

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 1623 of 1991

Dated, New Delhi this the 23rd January, 1996

Hon'ble Mr. Justice A.K. Chatterjee, Vice-Chairman(J)

Hon'ble Mr. K. Muthukumar, Administrative Member

Shri Israr Ahmed
S/o Shri Iqbal Ahmed
R/o Flat No. G-1, Delhi Administration
Flats, Model Town,
Delhi

..... Applicant

By Advocate : Shri S.K. Biseria, Ld. Counsel

Versus

1. Lt. Governor of Delhi, through
Chief Secretary,
Delhi Administration,
Delhi

2. Director of Information and
Publicity,
Delhi Administration,
Delhi

..... Official
Respondents

By Advocate : Shri Amresh Mathur, Ld. Counsel

3. Shri Raj Gopal,
C/o. Director of Information and
Publicity,
Delhi Administration,
Delhi

..... Private
Respondent

Advocate by : Shri B.K. Aggarwal, Ld. Counsel

O R D E R

Hon'ble Mr. Justice A.K. Chatterjee, VC(J)

The applicant was an Information Officer in Delhi Administration and while working as such, he was appointed to the post of Editor in the scale of Rs. 1100-1600/- on an adhoc basis for a period of six months on 13.12.82, the post having been created about three days prior thereto i.e. to say on

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10.12.82. At that time, the Recruitment Rules did not provide for the method of recruitment to the post of Editor and it was only in June, 1984 that the Recruitment Rules were amended to bring within its fold the post of Editor along with two posts of Deputy Director and one post of Press Secretary, which together constituted a single cadre carrying a pay scale of Rs.1100-1600/-. The applicant continued to hold the post on an adhoc basis even after expiry of six months and was appointed on an officiating basis with effect from 19.1.85. In the meantime, the respondent No.3 was appointed to the post as a direct recruit on 15.4.83 having been selected by the U.P.S.C. on the basis of a competitive test according to the recruitment rules prevailing at the relevant time. A tentative seniority list of the officers in the relevant cadre was prepared and circulated inviting objections thereto, if any, and after deciding the objections received, a final seniority list as on 1.11.88 was published in respect of all the four officers in the cadre indicating that the applicant held the third position and the respondent No.3 holding the position just below him. However, about two and half years thereafter, the final seniority list was revised on 27.5.91, wherein the respondent No.3 has been shown at Srl. No.1 and the applicant relegated to the position at Srl.No.4. The applicant contends that such revision of the final seniority list without even any show-cause notice to him violated the principles of natural justice and thus, the impugned seniority list published on 27.5.91, which prejudicially affects him, is liable to be quashed.

2. The official respondents and the respondent No.3 have filed separate replies. Material facts are not in dispute and according to the official respondents, objections were received

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from the respondent No.3 after tentative seniority list was published, but the objections were rejected in view of the judgment delivered by Delhi High Court in C.N.Sharma vs. Delhi Administration in Civil Writ Petition No.505 of 1970 and by the Supreme Court in G.P.Davil vs. Govt. of U.P. in Case Nos.5105-13 of 1983 and thus, a final seniority list was published showing the applicant senior to the respondent No.3. However, against this final seniority list also, the respondent No.3 had put in another representation, when the matter was re-examined and referred to the Department of Personnel in the Ministry of Home Affairs and on the advice of the said Ministry, the seniority list was revised and the benefit of adhoc service rendered by the applicant in the matter of determination of the seniority was withdrawn. As a result of such withdrawal, the applicant became junior to the respondent No.3 and the impugned seniority list was accordingly published.

3. The respondent No.3 in his reply contends that the adhoc appointment of the applicant cannot be counted for determination of his seniority and further that he was selected by the U.P.S.C. on 13.11.82, although he joined the post of Deputy Director on 15.4.83 and thus his seniority should be determined with reference to the date of his selection and not the date of joining the post. Regarding the supposed final seniority list published on 1.11.88, his contention seems to be that even though it is described as final, it was really not so as his objection to the tentative list was still pending.

4. We have heard the Learned Counsel for all the parties at length and duly considered their submissions and also perused the application, the replies and the rejoinder together

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with the annexures thereto. There seems to be no doubt that the seniority list issued on 1.11.88, whereby the applicant was shown to hold the position senior to that of the respondent No.3, was revised without giving any opportunity to the applicant of showing any cause against it. Legal position in this regard is perfectly clear and it is that a final seniority list cannot be disturbed without giving an opportunity to show-cause to the persons, whose interests are likely to be prejudicially affected by the revision. This is against the principle of natural justice and if any authority is needed in this connection, reference may be made to the decision of the Supreme Court in S.K. Ghosh & Anr. vs. Union of India & Ors., 1968(2) S.L.R. 741 and also to a decision of the Calcutta Bench of this Tribunal in Tapan Kr. Bose & Ors. vs. Union of India & Ors., 1992(2) S.L.J.(CAT) 440. Indeed, even the Learned Counsel for the respondent No.3 has not disputed the position that a seniority list once published finally cannot be reopened without giving an opportunity to the persons likely to be affected by such action, but his contention was that as a matter of fact, the seniority list published on 1.11.88 was not final as his representation against the tentative seniority list was pending even on that date. We do not see any merit in this contention in view of the categorical statement by the official respondents that the objections raised by the respondent No.3 to the tentative seniority list was considered and rejected in view of the decision of Delhi High Court in C.N.Sharma vs. Delhi Administration in C.W.P. No.505 of 1970 and the decision of the Supreme Court in G.P. Davil vs. Govt. of U.P. in Case Nos.5105-13 of 1983. The

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seniority list issued on 1.11.88 itself also shows that it was being published after consideration of the objections to the tentative seniority list. The respondent No.3 might have put in another representation subsequent to the publication of the final seniority list on 1.11.88, but certainly this does not destroy the finality of the seniority list published on the said date. If really the respondent No.3 had any grievance against the final seniority list issued on 1.11.88, the proper course for him would have been to approach this Tribunal for relief in an appropriate O.A. The Learned Counsel for the official respondents also found it difficult to support the revision of the final seniority list without giving an opportunity to the applicant. In such circumstances, we have no option but to quash the impugned seniority list dt.27.5.91, a copy of which has been made Annexure I to the application.

