

Two

9

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1739/1990

New Delhi this the 20th Day of January 1995

Hon'ble Mr. Justice S.C. Mathur, Chairman

Hon'ble Mr. P.T. Thiruvengadam, Member (A)

Shri Gurmit Singh,
S/o late Shri Teja Singh,
R/o 12/2 Sector I,
Pushap Vihar,
New Delhi 110 017.

... Applicant

(By Advocate : Shri M.R. Bhardwaj)

Vs.

Union of India through

1. Secretary,
Ministry of Science & Technology,
Department of Science & Technology,
Technology Bhawan, New Mehrauli Road,
New Delhi-110 016.
2. Secretary,
Department of Personnel and Training,
North Block,
New Delhi.
3. Shri B.S. Badharak,
Under Secretary,
Dept. of Science & Technology,
Technology Bhawan, New Mehrauli Road,
New Delhi 110 016.

.... Respondents

(By Advocate : Shri N.S. Mehta)

O R D E R

Hon'ble Mr. Justice S.C. Mathur -

The hearing of this case commenced on 17.1.1995.

The case became part heard for the next day. On the next day because of the miscellaneous matters the case was taken up late in the day and hearing couldn't be concluded. Accordingly, the case was adjourned for 19.1.1995. On 19.1.1995 the Bench could not be constituted on account of the absence of one of the

2

Members (SCM (J)). The case was published in the Cause List of 20.1.1995 but no one appeared on behalf of the applicant. On behalf of the Central Government Shri N.S. Mehta appeared. He took us through the record and advanced arguments. We are deciding the case on merits on the basis of the arguments advanced by Shri M.R. Bhardwaj, learned counsel for the applicant and Shri N.S. Mehta, learned counsel for the Central Government and on the basis of the material on record which has been perused.

2. The applicant Shri Gurmit Singh, Section Officer in the Department, of Scientific and Industrial Research, Ministry of Science and Technology, Central Government, New Delhi is aggrieved by the advancement of the date of confirmation of the third respondent Shri B.S. Bedharak on the post of Assistant in the said department and by the non-inclusion of his name in the select list of Section Officers (Seniority Quota) for the year 1981. He has accordingly prayed for the quashing of the order dated 24.3.1989, Annexure A-2, and sought a direction to the respondents to include his name in the select list of Section Officers for the year 1981. A few facts necessary for the decision of the original application may be stated.

3. The applicant and the third respondent both belong to the Scheduled Caste. The third respondent was appointed Upper Division Clerk (UDC) in the Ministry of Works and Housing, Central Secretariat in the year 1963. On 11.10.1973 he took charge of the post of Assistant in the Department of Science and Technology.

By order dated 25.4.1982 he was confirmed on the post of Assistant with effect from 16.12.1979. His name was not included in the select list of Section Officers for the year 1981. He was aggrieved by this action or inaction of the authorities. He unsuccessfully represented to the authorities and thereafter filed the Original Application No. 290/1986 in this Tribunal which was allowed and direction was issued to the competent authority to take steps to include his name in the select list of Section Officers for the years 1981 to 1984 and to consider him for promotion to the post of Section Officer. In purported compliance of the directions the competent authority included the name of the third respondent in the select list of Assistants for the year 1973 but did not include his name in the select list of Section Officers for the year 1981, but included it in the select list of 1983. The third respondent was not satisfied with this implementation of the Tribunal's judgement and therefore filed Contempt Application No. 5/1989. A Division Bench of the Tribunal held that the implementation of the judgement of the Tribunal was indeed faulty but there was no deliberate disobedience of the judgement. The Tribunal, therefore, did not impose punishment on any Officer of the Government but issued direction to include the name of the third respondent in the select list of Section Officers for the year 1981 and to consider him for promotion to the post of Section Officer. The Contempt Application was decided on 4.5.1989. Prior to this date the Government issued an order on 24.3.1989 appointing the third respondent to the post of Assistant

2

in substantive capacity in Grade IV of the Central Secretariat Service with effect from 28.4.1977. As noticed herein-before the third respondent was confirmed on the post of Assistant with effect from 16.12.1979. The effect of the order dated 24.3.1989 is that the confirmation of the third respondent on the post of Assistant gets advanced by more than 2½ years. It is claimed on behalf of the Central Government that this had been done to give effect to the judgement of the Tribunal in third respondent's original application.

4. The submission of the applicant is that there is no direction either in the Tribunal's original judgement or in the judgement on the contempt application to advance the date of confirmation of the third respondent on the post of Assistant and therefore the order advancing the date of confirmation is illegal and unwarranted. Before we deal with the pleas of the applicant, we may notice the service profile of the applicant also.

