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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

.....

O.A. NO. 1911/90

DATE OF DECISION : 8th Nov. 91

SH. M.S. BIRDI

..... APPLICANT

VERSUS

UNION OF INDIA & ORS.

..... RESPONDENTS

CORAM:-

THE HON'BLE MR. D.K. CHAKRAVORTY, MEMBER(A)

THE HON'BLE MR. T.S. OBEROI, MEMBER(J)

COUNSEL FOR THE APPLICANT : SH. D.C. VOHRA

COUNSEL FOR THE RESPONDENTS : SH. M.L. VERMA

Judgement

(of the Bench delivered by Hon'ble Mr. T.S. Oberoi, Member(J))

In this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:-

(i) The Respondent No.2 be directed to assign seniority to the applicant as LDC on the basis of orders governing pre-1959 entrants in government service and principles laid down in the case of UNION OF INDIA VS. RAVI VERMA & ORS 1972(2) SCR 992 and for this purpose order the restoration of seniority list dated 27.11.1975 superseded by the Respondent No.2 erroneously and unconstitutionally, by misinterpreting orders of this Hon'ble Tribunal dated 27.8.1987, and 11.7.1988 and 2.12.1988 which have assumed finality in terms of Section 27 of the ATA 1985;

(ii) Respondent No.2 may please be directed to

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grant all the consequential benefits, viz., promotion to the posts of UDC, Assistant, Superintendent and Senior Superintendent from the dates his juniors were so promoted with arrears of pay and allowances, alongwith the admissible rate of interest thereon;

(iii) The costs of these proceedings may be awarded in favour of the applicant and against the respondents; and

(iv) Any other or further relief as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case of the applicant.

2. The facts and circumstances leading to the filing of the present O.A., briefly stated, are that, originally two Civil Writ Petitions No.1031/82 and 3916/82 were filed by the contending parties in the High Court of Delhi, which were transferred, under Section 29 of the Administrative Tribunals Act, 1985, and registered as T.A.No.793/85 and 794/85, respectively, and disposed of, finally vide a common judgement dt. 27.8.1987, with the following as the operative part thereof:-

"In the facts and circumstances discussed above, we cannot persuade ourselves to deem the petitioners in the first case and respondents in the second case as retrenched surplus staff who were transferred to the L.D.O. in their private interest. We are also unable to accept that by virtue of the guidelines of the O.M. of 22.12.1959, the petitioners cannot count their past service for the purpose of seniority in the L.D.O. We accordingly allow the first petition and dismiss the second petition to the extent of quashing the recommendations of the Departmental council based on its Committee report and restore the Order No.10(78)/68-L-II passed by the Govt. of India in the Ministry of Health & Family Planning and Works, Housing and Urban Development, dt. 9th March, 1971 which is at Annexure D (pages 36-37) to the petition in the first case and Annexure 40 to the petition in the second case.

We direct the respondents to prepare a seniority list on the basis of these orders and finalise the same within six months after giving opportunity of raising objection to all concerned. The promotions and confirmations against posts existing prior to 1.11.1962 should be made on the basis of the seniority list existing immediately before 1.11.1962. Promotions and confirmations made thereafter till the admission of the first petition on 14.2.1982, should be protected. Promotions and confirmations made thereafter should be subject to the revised seniority list so prepared. Those who are rendered senior in the revised seniority list to those who have been promoted or confirmed after 1.11.1962,

should be given notional promotion or confirmation with arrears of pay and pension, if any. In the circumstances of the case, there will be no order as to costs. The aforesaid two writ petitions are disposed of on the above lines."

3. Thereafter, O.A.No.1162/86 was filed by the applicant herein, besides another, which, too, was disposed of on 11.7.1988, with the following directions:-

"In view of the aforesaid judgement, we need not give any further directions in the instant case before us, but direct the respondents to prepare the revised seniority lists on the basis of the aforesaid judgement. If the revised seniority lists have not been prepared till now, the respondents should complete the preparation of the seniority lists within a period of one month from the date of communication of this order. The consequential benefits of confirmation and promotion to the next higher grade of the applicant before us should be made on the basis of the revised seniority list. The applicant will be at liberty to move the Tribunal, if so advised, in accordance with law if he feels aggrieved by the seniority assigned to him on the basis of the revised seniority lists and any action taken by the respondents on the basis of that seniority list."

