SC candidates who are his juniors - for purposes of the seniority list issued in 1989, with all consequential benefits and to set aside the date of nomination 8.1.75 now assigned to him in this regard. Hence the need for interpretation of clause (a) of Rule 26(1) arises.

7. The respondents have filed a reply opposing the application. They have made the following important points:-

7.1 It is contended that a new seniority list dated 22.6.89 was issued after calling for objections from individuals, but the applicant did not raise any objection to the same and the final seniority list was issued thereafter.

7.2 In the original application that was filed, the applicant has challenged the seniority list of 3.12.80 of Grade II Ministerial staff issued on 6.1.86

and the integrated seniority list of 9.1.87 and his prayer then was that the date of appointment given to him should be the same as the date of appointment given to the earliest direct recruit of the 1973 examination.

7.3 However, in the amended OA, the applicant has changed his stance and raised a new plea that, though he was higher in the merit list in relation to the four SC candidates named by him, he has been nominated from a later date and has been relegated to a lower position in the seniority list of Grade II Ministerial as on 3.12.80 and in the integrated seniority list as on 4.12.80, as compared to the junior SC candidates.

7.4 This issue is being raised by the applicant for the first time in 1992, almost after 17 years. This issue was not even raised in the Original Application filed by the applicant in 1987.

7.5 In so far as appointments made after the 1973 examination are concerned, it was stated in para 4.5 (iv) of the reply dated 11.6.93 to the amended OA as follows:-

"In reply to para 4.5(iv), it is submitted that as already stated above in para 4.3, against 25 vacancies of Grade-II that arose against direct quota, 5 officials belonging to SC category although their merit position was junior to the applicant, were nominated for appointment to the post of Grade-II against reserved vacancies w.e.f. 23.2.1974. The applicant had no claim to get the appoint-

ment in Grade-II which was reserved for SC category officials. The applicant had been rightly nominated for appointment to the Grade-II as per merit list w.e.f. 8.1.1975.

8. When the learned counsel for the applicant pointed out that the respondents have, in the reply extracted above, accepted his claim that he is senior to SC persons in the merit list, respondents filed an affidavit on 27.9.93, stating that what was stated above was found to be incorrect after verification of records. Therefore, the respondents were directed to file a MP covering all points that have been raised. Such an MP was filed on 18.10.93 and alongwith the MP an amended reply dated 18.10.93 to the petition has been filed based on the clarifications furnished in the MP.

9. Shortly stated, the respondents contend that, at the conclusion of the examination, three merit lists were prepared pertaining to i) general candidates; ii) SC candidates; and iii) Ex-Servicemen. In the general category candidates, names of 201 persons were included and when their names were rearranged in accordance with the marks secured by them the name of the applicant was shown at serial No.103, he having secured 265 marks. Surinder Kumari was placed at serial No.100. She had also secured the same marks but was placed above the applicant as she was older than him. In the merit list of SC candidates, there were 31 names and G.R. Prasad, H.D. Mahi, Chander Pal and Kartar Singh, the four candidates whose names have been specifically mentioned as being junior to the applicant in the merit list, have been shown respectively at serial No.11,13,15

and 16. The highest marks (234) was secured by G.R. Prasad. The other have secured lesser marks than him. The respondents, therefore, contend that as the merit list of SC candidates is a separate list, there is no question of the SC candidates being shown junior to the applicant. The relative seniority of a person can be confined only to the list in which his name appears and there can be no comparison between the two lists.

10. The circumstances in which the applicant was given 8.1.75 as the date of his nomination has been explained in paras 4.3 and 4.4 of their reply.

10.1 It is stated that on 8.2.74, 42 vacancies of Grade II arose against the direct recruit quota. 42 direct recruits were nominated and their names are shown at serial No.459 to 690 in the Annexure A-2 seniority list.