5. Unlike the third respondent who came to the post of Assistant by way of promotion from the post of Upper Division Clerk, the applicant was directly recruited to the said post through the Union Public Service Commission (UPSC). He had appeared at the examination conducted by the Commission in the year 1974. He was appointed on probation by order dated 28.4.1975. He was confirmed with effect from 28.4.1977. His original appointment was in the Ministry of Finance, (Department of Expenditure). He was transferred on permanent basis to the Department of Science and Technology on 1.12.1978. A seniority

list of Assistants was issued reflecting the position as obtained on 1.12.1978. In this list the name of the applicant appeared at S.No. 20 while that of the third respondent at S.No. 37. The applicant's date of continuous officiation was shown as 28.4.1975 while that of the third respondent as 11.10.1973. The applicant's date of confirmation was disclosed as 28.4.1977. The date of confirmation of the third respondent was not mentioned. In this list the assignment of seniority had not been done on the basis of continuous officiation on the post but on the basis of the date of substantive appointment. This is apparent from the fact that although the date of continuous officiation of the third respondent is shown as prior to that of the applicant, the former has not been shown senior to the latter; instead he has been shown junior.

6. Now the submission of the learned counsel for the applicant against the advancement of third respondent's date of confirmation is two fold -
(i) there is no direction to that effect in the judgement of the Tribunal, and (ii) Seniority is not dependent on the date of confirmation. So far as the first argument is concerned, we are unable to accept the same. Once the date of empanelment of the third respondent is advanced he will have to be given consequential benefits also. Despite his appointment to the post of Assistant in the year 1973 his year of empanelment was treated as 1975. This the Tribunal found incorrect. The Tribunal specifically observed that in view of the Office Memorandum dated 16.12.1975

(13)

select list of the year 1973 was required to be revised but it was not revised. In order to give full effect to the judgement of the Tribunal it did become necessary for the Government not only to revise 1973 panel but also to revise the date of substantive appointment. We, therefore, find no merit in the first submission of the learned counsel. So far as the second submission is concerned, we may assume that seniority is not required to be determined on the basis of confirmation or substantive appointment. In that case the applicant should have no grievance against the antedating order but the submission of the learned counsel was that by advancing the date of substantive appointment of the third respondent applicant own seniority had been affected. If that is so, it cannot be helped as the learned counsel was unable to show that empanelment of the third respondent in 1973 list was contrary to law. Once the year of empanelment is correct, the altered date of substantive appointment can not be faulted.

7. Learned Counsel for the applicant further submitted that appointment to the post of Assistant is made by direct recruitment as well as by promotion and seniority is determined by rota quota rule. We may assume this position. After antedating the confirmation of the third respondent the government have also advanced his seniority position. He has been interpolated at S.No. 102A in the common seniority list in which the applicant remains at S.No. 105. The applicant has not said a word about the position which the third respondent and he himself would have

l

occupied in the common seniority list by application of the rota quota rule after the advancement of the third respondent's date of substantive appointment. In paragraph 4 of the Original Application he has stated "according to the date of confirmation of the applicant in the grade of Assistant, viz., 28.4.1977, his name was placed in the seniority list of Assistant as on 1.10.1978 issued by the Department of Science and Technology below Shri A.R. Lalwani, whose date of confirmation as Assistant was 1.11.1975 and above Shri Paulekha who had been confirmed as Assistant with effect from 13.7.1979." Thus the argument of the learned counsel is contrary to the pleading contained in the Original Application. It could not be shown by the learned counsel that by giving consequential benefits to the respondent, he would have occupied a position in the seniority list different to the one assigned by the Government.

8. The above is so far as the applicant's challenge against the grant to the third respondent of benefits consequent to the implementation of the Tribunal's judgement and order is concerned. We may now examine the claim of the applicant regarding inclusion of his name in the select list of Section Officers for the year 1981.

9. As noticed here-in-above the applicant was appointed Assistant as a direct recruit on 28.4.1977. The next post to which he could look forward for promotion was Section Officer. In paragraph 14 of the Original Application, it has been stated that for preparing select list of Section Officer's Grade for

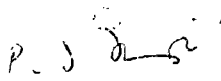
the year 1981 the Government had issued instructions on 20.10.1982 relevant portion of which reads thus -

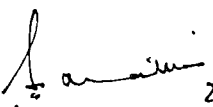
(b) For SC/ST Candidates:

All eligible officers included in the Supplementary Common Seniority List of Asstts. issued on 21.8.1980 and all permanent SC/ST Officers who were included in the Select List of Assistants on 1.7.1973, or earlier, and permanent direct recruit SC/ST Assistants senior to them". (Emphasis supplied).

On the basis of the emphasised portion in the instructions, the applicant submits that the third respondent was junior to him and since his name has been included in the select list of Section Officers for the year 1981, his name also deserves to be included in that list. In view of our findings recorded on the applicant's first challenge the third respondent can no longer be treated as junior to the applicant. Accordingly this argument is misconceived.

10. In view of the above, the Original Application is dismissed but without any order as to costs.


(P.T. Thiruvengadam)
Member (A)


(S.C. Mathur)
Chairman

Mittel