

(8)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No.3035/91.

Date of decision 2.12.92.

Shri ~~Kripa~~ Shankar .. Applicant

V/s

Union of India & Ors. .. Respondents

coram:

Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J)

Hon'ble Member Mr. I.P. Gupta, Member (A)

For the Applicant .. Shri A.K. Behra, counsel.

For the Respondents .. Shri M.L. Verma, counsel

Shri Harjeet Singh, counsel.

(1) Whether Reporters of local papers may be allowed to see the Judgement ?

✓(2) To be referred to the Reporter or not ? *Yes.*

J U D G E M E N T

[Delivered by Hon'ble Shri I.P. Gupta, Member (A)]

pal

In this application filed under Section 19 of the Administrative Tribunal Act, 1985, the applicant has prayed for quashing the seniority list dated 18.4.1990 to the extent it prejudicially alters the seniority of the applicant and to direct the respondents to fix the seniority of the applicant above Shri K.S. Nagar (respondent No. 4) and to

allow all consequential benefits.

2. The Learned Counsel for the applicant drew our attention to the memorandum (Annexure A-1) regarding seniority position in the grade of Director of Horticulture, Additional Director of Horticulture and Deputy Director of Horticulture and Assistant Director of Horticulture as on 1.1.1989 in the CPWD. It was mentioned therein that the Director of Horticulture should bring the seniority position to the notice of all concerned and discrepancies, if any, might be brought to the notice of the Directorate within one month. The applicant figured at S.No. 60 of the said seniority list and respondent No. 4 appeared at S.No. 61, that is just below the applicant.

3. Another memorandum was circulated on 18.4.90 (Annexure A-2) giving the seniority position as on 1.1.1990 and here too the Director of Horticulture was requested to bring the seniority list to the notice of all concerned. Discrepancy, if any, was to be brought to the notice of the Directorate within one month. In this seniority list the

ML

applicant figured at S.No. 44 and respondent No. 4 at S.No. 43. In other words, respondent No. 4 became senior to the applicant by virtue of this seniority list. Against the name of respondent No. 4 it was mentioned that the seniority was changed on the recommendation of the review DPC held on 27.12.1989.

4. The applicant was appointed as regular Assistant Director on 5.11.1986 whereas ~~the~~ respondent No. 4 was so appointed on 11.5.1988. Therefore the Learned Counsel for the applicant contended that the applicant was regularly appointed as Assistant Director much before respondent No. 4. The applicant represented against the seniority list as on 1.1.1990 to the respondents on 2.5.1990. He again represented on 31.7.1990. With this representation he enclosed a copy of his earlier representation dated 2.5.1990 and in this there is also a mention of the fact that from a perusal of the Director General (Works)'s letter dated 8.6.1990 in reply to his representation dated 2.5.1990 the reasons for changing the seniority as a result of review DPC were not discernible. The applicant continued to represent by his letters dated 8th

9/2

November, 1990 and 27th February, 1991. It appears that he did not receive reply.

5. The Learned Counsel for the applicant argued that seniority position of the applicant could not be altered to his disadvantage without giving him an opportunity to represent or of hearing. In this connection he cited the case of S.L. Khanna, Assistant Accounts Officer v/s The Punjab State Electricity Board [1975 AISLJ(Punjab & Haryana High Court) 27] where it was held that ' it cannot be disputed that seniority plays an important part in the career of a public servant. Promotions to the higher ranks are made on the basis of the seniority list and if the merit of two public servants are almost equal, it is the seniority which tilts the balance in favour of one or the other. It is obvious that this order dated dated 1.1.1973 which changed the seniority of the petitioner adversely affected his civil rights. Such an order could not have been passed without affording the petitioner an opportunity of hearing.' He further cited the case of Arun Prasad v/s Union of India & Ors. [1991 (18)ATC(PAT) 875] where it was held that

hcl

' before disturbing his seniority the applicant was not given an opportunity of being heard in respect of changing his seniority vis-a-vis the respondents. Inviting objections after the impugned order placing the applicant below the respondents was issued, does not amount to allowing a prior opportunity. Therefore, the impugned order violates the principle of natural justice.² The Learned Counsel cited another case of M. Venkaiah v/s Union of India & Ors. [ATR 1989 (2) CAT 23] where it was observed that ' any modification or cancellation of a favourable order which visits the Government employee with evil consequence, can be passed only after affording him an opportunity to represent his case by giving him due notice for the same. Still further in the case of J. Kalpana v/s Union of India & Ors. [ATR 1986 (CAT) 285] it was observed that ' where, therefore, admittedly no notice was given and she was never told as to what is the procedural flaw which vitiated the earlier select list, how it has affected her rank in the select list then in such a case reversion due to some procedural flaw in select list without notice cannot be

AR

sustained. In the same judgement, the following observation was also made :-

" In our view the principle of natural justice knows of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It will come from a person who has been denied justice is not prejudiced."