10.2 Subsequently, on 23.2.74, 25 vacancies of Grade II arose against the direct recruit quota, against which 25 officials, including 5 SC, were nominated for appointment. Their names are at serial No.691 to 715 of the Annexure A-2 seniority list which includes Surinder Kumari at serial No.710 and the four SC candidates mentioned by the applicant at serial No.711, 713, 714 and 715.

10.3 Thereafter, 137 vacancies arose in the promotion quota on 27.2.74 and likewise, one more vacancy arose in the promotion quota on 24.12.74. In between, one vacancy arose on 16.3.74, five vacancies on 4.5.74 and one vacancy on 13.6.74, all of which were against the direct recruit quota and in respect of all of which persons belonging to the SC category

were nominated for appointment. Thus, in all, after 23.2.74, 138 promotees were appointed as also 7 direct recruits were nominated, all of whom were scheduled castes. Their names are placed at serial No.716 onwards.

10.4 Subsequently, on 8.1.75, one vacancy of Grade II arose against the direct recruit quota and the applicant was nominated on this date and hence he has been given this date of nomination in this seniority list.

10.5 The applicant's name in the integrated seniority list appears at serial No.1587 way below the name of Surinder Kumari and four SC candidates for the above reasons.

11. It is contended that it is not correct to state that the four candidates belonging to scheduled castes were juniors to the applicant, because they were kept in a separate list. The respondents have merit lists and also filed copies of the relevant notesheets to substantiate the above submissions.

12. The learned counsel for the applicant contends that the appointment orders were issued by office order No.61 on 26.2.74 (Annexure A-5) to 46 candidates who passed the examination. The last candidate is Surinder Kumari. Therefore, the sequence of appointments allegedly made, as mentioned in the reply has ^{no} factual basis.

13. The learned counsel for the applicant submits, that even if the facts as now mentioned in the reply are taken as correct for the sake of arguments, the rule regarding seniority (i.e. 26(1)(a)) now gives the applicant a right to be given the same date of nomination as his juniors (i.e. the four SC candidates) who have been given 23.2.74 as the date of nomination.

14. The learned counsel for the applicant contended that Rule 26(1)(a) should be interpreted as it is. We cannot add any words not already there. Plainly, it has been provided that if, for any valid reason, a more meritorious person was nominated later than his junior, who was nominated earlier, the former too shall be assumed to be nominated from such earlier date. The earlier nomination/appointment of scheduled castes to the reserved vacancies is a valid reason. This is not excluded from the purview of the rule. Therefore, it is contended that the applicant has to be given the same date of nomination as the scheduled caste candidates.

15. However, the learned counsel for the respondents submitted that the interpretation of this rule cannot be de hors the background in which the Annexure A-6 notification was issued. She draws our specific attention to the preamble to this notification. It recites the various judgements commencing from the judgement of the Delhi High Court delivered on 30.5.82 in Civil Writ Petitions 1882 and a batch of cases and ending with the judgement of the Supreme Court dated 30.8.1988 in SLP 3727 of 1988 with Civil Misc. Petition No. 5970-77 of 1988 - Shri Banarsi Lal

and others Vs. Delhi Administration and others. The recitation briefly states what was decided. She contends that the judgements mentioned in the preamble cannot be overlooked. The interpretation has to be in conformity with these judgements. In none of these judgements was the issue now raised by the applicant ever considered. The provision in question is to cover cases where the senior joined at a later date than a junior person, either because of the fact that his appointment was delayed or he had to take a longer joining time or for some such similar reason.

