

M

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

R.A. 184/92

in

O.A. 1536/88

New Delhi this the 3rd day of January, 1995.

Shri N.V. Krishnan, Vice Chairman(A).

Mrs Lakshmi Swaminathan, Member(J).

Chaitnaya Swaroop Chaturvedi ... Applicant.

By Advocate Shri M.L. Chawla with Shri S.L. Lakhanpal.

Vs.

Union of India through
The Secretary to the Govt. of India,
Department of Official Language,
Ministry of Home Affairs,
Government of India, North Block,
New Delhi. ... Respondent.

By Advocate Mrs Raj Km. Chopra.

ORDER

Shri N.V. Krishnan

O.A. 1536/88 of the applicant was dismissed by the judgement dated the 12th March, 1992 of the Hon'ble Mr. P.K. Kartha, Vice Chairman(J) and Hon'ble Mr. D.K. Chakravorty, Member(A). The applicant has filed an application seeking a review of the judgement which has been placed before us for disposal on the orders of the Hon'ble Chairman.

2. The prayers of the applicant in the O.A. were as follows:

"(a) To assign proper seniority to the applicant as Assistant Director (Official Language) in the impugned seniority list of the cadre circulated vide Respondent OM No.7/2/87-OL(S) dated 27.8.1987 by effecting the promotion of the applicant as AD (OL) w.e.f. the same date as his next immediate junior stands promoted under the 'Next Below Rule' and not from 7.5.1986 since the applicant figured

at S.No.42 in the seniority list of the Senior Hindi Translators from which the promotion is made to the post of AD (OL), and the name of the applicant was omitted on account of some administrative lapse on the part of the respondents and for no fault of the applicant.

(b) To safeguard the service interest of the applicant for future promotions.

(c) To pass any order/orders as deemed fit in the facts and circumstances of the case".

After completion of the pleadings and hearing of the parties, the case was reserved for orders and the judgement was delivered and subsequently, dismissing the application.

3. In the review application, it is stated that the judgement rendered suffers from errors apparent on the face of the record. It is mentioned that when the counter affidavit was filed by the respondents, certain new facts came to his notice. Therefore, the applicant filed a Misc. Petition No. 709/89 on 4.4.1989, seeking an amendment of the prayer clause. This has not been adverted to in the judgement. Likewise, MP 1604/90 filed on 6.6.1990 was also not disposed of. Hence, the judgement delivered suffers from errors apparent on the face of the record.

4. The review application has been opposed by the respondents who contend that all relevant matters have been considered in the judgement and that there is no error therein to justify review.

5. We have seen the record and heard the learned counsel for the parties.

6. The learned counsel for the applicant mentioned that certain new facts have been brought to light by the respondents in reply to the O.A. Admittedly, a post of Assistant Director

in the department itself fell vacant ever since November, 1993, to which the applicant could have been appointed, but was not offered to him. The relief sought by him earlier with respect to Jagdish Raj Mahajan did not subsist as his name did not figure in the Annexure A seniority list filed by the respondents. The next junior person is J.N.S. Tyagi who has been promoted on ad hoc basis w.e.f. 21.2.1979 and given seniority at serial No.43 in the list of Assistant Directors. Therefore, MP 790/89 was filed on 4.4.1989 containing the following prayers:

- "(a) To direct that the applicant be deemed to have been promoted/appointed as AD(OL) w.e.f. the date his next junior viz., Shri J.N.S. Tyagi stood promoted on 27.2.1979 on ad hoc basis and/or in the alternative from 30.1.1981, the date since when the applicant has been continuously holding an equivalent post on an ex cadre basis in the office of the Deputy Commissioner, Small Scale Industries.
- (b) To assign proper seniority as AD(OL) in the impugned seniority list (Annexure-A) by placing the name of the applicant between Shri S.L. Gupta at S.No.42 and Shri J.N.S. Tyagi at S.No.43.
- (c) To award all consequential benefits as a sequel to the revision of seniority and to safeguard the service interest of the applicant for future promotion etc."

7. The learned counsel for the applicant contended that by not considering this important MP, a serious mistake has been committed which is apparent on the face of the record and, therefore, the judgement should be reviewed.

