

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN. NO. C.A. 1139/87.

DATE OF DECISION: 7.1.1993

Sushil Kumar & Ors.

... Petitioners.

Versus

Union of India & Ors.

... Respondents.

CORAM:

THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. S.R. ADIGE, MEMBER(A).

For the Petitioners. ... None.

For the Respondents 1 & 2. ... None.

For Respondent No. 3. ... Shri R.K. Kamal,
Counsel.

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice V.S. Malimath,
Chairman)

The three petitioners in this case have prayed for quashing the impugned order dated 11.5.1987 (Annexure A-1) by which the name of the 3rd respondent Shri S.K. Gupta has been interpolated in the panel of ASTEs for 1974-75, below Shri S.S. Verma and above Shri Sushil Kumar. The very said order also says that the panel is provisional, that it has the approval of the General Manager and subject to consideration of representations received, if any, within three months of the notification of the enlarged panel. As a consequence of inclusion of the name of the 3rd respondent in the panel, he gets placed above the petitioners. That is how their interests are affected which motivated them to challenge the impugned order. All the respondents have filed their replies taking the stand that the impugned order has been made to undo the injustice to which the 3rd respondent was subjected to for no fault of his. We shall first examine as to whether there is any substance on merits in the case of the petitioners before considering the contentions bearing on the technicalities. That the 3rd respondent was senior to the petitioners all along does not admit of any doubt. That is the statement of the administration in the reply and that is the

stand taken by the 3rd respondent. The petitioners have not placed any material to the contrary nor have they effectually asserted that they were senior to the 3rd respondent earlier. What has happened is that in the year 1974 for promotion from Group 'C' to Group 'B', a selection test was required to be held. The notification for participation in such a test says that it is only those who are permanent employees and who have put in three years regular service and satisfy the other conditions are eligible for taking the said test for selection. Unfortunately, for the 3rd respondent, an order of his confirmation had not been passed in his favour though such orders were made in favour of the petitioners who were junior to Respondent No. 3. Apprehending that he will thus lose a valuable right to appear in the test, the 3rd respondent moved the authority concerned for permission to appear in the test stating that his juniors having been confirmed, he should not be deprived of the right to appear in the test merely because he has not been confirmed on account of certain administrative delays and not because that he did not qualify for confirmation. The request of the 3rd respondent was turned down by taking a very technical view of the matter that he does not satisfy one of the essential conditions for taking the test and that, therefore, permission sought by him cannot be granted. His juniors like the petitioners took the test and they qualified and get promotion to Group 'B'. Later, an order of confirmation was made in favour of the 3rd respondent, dated 29.4.1976 (Annex.R-3) w.e.f. 1.4.1973. The name of Respondent No. 3 is at Serial No.5 in the said order. It says that he has been given final confirmation w.e.f. 1.4.1973.

2. In the reply filed on behalf of the Administration, it is stated that the delay in according confirmation to Respondent No.3 was on account of some administrative reasons to which the 3rd respondent was not really responsible. The 3rd respondent having

became qualified on the passing of the order of confirmation for taking the test, he availed of the very first opportunity and passed the test held in the year 1977. Having regard to the order of confirmation made in favour of Respondent No. 3 w.e.f. 1.4.1973 and his passing the requisite test ~~for promotion~~ for promotion to the earliest opportunity, he sought the correction of the injustice done to him by his not permitting in the test held in the year 1974. The authority realising that the 3rd respondent has been subjected to injustice on account of administrative delay and not on account of 3rd respondent, they made an order as per Annexure A-1 interpolating the name of the 3rd respondent at Serial No. 7, the place he would have got in the panel for promotion had he passed the test in the year 1974. As the 3rd respondent was deprived of the right for appearing in the test for no fault of his, the authority took steps to redress the injustice done to the 3rd respondent. The impugned order (Annexure A-1) is described as a provisional panel subject to modification on consideration of representations, if any, that may be presented by aggrieved parties within the specified time. The petitioners appear to have made half-hearted attempts to submit their objections. They said that they should have been given the copies of the correspondence that took place earlier when the request of the 3rd respondent for appearing in the test held in the year 1974 was considered and denied to him. Whatever may be the reasons, copies of the orders do not appear to have been furnished to the petitioners. It is in this background that they approached the Tribunal for relief, as aforesaid.

3. We are satisfied on the material placed before us particularly having regard to the stand taken by the administration itself that the 3rd respondent was entitled to be confirmed w.e.f. 1.4.1973 and that his not being confirmed before 1974 test was not on account of the mistake or lapse of Respondent No. 3, but was attributable

to administrative delay. One of the cardinal principles is that the employee should not be made to suffer for the mistake committed by the employer or the superior. It is just and proper that when the mistake committed is realised, expeditious action should be taken to retrace the steps and to redress the injustice done to the employee. That precisely has been done in this case. The order of confirmation made in favour of Respondent No. 3 has not been challenged by the petitioners in this case. Hence, it is not liable for interference. Now we must proceed on the basis that the 3rd respondent was legally confirmed w.e.f. 1.4.1973. When the order of confirmation could be passed in favour of the petitioners who were junior to Respondent No. 3 before the 1974 test, there was no real justification for not confirming the 3rd respondent also before the 1974 test. It is on account of the administrative delay that the 3rd respondent was not confirmed before the 1974 test. Once the confirmation was made in favour of the 3rd respondent, it was impossible for him to take the test which was held in the year 1974. It is, therefore, that he took the test held for the first time in the year 1977. The authority reflected the test held in the year 1977 back to the year 1974 when the 3rd respondent's juniors were permitted to take the test. This, in our opinion, is the only reasonable way to undo the injustice to which the 3rd respondent was subjected to. The 3rd/having passed the test held in the year 1977 for the first time after the test held in the year 1974, it was deemed that he passed the 1974 test and it was on that basis that his name was included in the panel for Group 'B'. The action taken in this behalf, in our opinion, is on facts justified and legally sound. Hence, the decision does not call for interference.

4. There is not much in the grievance of the petitioners that the principles of natural justice have not been complied with before the 3rd respondent was treated as having passed his test held in the year 1974. It is necessary to point out that the revised panel was also provisional and subject to modification on consideration of the representations that may be received within three months of notification of the enlarged panel. Hence, it is clear that an opportunity of showing cause was given to the petitioners and everyone concerned. It is no doubt true that the petitioners sought the copies of the correspondence bearing on the refusal of permission to the third respondent to take the 1974 test. In our opinion, having regard to the circumstances of the case, we are inclined to take the view that the request for furnishing such information cannot be regarded as very reasonable. Hence, we are satisfied that there is no violation of/natural justice. Be that as it may, having regard to the circumstances of the case and we having examined and found that the petitioners have no case on merits, the question of interfering with the decision of the authority does not arise. We should not interfere with the decision taken by the authority which is legal, proper and just merely for the satisfaction of the technical contention.

5. For the reasons stated above, this petition fails and is dismissed. No costs.

Arfalg
(S.R. ADAGE)

MEMBER(A)

Malimath
(V.S. MALIMATH)
CHAIRMAN

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