16. We have carefully considered the rival contentions and perused the records. We notice that the office order 61 dated 16.2.74 (Annexure A-5) refers to 46 candidates having been recommended vide letter No.F.3(2)/74/S.II dated 8.2.74 and 23.2.74 for appointment. These are the letters to which reference has now been given in the Annexure A-2 and A-3 seniority list in column 7. It is seen from Annexure A-3 seniority list that in respect of the persons shown in the Annexure A-5 appointment order at serial No.27 to 46 (i.e. and ending with Surinder Kumari at serial No.691 to 710 of the Annexure A-3 seniority list) reference has been given to letter dated 23.2.74 in column 7 of the seniority list. Regarding the candidates from 1 to 26 of the same appointment order, most of them find higher places in the seniority list on and after serial No.650, which is the place assigned to K.L. Kohli serial No.1 in the appointment order. In column 7 of the seniority list reference has been given to the letter dated 8.2.74. Thus,

these details confirm the facts mentioned by the respondents regarding when various persons were 'nominated' for appointment to various departments. Column 7 of the Annexure A-3 seniority list gives reference to the letter of nomination.

17. We do not find any substance in the claim of the respondents that as the merit list is in three categories there cannot be a comparison between the candidates included in the different lists. The preparation of the merit list in three parts, i.e., one general candidates, one for SC candidates and one for Ex-servicemen is only a matter of convenience. As pointed out by the learned counsel for the applicant, rule 15 of the rules issued when the examination was conducted requires that the candidates should be listed by the Delhi Administration in order of merit as disclosed by the aggregate marks finally awarded to each candidate. Therefore, the applicant who has secured more marks than the four SC candidates, referred to by him, is, undoubtedly, senior to them in merit and in the merit list he has to have a higher position, even though their names are shown in different merit lists.

18. Granting that the applicant is senior in the merit list to the four scheduled caste employees, the question is whether he has a legal right to claim that the date of nomination given to the juniors, i.e., 23.2.74, should be given to him also, instead of 8.1.75, on the strength of Rule 26 (1) (a) as interpreted by him above.

19. That takes us to that provision which is at Annexure A-6. It is clear from the preamble to the notification that the dispute of seniority between direct recruits and promotees was decided by the Delhi High Court in its judgement dated 1.2.85 in L.P.A. 166/1980 (Ajit Singh & Others Vs. Delhi Administration) by holding that the quota rota rule for promotion/appointment had broken down and become non-operative and that, therefore, inter-se-seniority cannot be determined on that basis. Therefore, clause (a) of Rule 26(1) begins by declaring that inter-se-seniority of promotees and direct recruits, prior to 12.7.85, shall be determined from the date of appointment in the grade. This would have been a simple rule to implement but for certain complexities which accompanied a strict adherence to this principle in latter. Therefore, a way out had to be found so that all are treated fairly.

20. How this was done has been explained in the reply dated 20.6.87 to the unamended O.A. Extracts from 6.8 of that reply are reproduced below:-

"It is stated that in respect of direct recruits, selection list is received from SSC by Admin. Thereafter the list is approved by the Chief Secretary. Then the selected officers are nominated to various departments under Delhi Admn. depending on the vacancy, who in turn issue appointment orders after completing coded formalities, such as Medical examination, character/antecedents verifications etc."

XXXXX XXXXX XXXXX XXXXX

"Since the appointing authorities are different, practical problems arose in the case of officers nominating on a

particular date by the Chief Secretary, where in turn the officers are appointed on several dates, spread over several months or in some cases more than one year. While taking the date of joining as actual date of appointment in the grade it was difficult to give proper placement to several officers in the seniority list. For example officials having higher merit position were appointed after consideration by some departments and by that time officials having lower seniority position were appointed and joined several months before the date of appointment of the former. To remove this anomaly it was decided by the Chief Secretary, to take the date of appointment as under:-

a) In respect of direct recruits, the date of nomination by the Administration, subject to the merit assigned by S.S.C."

xxxxx xxxxx xxxxx xxxxx

"By following the above decision, a trickling issue has been settled to the advantage of all the officials and none has been put into disadvantage. Placement in the seniority list was given strictly according to the merit assigned by S.S.C. or Departmental test or by the D.P.C."

