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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

(5)

Regn.No. OA-2690/90

Date of decision: 1.4.1992

Shri T.R. Nanda Applicant

Versus

Union of India & Anr. Respondents

For the Applicant Shri B.B. Raval, Advocate

For the Respondents Shri N.S. Mehta, Sr. Advocate

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*
2. To be referred to the Reporters or not? *No*

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman(J))

The short point for consideration is whether the applicant, who is working as Upper Division Clerk in the Intelligence Bureau, is entitled to the benefit of the judgement of this Tribunal dated 21.11.1986 in TA-713/85 (Smt. Swaran Baweja Vs. Principal, Lady Hardinge Medical College and Others). *Q*

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2. The applicant claims that he is entitled to the benefit of the aforesaid judgement, while the respondents contend that he is not entitled to the same.

3. We have gone through the records of the case and have heard the learned counsel for both the parties. The applicant joined Government service in 1958 as a Telephone Operator which was in the equivalent grade of Lower Division Clerk. He was appointed in the Intelligence Bureau. He became quasi-permanent in 1961 and was confirmed as Telephone Operator in 1966.

4. The Third Pay Commission recommended rationalisation of pay-scales. One of the recommendations of the said Commission was that Telephone Operators outside P & T Department may not be retained as a separate cadre and that they should be merged into the general clerical cadre. The applicant has stated that the Ministry of Home Affairs wrote to the Director, I.B. on 10.2.1978 on the subject of induction of Telephone Operators in the I.B. in L.D.C. grade of Intelligence Bureau Clerical Service (Reorganisation) Scheme and grant of Special Pay to Telephone Operators and LDCs working as Telephone Operators. The letter also stated that on their merger, seniority of the Telephone Operators in the Cadre of L.D.Cs will be determined on the basis of length of continuous regular service in that grade,

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irrespective of the date of confirmation, but added that they will, however, not gain seniority over LDCs already working in the Department before the date of issue of this order. The respondents have admitted this in their counter-affidavit.

5. The applicant has contended that the merger has put him and his class to a tremendous disadvantage inasmuch as all the existing LDCs in the I.B. and the applicant had joined in the same scale of LDC but in two different streams which were merged by the decision of the Govt. of India. He has further contended that the respondents further discriminated against him by allowing Teleprinter Operators, who were also merged with the LDCs, seniority from the date of joining and not below the existing LDCs. A copy of the memorandum dated 16.3.1979 issued by the respondents has been annexed as Annexure-5 to the application at page 23 of the paper-book.

6. The request of the applicant for protecting his seniority has been turned down by the respondents. In the meanwhile, Smt. Swaran Baweja, a Telephone Operator working in Lady Hardinge Medical College, had filed a writ petition in the Delhi High Court which stood transferred to this Tribunal as TA-713/85. The Tribunal held in its judgement dated 21.11.1986 as follows:-

"Having been merged into the Clerical Cadre, the seniority of the Petitioner vis-a-vis those in the Clerical Cadre should be determined on the basis of length of continuous officiation as Telephone Operator/LDC. The question of Telephone Operators being placed en bloc below the LDCs does not arise."

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In the facts and circumstances of the case, we see considerable merit in the Petition and direct that the Petitioner should be merged in the Clerical cadre of Lady Hardinge Medical College with effect from 1.1.1973 without any test and give the Special Pay of Rs.20/- per month with effect from the date so long as she works as Telephone Operator. The respondents should interpolate the Petitioner's name in the seniority list of the Clerical Cadre based on her length of continuous service as Telephone Operator."

7. The Lady Hardinge Medical College has implemented the aforesaid judgement.

8. Thereafter, the applicant again represented to the respondents praying that he be given the same benefit as was given to Smt. Baweja. The respondents rejected his representation, observing that the aforesaid judgement was applicable only to the parties thereto and could not be extended to her. The learned counsel for the applicant stated that though the applicant has completed nearly 33 years of service, he got his first promotion as UDC after putting in 21 years of service, whereas the other LDCs who joined in the same scale of Rs.260-400 as that of the applicant, got their promotion as UDC within three years and after 9 years, were promoted to the grade of Assistant.

9. The respondents have raised a preliminary objection on the ground that the grievance of the applicant arose in 1978 when he was inducted into the LDC Grade w.e.f. 10.2.1978 and his seniority was fixed in accordance with the letter of the Ministry of Home Affairs dated 10.2.78.

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He did not seek his remedy from appropriate legal forum in time. They have contended that this Tribunal cannot entertain any application in which the cause of action arose prior to 1.12.1982. According to them, repeated representations would not extend the period of limitation. On ^{the} merits, their contention is that the judgement of the Tribunal in Smt. Baweja's case is applicable only to the parties concerned and that it has no general application.

10. In our opinion, the respondents should not have raised the technical plea of limitation to defeat the just cause of the applicant. They have not stated how the case of Smt. Baweja stands on a different footing from that of the applicant. Smt. Baweja also was working as a Telephone Operator in the Lady Hardinge Medical College. In our opinion, the ratio in the said judgement of the Tribunal applies equally to the instant case.

11. In the facts and circumstances of the case, the application is allowed. The respondents are directed to fix the seniority of the applicant in terms of the judgement of the Tribunal in TA-713/85, giving him the benefit of the length of service from the date of joining the Government service on 26.4.1958. The respondents shall refix his seniority by interpolating his name at the appropriate place of seniority. He should also be

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considered for further promotions in accordance with the relevant rules on the basis of the seniority so revised. In the facts and circumstances of the case, we do not direct payment of arrears of pay and allowances as claimed by the applicant. The respondents are directed to comply with the aforesaid directions as expeditiously as possible and preferably within three months from the date of receipt of this order. There will be no order as to costs.

B. N. Dhoundiyal
(B.N. Dhoundiyal)
Administrative Member

P. K. Kartha
1/4/92
(P.K. Kartha)
Vice-Chairman(Judl.)