8. We have carefully considered the rival contentions. We notice from the records of the O.A. that this M.P. was listed on 11.4.1989 when the counsel for the applicant was present and notice was directed to be issued to the respondents,

returnable on 20.7.1989. The O.A. itself was also separately listed on the same date for completion of pleadings and hearing on admission. On 20.7.1989, when the matter was listed and the applicant was represented by counsel, it was adjourned to 24.7.1989. The learned counsel for the applicant did not draw the attention of the Bench to the pendency of the MP. This MP was completely lost sight of till the very end of the proceedings. Even when the arguments were finally heard on 24.2.1992 and 25.2.1992, this MP was neither listed nor was the attention of the Bench drawn to this fact by the counsel. In other words, if the Bench did not pass any order on this MP, in the judgement, it is due to the fact that neither the applicant nor his counsel brought this to the notice of the Bench.

9. That apart, we notice that even without considering the MP, the matter mentioned therein has been considered in the O.A. by the Bench. It has to be pointed out that the prayer in the MP has no connection with the existence of a post of Assistant Director from November, 1983 as mentioned in para 4 of the M.A. The prayer is related to the disappearance of the name of Jagdish Raj Mahajan from the seniority list, which necessitated the substitution of the name of J.N.S. Tyagi.

10. A perusal of the records also shows that the respondents stated that the applicant was considered along with other departmental candidates by the selection committee headed by the Member, UPSC. ~~His ranking as Assistant Director follows the ranking by the selection committee.~~ His ranking as Assistant Director follows the ranking by the selection committee. Therefore, there is nothing unnatural if he is now assigned a

lower seniority at Serial No.75 in the grade of Assistant Directors, whereas J.N.S. Tyagi, his junior, in the cadre of Sr. Translators, has been assigned place at serial No.43. This is confirmed by a perusal of the seniority list produced by the applicant at Annexure 'A' of the O.A. It shows that the seniority is not based on the date of appointment on ad hoc basis or deputation basis.

11. In the judgement, the Bench has observed that, after publication of the seniority list of Sr. Translators on 28.5.1983, vacancies in the cadre of Assistant Directors are stated to be filled up by promotion of Sr. Translators on an ad hoc basis on the basis of seniority. The applicant's turn for such promotion on an ad hoc basis came in November, 1991. However, he was not considered for ad hoc promotion because he was already holding the post of Assistant Director, an ex-cadre post, on deputation, where he got the same benefits. The Bench further observed that, strictly speaking, the respondents should have offered the applicant ad hoc promotion to the post of Assistant Director when his turn came but it also noted that this has not affected his regular appointment as Assistant Director after the constitution of the service, either in terms of any benefits or seniority. The Bench noted that the post of Assistant Director is a Group 'A' post and in accordance with the 1983 recruitment rules it was to be filled up on the basis of the recommendations of the Selection Committee headed by a member of the UPSC. The Committee found him suitable for appointment as Assistant Director (Grade-III) in the Central Secretariat Officials Language Service with effect from the initial constitution i.e. 1.2.1985. His name has figured at serial No.89. It was further held that in respect of his appointment as Assistant Director at the initial constitution, his ranking in the post of Sr. Translator was not relevant. It

was further observed that there was no loss of emoluments to the applicant and he was given proforma promotion w.e.f. 1.2.1985 i.e. the date from which Mange Lal, his immediate junior was appointed on regular basis as Assistant Director. It concluded by stating that even if the respondents had offered ad hoc promotion to the applicant in November, 1983 and he had accepted the offer, that would not have altered his seniority in the Grade-III Assistant Directors.

12. It is thus clear that the non-consideration of MP 790/89 in this judgement does not render it erroneous, because the judgement disposed of the prayers made in that M.P., though it was not considered.

13. In so far as MA 1604/90 is concerned, it was filed on 6.6.1990 for a direction to the respondents to consider the promotion of the applicant as Deputy Director (Official Language) vis-a-vis his juniors as and when the DPC is held. Persons who are alleged by the applicant to be junior to him, have been assigned higher seniority in the rank of Assistant Directors and, therefore, they were likely to steal a march over the applicant in the matter of further promotion to the rank of Deputy Director. Hence, the above prayer was made. We find that notice was directed to be issued on this MP on 30.7.90 and the MP was listed even on the last date of hearing i.e. 25.2.1992. No doubt, the judgement does not refer to this MP but that does not in any way render it erroneous because as the O.A. has been dismissed, this MP would, necessarily, have been dismissed.

14. We, therefore, find that while there is no reference to either of the two MPs in the final order, ^{4/this} the mere fact does not render the judgement erroneous necessitating a review.

15. If the applicant is still aggrieved, he has to seek other remedies.

16. In the circumstance, the application for review is dismissed. No costs.

Lakshmi Swaminathan

(SMT. LAKSHMI SWAMINATHAN)
MEMBER(J)

N.V. Krishnan

(N.V. KRISHNAN)
VICE CHAIRMAN(J)

'SRD'