6. The Learned Counsel for the respondents mentioned that there was a mistake in regard to year-wise calculation of vacancies. On the basis of recommendations of Departmental Promotion Committees for promotion from Sectional Officer (Horticulture) to Assistant Director of Horticulture, year-wise panel was drawn up as under :-

" YEAR	VACANCIES	CANDIDATES RECOMMENDED
1985	2	1. Shri S.P. Singh 2. Shri Randhir Singh.
1986	2	1. Shri M.L. Verma. 2. Shri Kripa Shankar.
1987	Nil	-
1988	1	1. Shri K.S. Nagar.

In October, 1989, a mistake in the yearwise vacancies was noticed. To set right this mistake a Review DPC was held on 27.12.89 in which the position of panels drawn from 1985 onwards was reviewed. The Review DPC, after following the laid-down procedure, made the following recommendations in the order of merit :-

<u>YEA R</u>	<u>VACANCIES</u>	<u>CANDIDATES RECOMMENDED</u>
1985	3	1. Shri S.P. Singh 2. Shri Randhir Singh 3. Shri M.L. Verma
1986	Nil	-
1987	Nil	-
1988	2	1. Shri K.S. Nagar 2. Shri Kripa Shankar

In view of the position explained above, the

incorrect seniority position assigned to Shri Kripa Shankar in the seniority list issued on 19.4.1989, was rectified vide seniority list issued on 18.4.1990. This position has been intimated to Shri Kripa Shankar, in reply to this representation made by him on 2.5.1990."

7. The Learned Counsel for the respondents further argued that an administrative error can be rectified even without affording an opportunity [D.P. Verma v/s CSIR1990(13)ATC(PAT) 460_7.

8. Let us analyse the contentions and arguments brought out above. We shall first take up the case of D.P. Verma (Supra) cited by the Learned Counsel for the respondents. The following observation was made therein :-

" It was further argued by the counsel of the applicant that, at any rate, before the issue of the impugned order, the applicant should have been afforded an opportunity of being heard, and it not having been done, the orders are

sd

vitiated. So far as the fixation of pay of a Civil servant is concerned, it is a matter within the power of the competent authority to have it done in accordance with Law. Merely because a subordinate officer has made the fixation overlooking the clear provision of Law, it does not stand in the way of the competent authority in rectifying the mistake when it is brought to its notice. Such re-fixation cannot be characterised as punitive; nor can it be said to be arbitrary on the ground that an opportunity of showing cause has not been afforded. Hence, the attack against the order on this ground also has to be rejected. However, since the applicant was drawing the pay as fixed by this order, we are of the view that it will not be fair or equitable to call upon him to refund the excess or make recovery of the same, as it was due to no fault of the applicant that the wrong fixation was done by the Administrative Officer of the third respondent."

sol

9. However, so far as the seniority position is

(17)

concerned, the judgements cited by the Learned Counsel for the applicant showing that seniority plays an important part and it cannot be changed adversely without giving an opportunity of representation or hearing, as it would be violative of principle of natural justice would clearly settle the legal position. The case of O.P. Verma (Supra) related to fixation of pay and rectification of mistake in such a re-fixation.

10. The documents relating to proceedings of DPC were also shown to us by the Learned Counsel for the respondents which confirm their stand that a Review DPC for the year 1988, after rectification of the number of vacancies, recommended respondent No. 4 above the applicant. We have gone through the ACRs also of the two officers but we refrain from giving our opinion on it since an assessment has to be of the DPC and so long as it is not arbitrary on the face of it, it cannot be treated as illegal. The fact, however, remains that no opportunity was given to the applicant before his seniority was adversely affected. Post-decisional opportunity

And

to represent cannot be treated as a prior opportunity.

11. The Learned Counsel for the respondents had also raised the question of limitation. It appears that a reply was given to the applicant on 8.6.1990 but from the applicant's letter dated 31.7.1990 it appears that the reasons for changing seniority as a result of Review DPC were not clearly spelt out and that is how the applicant represented again. We do not find the reply of the respondents dated 8.6.1990 on the papers filed in the case though Annexure A-4 refers to it. Be that as it may, the applicant wanted to get clarification on several points mentioned in his letter dated 31.7.1990 but no reply was sent by the respondents to him. We do not find that there has been any negligence on the part of the applicant and even if there is some delay, we are of the opinion that there is sufficient ground to condone it.

12. In the conspectus of the above view of the matter, we direct the respondents to restore the original seniority of the applicant vis-a-vis the 4th respondent as shown in the seniority list of 1.1.1989. We quash

the seniority list dated 1.1.1990 in so far as it relates to the applicant and the 4th respondent.

This will not preclude the respondents from taking such action as may be necessary to rectify any wrong order after following the principles of natural justice i.e. opportunity to the affected persons of representing and of being heard.

13. With the above direction and order, the case is disposed of with no order as to costs.

I.P. Gupta
(I.P. Gupta) 2/12/92
Member (A)

Ram Pal Singh
(Ram Pal Singh)
Vice-Chairman (J)