4. The above was followed with a number of Misc. Petitions/ Contempt Petitions, by the parties concerned, seeking clarification/implementation of the judgement dt. 27.8.87 passed in TA-793/85 and 794/85, which were disposed of vide judgement dt. 2.12.1988, directing the respondents to re-draw the seniority lists of L.D.Cs. and U.D.Cs., based on the judgement dt. 27.8.87 and the clarifications afforded in the order dt. 2.12.1988, within a period specified therein.

5. Another C.C.P.No.102/89 (in OA-1162/86) was filed on behalf of the applicant in the present case, which too was disposed of on 8.8.90, rejecting mainly on the ground that the remedy sought for was not within the scope of contempt petition, but the applicant was allowed to file a fresh O.A., if he still felt aggrieved with the seniority list brought out by the respondents on 10.4.1989.

That is how the present O.A. came to be filed.

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6. The net grievance in the present O.A. thus remains to be that the applicant is not content with the seniority given to him by the respondents as per the seniority list dt. 10.4.1989 (Annexure 'T' P.112 of paperbook), and he claims the same, vide seniority list dt. 27.11.1975 (p.48 of the paperbook).

7. As against the above case of the applicant, the respondents' contention is that the applicant's case has been, once for all, decided by this Tribunal, considering all the pros and cons, vide detailed judgement dt. 27.8.87 (ibid), and he cannot be allowed to reagitate the matter, again and again, even after that decision and also in O.A.1162/86, followed with C.C.P. etc. as mentioned above, and take up the matters and unsettle the settled position. Reference was also drawn to 1989(10)ATC 361 (Ramesh Singh Vs. U.O.I.) decided by Jabalpur Bench of this Tribunal, declining to interfere in a matter like this, so old and having inter-se implications of seniority, so as to unsettle things once again. Objection was also raised by the respondents, on the principle of "resjudicata" as well as constructive resjudicata, on the ground that the applicant should not be permitted to raise pleas which he ought to have raised, at appropriate stage in the first Writ Petition/TA. The applicant's case was also opposed on the point of jurisdiction as well as limitation, pointing out that what he really seeks is to restore the position as per seniority list dt. 27.11.1975 as would be evident from

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the relief No.1 in the present O.A., which is not only time barred but even not within the jurisdiction of this Tribunal to look into being a matter before 1.11.1982 i.e. three years before coming into force of the Central Administrative Tribunal Act, 1985.

8. We have given our careful consideration to the facts and circumstances of the present case, as briefly narrated above. We have also given our careful thought to the rival contentions, as urged by the parties. The first point that we would like to dwell upon is with regard to the limitation and whether the present application is barred by limitation or by the application of the principle of resjudicata. After careful consideration of this aspect of the case and keeping in view that the applicant had been permitted to agitate the matter by appropriate proceeding, while disposing of the T.A's/OA/MP/CCP, the present O.A. may not be impermissible or rejected on that ground alone. The next point to be looked into by us is as to from which date, the seniority of the applicant be reckoned. The applicant in the present O.A. in paragraphs 12-14 has summed up his grievance in this respect, which if cumulatively read, would bring to the fore that he wants his seniority to be reckoned from the date of his joining service in 1954. The respondents, on the other hand, in the preliminary objections contained in their counter as well as in paragraph 8.1 thereof, taken up a different line, which may, for benefit, be reproduced as under:-

"The Supreme Court judgement in case of Union of India Vs. Ravi Verma delivered on 4.1.1972 is not

