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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A. 601/87

DATE OF DECISION: 16.9.92

R.K. Kapoor

... Applicant

vs.

Union of India through
The Secretary to the Govt. of India,
Ministry of Urban Development,
Nirman Bhavan, New Delhi and Others... Respondents

For the Applicant ... Shri K.L. Bandula,
Advocate.

For the Respondents ... Shri P.P. Khurana,
Advocate

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THE HON'BLE MR. S.P. MUKERJI, VICE CHAIRMAN

THE HON'BLE MR. T.S. OBEROI, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? q
2. To be referred to the Reporter or not? u

JUDGMENT

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

In this application dated 28th April, 1987 the applicant who has been working as Superintendent (Accounts) in the Directorate of Estates has challenged the impugned order dated 17.2.1987 (Annexure-I) by which his representation about seniority was turned down. He has challenged the Seniority Lists of Accountants dated 25.2.1980 at Annexure-XII and Superintendents (Accounts) dated 5.12.1984 at Annexure-XI and has prayed that the inter-se seniority given to him as per Seniority List dated 1.9.1973 at Annexure-IV be restored and he should be promoted as Superintendent with effect from 1.12.1978 with all consequential benefits. The brief facts of the case are as follows.

2. The applicant was appointed as Accountant on 24.3.1964 from the clerical grade whereas respondents 3 and 4 were appointed as direct recruits ^{as Accountant} to that grade on 30.8.1968. He had passed the Departmental Higher Accountancy Examination in 1956 and gave his option to be permanently absorbed as Accountant with effect from 2.2.68. In the Seniority List published on 1.9.1973 on the basis of his earlier date of appointment as Accountant, he was shown at Sl.No.21 whereas respondents 3 and 4 were shown at Sl.No.22 and 23. Based on that seniority, the DPC in 1976 included him in the panel for promotion as Superintendent(Accounts). He was given the promotion intermittently between 1976 and 1978. The applicant's grievance is that vide the order dated 21.10.1978(Annexure-X), the applicant's confirmation as Accountant with effect from 2.2.1968 was arbitrarily cancelled ⁱⁿ ~~in~~ years after such confirmation without giving him an opportunity ^{to} ~~of~~ show cause against such an action. This order is also a non-speaking order. Subsequently his juniors i.e, respondents 3 and 4 were promoted as Superintendent on 1.12.1978 and 5.2.79 and the applicant was promoted after them on 1.5.1979. In the revised Seniority List issued in February ,1980(Annexure-XII), respondents 3 and 4 were shown above him at Sl.Nos. 13 and 15 , whereas he was placed at Sl.No.16. The applicant has challenged this draft Seniority List ^{as} ~~and~~ no final Seniority List has so far been issued. He has contended that on his further representations, the order dated 21.10.1978 cancelling his confirmation

as Accountant was withdrawn by order dated 20.1.1981 at Annexure-X¹II indicating that the applicant's confirmation as Accountant stands with effect from 2.2.68. His grievance is that in the endorsement of that order it was stated that "this would not affect his present seniority". This order is also a non-speaking one and does not give any reasons for restoring his confirmation but not restoring his earlier seniority based on his confirmation from 2.2.1968.

3. In the written statement filed by the respondents it has been stated that the applicant cannot challenge the order dated 21.10.1978 at this late stage. The revised Seniority List was circulated on 25.2.1980 which cannot be challenged as such a challenge would be time-barred. The impugned order dated 17.2.1987 states that there was no case for reconsideration and hence challenge of that order is also time-barred. The respondents have conceded that passing of Department test was relaxed in favour of respondents 3 and 4 before their regular absorption. However, they have contended that the applicant's appointment as Accountant with effect from 1968 was held to be not in order as he gave his option for absorption only on 24.9.1970. On that basis, his service was to be reckoned only from 24.9.1970 for purpose of seniority.

4. In the rejoinder the applicant has stated that he was confirmed as Accountant with effect from 2.2.1968 and given appropriate seniority in the 1973 Seniority List on that basis. His deconfirmation on 21.10.1978 without assigning any reason and without giving him an opportunity of being heard, is illegal.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. In accordance with the Seniority List as on 1.9.1973 at Annexure-AIV it is clear that while the applicant was appointed on 24.3.64 as Accountant, the respondents 3 and 4 were appointed as such on 30.8.68. It is also clear therefrom that whereas the applicant was confirmed as Accountant with effect from 2.2.68, the respondents 3 and 4 were confirmed on 27.9.70 and 28.10.70. Thus both on the basis of length of service as also on the basis of date of confirmation, the applicant has to be senior to respondents 3 and 4. The deconfirmation order against the applicant dated 21.10.1978 was obviously illegal and was rightly withdrawn by the respondents vide their order dated 30.1.81 at Annexure-XIII which reads as follows:-

"Subject :- Withdrawal of de-confirmation letter dt. 21.10.78.

This Office Order No.A-32015/1/76-Admn.A dated 21.10.78 cancelling the confirmation letter No.A-23028/1/76-Admn.A dated 14.6.77 is hereby withdrawn.

In other words confirmation as Accountant of S/Sh.Jagdish Mitter, R.K Kapoor officiating Supdt.(A/cs) stands w.e.f. 2.2.1968."

The offending endorsement in that order reads as follows:-

"This will however not effect their present seniority".

No justifiable reason has been given for denying the applicant the benefit of his restored confirmation with effect from 2.2.68. The respondents' contention that since he gave his option for absorption in 1970, his previous service as on deputation should be ignored for the purpose of seniority cannot be accepted because the

respondents themselves at Annexure-XIII, as quoted above, have confirmed him as Accountant from 2.2.1968. The original application filed on 28.4.87 against the impugned order dated 17.2.87 (Ann.I) is not time barred.

6. In the facts and circumstances, we allow the application, set aside the impugned order dated 17.2.87 at Annexure-I and the Seniority Lists of Accountants and Superintendents at Annexures-XI and XII and direct that the applicant should be given due seniority on the basis of his seniority as on 1.9.1973 at Annexure-IV and should be placed above respondents 3 and 4 with all consequential benefits of pay and allowances.

There will be no order as to costs.

Decd 18.9.92
(T.S. Oberoi)
JUDICIAL MEMBER

S.P.M.
18.9.92
(S.P. Mukerji)
VICE CHAIRMAN

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