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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 1871/90.

19-8-94
Date of decision.

Hon'ble Shri S.R. Adige, Member (A)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

S.P. Singh Saini,
S/o S. Ajit Singh,
No. 68 Chandrawal Water Works,
New Delhi-52. .. Applicant

(By Advocate Shri O.P. Sood)

versus:

1. Secretary,
through Ministry of Defence,
South Block, New Delhi-110 011.
2. Scientific Adviser to Raksha Mantri,
Ministry of Defence, South Block,
New Delhi-110 011. .. Respondents

(By Advocate Shri M.K. Gupta)

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[Hon'ble Smt. Lakshmi Swaminathan, Member (J)]_7

The applicant being aggrieved by the order/letter
(Annexure A-1)
dated 7.2.1990/ regarding fixation of seniority as
Chief Draughtsman has filed this application under
Section 19 of the Administrative Tribunals Act,
1985. In this letter, the respondents have stated
that since their promotion order promoting the
applicant as Chief D'man in accordance with the
recommendations of the DPC held on 21st July, 1971

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has been subsequently cancelled vide order dated 8th August, 1979, his seniority in the grade had been correctly fixed with reference to the subsequent DPC meeting held on 15th September, 1980.

2. Although it is an admitted fact that the applicant was in the select panel of Chief D'man in 1979, he had been asked to assume the higher appointment at Bangalore which he declined and had requested for absorption in Delhi. The Respondents did not agree to this and the promotion orders were cancelled. The applicant was subsequently promoted to the post of Chief D'man on the basis of the DPC meeting held in September 1980 and he assumed charge of that post with effect from 27th November, 1980. The main grievance of the applicant is that since he had been selected by the DPC in 1979 and was allowed to resume the higher appointment at Delhi, the respondents' cancellation of his earlier ^{subsequently} promotion/ was arbitrary and unfair. His claim is that in the seniority roll of Chief D'men dated 29.4.1982 (Annexure A-5) he had been shown at S.No. 34, just below one Shri C.B. Srinath. In the seniority roll of 6th April, 1983 (Annexure A-7), however, his seniority was shown at S.No.26 whereas Shri C.B. Srinath was shown at S.No.5.

He has also referred to the position in the seniority roll of one Shri B.S. Bajaj, who, according to him, was also considered for promotion as Chief D'man by the DPC in September 1980, who has since been promoted as Junior Scientific Officer (JSO) on 21.5.1990 whereas the applicant has been ignored. He states that he has made several representations to which he has received the impugned reply dated 7th February, 1990 (Annexure A-1). The learned counsel for the applicant has relied on the judgment of this Tribunal (Calcutta Bench) in N.C. Chakraborty v. UOI / 1990 (1) CAT 101] in which it was held that having once gone through the process of selection by the DPC it was not proper to subject him to a further process of selection by another DPC, where the applicant had also declined his promotion.

3. We have heard the learned counsel for both the parties and perused the record. The respondents have submitted that in the seniority roll of Chief D'men issued in 1982, his name had been incorrectly shown with reference to DPC panel of July, 1979 wherein they had inadvertantly overlooked the fact that the promotion order issued on the basis of DPC panel of

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July, 1971 has been subsequently cancelled as he did not accept the promotion at Bangalore or assumed charge there. The same mistake had been repeated while issuing the seniority roll in April, 1988 and his seniority was later correctly fixed at S.No. 26 with reference to DPC panel of September 1980. The respondents have also stated that the seniority of Chief D'men has been uniformly fixed on the basis of the selection i.e. the date of DPC meeting in the case of promotees. Since there was a number of panels drawn by DPC in several Establishments/Laboratories on the same date i.e. 15th March and 15th September of each year, they were required to be combined on the basis of length of seniority in the lower grade subject to maintenance of order in each panel. In this manner, they have explained how the seniority of the applicant vis-a-vis that of Shri B.S. Bajaj, who was promoted to the post of Chief D'man on the basis of the panel drawn by DPC on separate groups of Establishments/Laboratories on 15th September, 1980, had been fixed. Since Shri B.S. Bajaj, had joined as D'man on 17th November, 1969 whereas the applicant had joined on 16th June, 1971, he had been given the senior rank in the seniority roll. They

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have also submitted that they had circulated a seniority roll of Chief D'men on 10th July, 1986 where also Shri B.S. Bajaj had been shown at S.No. 26 and the applicant at S.No. 31 on which the applicant had not submitted any representation.

The respondents have, therefore, taken the plea that the application is time barred as it was only after the publication of 1988 seniority roll that the applicant has filed this O.A. They have relied on the judgment of the Supreme Court in Direct Recruits Class II Engineering Officers' Association v. State of Maharashtra [AIR 1990 SC 1607]

wherein it was observed that it is not in the interest of service to unsettle a settled position.

4. The applicant's claim that his name should have been amongst the list of Chief D'men promoted from the panel of July, 1979 instead of the selection held by the DPC in September 1980 is barred by limitation. Although he might have represented against the later selection in 1980 to the same post, he should have agitated the matter before the appropriate forum as repeated representations will not bring it within the period of limitation. In his own representation dated 8th September 1988 (Annexure A-2), he has stated that the Headquarters had cancelled

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all the promotion orders of all the individuals

who had not joined their promotion posts vide

letter dated 31st December, 1979, and he cannot therefore, agitate this matter now.

5. The learned counsel for the applicant

submits that on the basis of the judgment of

this Tribunal in N.C. Chakraborty's case (supra),

having already been selected for promotion by

the DPC in July, 1979, the applicant should not

have been subjected to another DPC in 1980.

6. Having regard to the judgment of the Supreme

Court in S.S. Rathore v. State of Madhya Pradesh

[SLJ 1990 (1) 98] and the provisions of Section 21

of the Administrative Tribunals Act, 1985, we find

that the claim of the applicant that he should not

have been subject to a fresh selection after the

ban period was over when he had declined the promo-

tion in 1979 suffers from laches and delay, which

has not at all been explained. We also find that

the seniority of Shri B.S. Bajaj has been assigned

correctly as per the extant rule in the seniority

roll of 10th July, 1986 and the applicant cannot

claim the position in the seniority rolls circulated

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in April 1982 and November 1982 which had been

corrected in 1986. We find that ^{the} decision in

Chakraborty's case relied upon by the applicant

will not also be of assistance to him as the

matter should have been agitated within the period

of limitation.

7. In the result, the O.A. is dismissed.

There will be no order as to costs.

Lakshmi Swaminathan
(LAKSHMI SWAMINATHAN)
MEMBER (J)

S.R. Adige
(S.R. ADIGE)
MEMBER (A)