21. That explains what the date of nomination is and why it has become relevant for determining seniority. It appears that, even if a person who is senior in the select list or merit list is nominated to a Department for appointment to a vacancy from a date earlier than that of another who is junior, there is no guarantee that he would be also actually appointed from an earlier date than his junior, for the reasons given in the reply extracted above. He would, therefore, suffer if the seniority is determined only on the date of appointment. Therefore, clause (a) of Rule 26(1) carries the rider "If for any valid reason, a person having secured higher merit in the select list was nominated/appointed later, in such cases the date of nomination/appointment of his immediate junior will be assumed as the date of his nomination/

appointment." The interest of the senior is thus protected. This rider is a proviso to the first sentence of clause (a) of Rule 26(1) and is intended to protect the interest of the senior.

22. We now consider the argument of the learned counsel for the applicant that the expression "for any valid reason" in the rider also takes within its ambit the reason why he was nominated later (8.1.75) than the junior scheduled caste candidates (23.2.74). According to the respondents the reason was that the S.C. candidates were appointed to vacancies reserved for SC, which was not permitted to be filled up otherwise. As this is a valid reason, the applicant who has been declared by us to be senior on merit, should get the benefit of the rider and be given 23.2.74 as the date of nomination, i.e., the same as his juniors.

23. We are unable to agree with the argument. The inter-se-seniority of scheduled caste candidates and other general community candidates was never a matter of litigation in the case of the DASS. That is clear from the preamble to the Annexure A-6 notification. The applicant has always been placed below the four scheduled caste candidates all along. He had neither objected to their earlier nomination/or appointment nor to the higher seniority assigned to them in the past also. It is not his case that he raised such an issue when the seniority list of 1978 was published. In the original O.A. filed by him he has annexed as Annexure A-8 dated 6.1.88 the final seniority list of Grade II

Ministerial on 3.12.80. Therein he has been assigned seniority at serial No.678, while the four SC candidates named by him have been given places at serial No.561, 563, 564 and 565 respectively. They have been shown to be appointed in February and March, 1974, while the applicant is shown to be appointed as in March, 1975. Yet, in that OA he did not challenge the places assigned to these SC candidates. No such grounds have been mentioned in that O.A. The same holds true for the integrated seniority list of Ministerial and Executive persons as on 4.12.80 (Annexure I to the unamended OA) where relative positions are 1583 for the applicant and 1414, 1416, 1417 and 1418 for the four SC candidates. Therefore, it is clear that the applicant did not have any grievance against the earlier appointments of the SC candidates because they were appointed to the reserved vacancies.

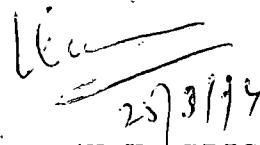
24. That apart, we find that the direction given in the first sentence of clause a of Rule 26(1) - reproduced in para 4 - has application only in the context of the dispute in regard to seniority between promotees and direct recruits. That was ended by a protracted litigation holding that before 12.7.85 the quota rota rule of recruitment had failed and, therefore, seniority has to be decided on the basis of length of continuous service after approved appointment. We cannot ignore this basic situation in interpreting the rider, because it is clearly a rider to the first

sentence of clause (a). Therefore, though a plain reading of that rider de hors the other provisions of Rule 26 (1) and the preamble to the Annexure A-6 notification, could, at first blush, be seen to lend support to the applicant's case, a critical look at the provisions reveals what its purpose is. We hold that the only purpose of the rider is to protect the interest of seniors in the situation described in the reply of the respondents, extracted in para 19 supra. That situation was a relevant factor to be taken note of in determining the prayer of seniority. On the contrary, the principle which the learned counsel for the applicant wants us to consider is totally irrelevant to the interpretation of the rule, which has a long history of litigation behind it. In short, we hold that the rider cannot be interpreted dehors the litigation and the judgements preceding the amendment in rule 26(1)(a). So interpreted, we find that the applicant's contention has no substance.

25. In the circumstances, we find no merit in this O.A. and accordingly it is dismissed.
No costs.


(B.S. HEGDE)
Member(J)

Sanju.


23/3/14
(N.V. KRISHNAN)
Vice-Chairman