5. We can well stop here and dispose of the O.A. in favour of the applicant by quashing the impugned seniority list but the Learned Counsel for the respondent No.3 has taken pains to bring home his contention that in the circumstances of the case, the applicant cannot be regarded as senior to respondent No.3. We propose to consider this aspect of the case as well so as not to pave the way for another O.A. to determine the rival claims of seniority. The principal question, which calls for adjudication in this regard is whether the adhoc service put in by the applicant from 13.12.82 when the recruitment rules did not provide at all for appointment to the post of Editor, can be counted for determination of his seniority. The Learned Counsel for the respondents has relied heavily upon

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the decision of the Supreme Court in Smt.M.Nirmala & Ors. vs. State of Andhra Pradesh & Ors., 1987(1) SLJ 99. In that case, the petitioners were appointed to certain posts on stop gap basis when there was a ban on direct recruit on condition that they would be replaced as soon as possible by a member of the service or an approved candidate qualified to hold the post under the rules. The petitioners were eligible to appear in the qualifying test but did not avail that opportunity and were regularised subsequently as per policy decision of the Government and in such circumstances, their Lordships held that they could not be treated as senior to those who were appointed through Public Service Commission prior to their regularisation. Thus, the facts of the case bare no analogy whatsoever to the facts of the present case inasmuch as in Nirmala's case(supra), the petitioners had every opportunity to qualify themselves by appearing at the test, which, however, they did not avail and were regularised as per policy decision because of the pressure put by them on the Government for their absorption. The Hon'ble Supreme Court had observed that the Government seemsd to have yielded to the pressure brought to bear upon it by these temporary employees, as a result of which the appointment of successful candidates in the test could not be regularised. In such circumstances, there cannot be any manner of doubt that to allow seniority to those petitioners would be to give them an advantage of their own omission in not appearing at the qualifying test, although they were fit to appear in such test. Therefore, this decision is absolutely of no assistance to the respondent No.3.

6. Another decision cited by the Learned Counsel for the respondent No.3 is one by Patna Bench of this Tribunal in Smt.Mandira Dasgupta vs. Union of India & Ors., 1990(1)SLJ(CAT) 539. In that case, the applicant was appointed on an adhoc

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basis as a temporary Nurse having been selected by Selection Board on the authority of a letter of the Railway Board dated sometime in December, 1970. The respondent No.8 in that case joined on a regular post in June, 1972 having been selected by the Railway Service Commission. It was held in that case that the ad-hoc service rendered by the applicant would not be counted for seniority. This decision too, in our view, is wholly inappropriate as a perusal of the said judgment would indicate that the appointment of the applicant was made specifically subject to the conditions that she would be replaced immediately when hands selected by the Railway Service Commission were available. We are, therefore, of the view that the present respondent No.3 cannot claim seniority over the applicant on the basis of the said decision.

7. Now reference may be made to a decision of the Supreme Court in Direct Recruit Class-II Engineering Officers' Association vs. State of Maharashtra, (1990) 13 A.T.C. 348, in which principles were laid down by the Supreme Court to show under what circumstances an ad-hoc appointment should be counted for seniority and under what circumstances it should not be so counted. One of the principles laid down is that if the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted. In the case before us, it has been pointed out that when the applicant was appointed to the post of Editor on an adhoc basis in December, 1982, the recruitment rules prevailing at that time did not provide for appointment to such post and it

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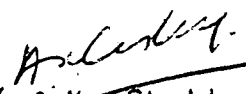
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was only in 1984 that the post of Editor was brought within the purview of the recruitment rules to form an unified cadre of four posts along with two posts of Deputy Director and one post of Press Secretary. In such circumstances, there could not be any question of the initial appointment of the applicant by following the procedure of any rules, but he continued to the post uninterruptedly till he was regularised and, therefore, his service from the date of his initial appointment on 13.12.82 ought to be counted to determine his seniority.

8. The only other question raised by the Learned Counsel for the respondent No.3 was that he having been selected by the U.P.S.C. in November, 1982 his seniority should be determined with reference to that date, although he actually joined on 15.4.83 and thus even if the seniority of the applicant is counted from the date of his adhoc appointment on 13.12.82, he becomes junior to the respondent No.3. The date of selection by U.P.S.C. no doubt determines inter se seniority of candidates selected by it but not the seniority in relation to a candidate, who has already been appointed otherwise and thus, the seniority of the respondent No.3 vis-a-vis that of the applicant can be determined only with reference to the actual date of appointment. On this basis, the applicant clearly has a march over the respondent No.3, who must be held to be junior to the former.

9. On the aforesaid premises, we find merit in this application and the same succeeds. The impugned seniority list dated 27.5.91, Annexure-I to the application showing the respondent No.3 as senior to the applicant is quashed and the final seniority list issued on 1.11.88, Annexure A6 to the application is restored. Parties to bear their own costs.


(K. Muthukumar)
Member(A)


(A.K. Chatterjee)
Vice-Chairman(J)