applicable in case of the applicant because the applicant was not appointed as LDC in the Regional Settlement Office on regular basis. The department of R.S.C. was itself a temporary nature department. The applicant was appointed as LDC on 15.1.1954 in the Office of the R.S.C. (Jullundar). His services were terminated on 1.10.1958 and released w.e.f. 7.10.1958. He was granted terminal leave w.e.f. 8.10.1958 to 26.1.1959 by the Asstt. Settlement Commissioner, Gurdaspur. He resumed his duty w.e.f. 5.12.1959. He was again transferred to A.S.C. Ludhiana on 30.6.59. Since the office of the R.S.C. was on ad-hoc nature the services of the applicant were being transferred from one office to other from Jullundar to Gurdaspur then to Amritsar and then to Faridabad and then to Delhi. Lastly, he was transferred to the office of the L&DO alongwith the other officials w.e.f. 1.11.1962. He is on regular service only with effect from 1.11.1962. Therefore, the general principal of the seniority issued by the Ministry of Home Affairs on 22.12.1959 were very much applicable in case of the applicant. The seniority list dated 10.4.1989 is therefore correct and final as it was issued in accordance with the judgement of the CAT, superceeding all previous lists."

9. As against the above opposing stands, while disposing of T.A.NO.793/85 and 794/85, the Tribunal had attempted an answer to this aspect, in paragraph 8 of judgement dt. 27.8.1987, already reproduced in para 2 of this judgement. Further, while disposing of the above mentioned two T.A's., in another part of the judgement dt. 27.8.1987 (ibid), while turning down the stand of the respondents therein, that the applicant and others like him were in the nature of surplus staff transferred to the office of the Land Development Officer, the elucidation given by the Govt. of India, the then Ministry of Health and Family Planning, Housing & Urban Development, Works, in their Order No.(10)78/68-L-11 dt. 9.3.1971, was maintained (Page 67 concluding lines, and para 8 on page 82 of judgement dt. 27.8.87). The same position was maintained in judgement dated 11.7.1988

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in OA-1162/86, while stating inter alia:-

".....the question of inter se seniority between 80 officials of the R.S.C. office, who came along with the work and the original employees of the L.D.O's office got entwined in those disputes."

To the same effect were the orders passed on 2.12.1988 referred to earlier, while disposing of some C.C.Ps. and M.Ps., and also order dated 8.8.1990, while disposing of C.C.P.No.102/89 in O.A. 1162/86, also referred to earlier.

10. Thus, a cumulative reading of the foregoing paragraphs leads us to conclude that if the respondents have prepared the seniority list dt. 10.4.1989 (Annexure-"T"), after taking into consideration the objections filed by the applicant, there is nothing to be interfered with, so far as this Tribunal is concerned, particularly when the position has not been challenged by the applicant in any superior forum, rather he has repeatedly agitated, in this very Tribunal, by way of O.A.No.1162/85 and other C.C.Ps. etc. referred to earlier, and also as others to be affected thereby, in case any interference is made by this Tribunal, in response to the present O.A., have not been made party in the present O.A., and also that a long time has since elapsed, making the matter stale and belated. Further, a minute look into the contentions raised in the O.A. leads us to conclude that the real intent of the applicant is to seek his seniority reckoned from the date of his joining in 1954, as against the one held in para 8 of this Tribunal's judgement dt. 27.8.1987,

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that "Promotion and confirmations against posts existing prior to 1.11.1962 should be made on the basis of the seniority list existing immediately before 1.11.1962. Promotions and confirmations made thereafter till the admission of the first petition on 14.2.1982, should be protected. Promotions and confirmations made thereafter should be subject to the revised seniority list so prepared. Those who are rendered senior in the revised seniority list to those who have been promoted or confirmed after 1.11.1962, should be given notional promotion or confirmation with arrears of pay and pension, if any."

11. This conclusion was consistently maintained by this Tribunal's subsequent judgement dt. 11.7.1988 (in OA 1162/86) and also in orders disposing of C.C.Ps. and M.Ps., earlier referred. So, any deviation from the above position, if intended to be brought about, by way of the present O.A., would, to our mind, be beyond the scope of this Tribunal, to be allowed, at this stage. Though respondents have stated that the objections filed by the applicant in this regard, have been duly taken into consideration, he is not content with that. In the absence of any specific averment, we have no reason to hold otherwise. In result, we find no merit in the present O.A., which, accordingly, stands dismissed. In the circumstances, however, we make no order as to costs.

T.S. Oberoi 8.11.91
(T.S. OBEROI)
MEMBER(J)

D.K. Chakravorty 8-11-1991
(D.K. CHAKRAVORTY)
MEMBER(A)