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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
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O.A.523/90.

New Delhi, the 8th day of July, 1994.

SHRI J.P. SHARMA, MEMBER (J).

SHRI S.R. ADIGE, MEMBER (A).

1. Smt. Surender Kaur,
wife of S. Amarjit Singh,
Telephone Operator, Forest Research
Institute, Dehradun,
R/o WZ-72, Sudershan Park,
New Delhi-15.
2. Shri S.P. Nailwal,
S/o Shri Lokanand Nailwal,
Telephone Operator,
Forest Research Institute,
Dehradun,
R/o WZ-72, Sudershan Park,
New Delhi-15.

...Applicants

By advocate : Shri S.K.Sawhney.

Versus

1. Union of India, through
Secretary,
Ministry of Environment & Forest,
Department of Forest & Wild Life,
Paryavaran Bhawan, New Delhi.
2. Registrar,
Forest Research Institute,
P.O. New Forest,
Dehradun.

...Respondents

By advocate : Shri N.S.Mehta, though not present.

O R D E R (ORAL)

J.P. SHARMA :

The applicant no.1 was initially appointed as Telephone Operator on 10-5-1967 and applicant no.2 was appointed on the same post in December 1970. Both of them were working in the Forest Research Institute (FRI), Dehradun and the pay scale for

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the post was Rs.110-200. The Third Pay Commission made certain recommendations with regard to the pay scales of those telephone operators working outside P & T Department and their pay scales have been fixed as Rs.260-400, with a special pay of Rs.20 per month and that they should be merged in the cadre of L.D.C. However, those telephone operators who were working in P&T Department were fixed in the scale of Rs.260-430. Earlier to this, the applicants were placed in the scale of Rs.260-430 in the cadre of Technical Assistant Grade I w.e.f. 1.1.1973. The Department has merged them in the grade of L.D.C. w.e.f. 10.9.1979 and have given them the benefit of that scale of Rs.260-400 but the applicants have not been given the seniority in the grade of L.D.C. w.e.f. 1.1.1973. The applicants could not get the favourable reply to their representation filed with this original application in March 1990 praying for the grant of the relief that the order rejecting their representation dated 9.8.89 be quashed and that the respondents be directed to induct the applicants in the cadre of LDC in FRI with retrospective effect from 1.1.73 and refix their seniority in that cadre on the basis of their length of service from 1.1.73. It is further requested that their pay be also refixed taking into account

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their pay as telephone operator immediately prior to 1.1.73 and they should be granted arrears of pay.

2. The respondents contested this application and took the preliminary objection that though the application has been filed in March 1990, but those persons against whom the applicants claim seniority havenot been impleaded as parties and the application is, therefore, bad for nonjoinder of necessary parties and liable to be dismissed on that account. The respondents have also contested the application on merits and stated that the applicants cannot get the benefit of seniority wef 1.1.73 as the same will create complications in the matter of fixation of seniority of L.D.C.s who have been appointed after 1.1.73. At the time of the induction of the applicants, the Ministry has given clear direction that before the telephone operators are inducted to the cadre of LDC, it should be ensured that it is done prospectively. In view of this, the applicants were inducted in the cadre of LDC w.e.f. 10.9.1979. The applicants, therefore, have no case.

3. We have heard the learned counsel for the applicants. None is present on behalf of the respondents.

4. The learned counsel for the applicants has placed reliance on a decision given in OA-622/88

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by the Central Administrative Tribunal, Bangalore Bench wherein Smt. Saraswati K., the petitioner of that case, claimed seniority in the grade of LDC wef 1.1.1973 and withdraw the seniority list.

Smt. Saraswati was appointed in the Forest Research Laboratory at Bangalore. The Tribunal decided the case by its order dated 31.1.1989 and directed the respondents to induct the applicant Smt. Saraswati into the cadre of LDC in the F.R.L. with retrospective effect from 1.1.73 and to refix her seniority in that cadre appropriately and also refix her pay wef 1.1.73 taking into account the pay she drew as Telephone Operator immediately prior to 1.1.73 and grant her arrears of emoluments, if any. She was also inducted in the cadre of L.D.C. with effect from 18.9.1979. Though the judgment aforesaid applies on all fours to the case of the applicants but the applicants have not impleaded all the persons to be affected by the revision of the seniority list in the cadre of LDC. Smt. Saraswati had approached the Tribunal, Bangalore Bench, earlier and, therefore, was granted the reliefs prayed for. The applicants did not assail their grievance and only when the judgment in the case of Smt. Saraswati was delivered on 31.1.1989, they filed this application in March, 1990. There is no reason whatsoever averred in the

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application or in ^{any} other miscellaneous petition explaining the delay caused in filing this application. The applicants were expected, according to law, as laid down under Section 21 of the Administrative Tribunals Act, 1985, to come before the Tribunal within one year from the date of cause of action ^{has} arisen. Even if the judgment delivered on 31.1.1989 gives them a fresh cause of action, then the present application has been filed in March 1990, i.e., more than a year after the decision of Smt. Saraswati's case. Thus, the ~~present~~ application is hit both by limitation as well as by nonjoinder of necessary parties. The counsel for the applicants, however, argued that in a case where the seniority is to be based on interpretation of certain law or on the basis of rule and that has not been followed, the persons to be affected need not be made parties and referred to the case of RAJBIR SINGH v. UNION OF INDIA. That was a railway case in which the benefit of continuous officiation was granted. In the present case, the applicants want that they should be deemed to have been inducted in the cadre of LDC from retrospective date, i.e., 1.1.73 though the respondents have inducted them in this cadre from a prospective date, i.e., 18.9.1979. Thus, the present case is materially

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different from the case of Raj Bir Singh. That was a case of continuous officiation on a particular post and counting of that service which was rendered on a casual basis. In the present case, the applicants want to be member of the service in the grade of LDC from a date much earlier than their merger in the cadre of LDC. Many persons must have been inducted on regular basis in the cadre of LDC and some might have been promoted to the higher grade in the hierarchy of posts. Thus, if the finding of the judgment of Smt. Saraswati of Bangalore Bench is followed and direction be issued, that will create a greater confusion and will unsettle the settled matters. Only two of the applicants have come forward and they want to unsettle the seniority list. In such a case, the interest of a group has to be protected and individual has to sacrifice in the interest of the service and larger interest of the administration.

5. Taking all these facts into account, we find that the application is bad on account of nonjoinder of necessary parties and also hit by limitation.

6. Regarding the fixation of pay, the learned counsel did not press this relief and stated that the applicants have rightly been paid their salary

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and in view of that, no direction can be issued even on that relief.

7. In view of the above facts and circumstances, the application is dismissed as barred by limitation and also on account of nonjoinder of necessary parties and devoid of merit, leaving the parties to bear their own costs.

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

J.P. Sharma
(J.P. SHARMA)
MEMBER (J)

08.7.1994.

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