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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 948 of 1991

New Delhi this the 21st day of April, 1995.

HON'BLE SHRI JUSTICE S. C. MATHUR, CHAIRMAN
HON'BLE SHRI P. T. THIRUVENGADAM, MEMBER (A)

Amar Nath Batra,
Stenographer Grade 'D',
PA to Deputy Director of
Armament (RD-12), Directorate
of Armaments, R&D Organisation,
Ministry of Defence,
Room No. 308-A, 'B' Wing,
Sena Bhawan, DHQ PO
New Delhi - 110011.

... Applicant

(In Person)

Versus

1. Union of India through its
Secretary, Ministry of
Defence, South Block,
New Delhi-110011.
2. The Secretary,
Ministry of Personnel, Pension
& Public Grievances,
North Block, New Delhi.
3. Joint Secretary (Admn.),
Officer of Chief Administrative
Officer, Ministry of Defence,
C-II Hutments, DHQ PO,
New Delhi - 110011.
4. Smt. Veena Sharma, PA,
Dte. of Vehs, DGQA,
Ministry of Defence,
'G' Block, New Delhi.
5. Shri G. C. Pande, PA,
Dte of Aeronautics, R&D
Orgn., 3rd Floor,
Ministry of Defence,
'B' Wing, Sena Bhawan,
DHQ PO, New Delhi.
6. Shri Surinder Singh,
R&D Organisation, Ministry
of Defence, Room No.301,
3rd Floor, 'B' Wing,
Sena Bhawan, DHQ PO,
New Delhi - 110011.

... Respondents

(Shri M. S. Ramalingam, Sr. Administrative Officer,
for Respondents 1, 2 and 3. None for respondents
4, 5 and 6)

O R D E R (ORAL)

Shri Justice S. C. Mathur —

The applicant, Amar Nath Batra, challenges the seniority list dated 8.1.1990 extract wherefrom has been annexed to the Original Application. In this extract, the applicant is shown at serial No.67 and Surinder Singh (respondent No.6) is shown at serial No.41. Names of Smt. Veena Sharma (respondent No.4) and G. C. Pande (respondent No.5) are not contained in this extract. The applicant who has argued his case in person stated that in the list published, names of these two persons are not contained. However, the applicant's challenge of seniority is directed against all the three persons, namely, respondents 4 to 6.

2. According to the averments made by the applicant which are not disputed by the respondents, the applicant was recruited to the post of Stenographer Grade 'D' in the Directorate of Armament, Ministry of Defence, New Delhi through limited departmental examination while respondents 4, 5 and 6 were recruited to the said post through an open competitive examination held by the Staff Selection Commission. Both the examinations took place in the same year, i.e., 1976. The impugned seniority list shows that the applicant joined the post on 29.5.1976 while respondent No.6 joined the post on 10.9.1976. Respondent No.6 was made substantive with effect from 26.11.1982 while the applicant was made substantive subsequently with effect from 20.9.1985. The applicant's claim of seniority is based on his prior joining on the post.

3. The application has been opposed on behalf of the administration who has filed a counter-affidavit. Despite service, no reply has been filed on behalf of the private respondents, 4 to 6. In the reply filed on behalf of the administration a preliminary objection of limitation has been raised. It has also been stated that the rules for recruitment are AFHQ Stenographers' Service Rules, 1970. The relevant rule for recruitment is rule 13-A. Under this rule, recruitment is primarily made on the basis of limited departmental competitive examination. This examination is limited to the members of the AFHQ Clerical Service. It is, however, provided that if sufficient number of qualified candidates are not available for appointment on the result of such examination, the remaining vacancies may be filled provisionally or on regular basis in such manner as may be determined by the Government. As all the vacancies available at the relevant time could not be filled by limited departmental competitive examination, the Government resorted to filling the vacancies through open competitive examination conducted by the Staff Selection Commission. Rule 18 of the said rules prescribes the mode of determination of seniority. The rules do not provide for any quota between those recruited through departmental promotion or through other source or sources. The rules also do not provide for determination of inter-se seniority between those recruited from different sources. Our attention has been invited to sub-rule (iii) of rule 18 which reads thus —

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"(iii) The seniority of officers appointed to the Grade under the proviso to sub-rule (1) of rule 13A shall be such as may be determined by the Government from time to time."

It is stated in the reply that under this rule, seniority of the applicant and respondents 4 to 6 was determined as far back as the year 1977-78, when the seniority list was published in which the applicant was shown junior to respondents 4 to 6.

It is further stated that thereafter, several seniority lists were issued prior to the one under challenge, but the applicant never challenged the seniority assigned to him. It is submitted on behalf of the administration that at this late stage, the applicant is estopped from challenging the assignment of seniority.

4. In the rejoinder the applicant has contested the claim of the administration that a seniority list was issued in the year 1977-78. According to the applicant, the impugned list is the first which was published by the respondents. On this basis, he contests the plea raised on behalf of the respondents.

5. Along with their counter, the respondents have placed on record order dated 19.2.1983 signed by K. R. Sharma, SAO, CAO(P-2). Relevant portion of this order reads —

"A seniority roll of quasi-permanent/temporary stenographers Grade 'D' of the AFHQ Stenographers' Service is forwarded herewith for circulation. The names of the individuals who were recruited on the basis of Clerks' Grade & Stenographers Examination, 1981 conducted by SSC have not been included in this seniority roll. However, their names will be circulated in due course."

2. Establishment Sections of Air HQ and Naval HQ and Coord Sections of the various Branches/Directorates of Army HQ and Inter Services Organisations are requested to circulate the above list for the information of the individuals serving under them. Discrepancies/Omissions, if any, observed by them or pointed out by the individuals concerned may kindly be intimated to the Admin Sections concerned of CAO's Office and Establishment Sections of Naval HQ and Air HQ, who after verification, will forward the same to this Section by 11.4.83."

This is the covering letter through which the said list was circulated. We are, therefore, unable to accept the plea of the applicant that the list circulated through letter dated 9.2.1983 was not published and, therefore, he did not acquire knowledge of the seniority assigned to him vis-a-vis respondents 4, 5 and 6.

6. It is settled law that a seniority assigned several years ago cannot be interfered with when the person assigned seniority reasonably accepts finality of the seniority assigned to him. Apart from this, proceedings in this Tribunal are governed by the Administrative Tribunals Act, 1985. Section 21 of the Act prescribes the limitation for approaching the Tribunal in respect of cases in which cause of action accrued after enforcement of the Act and also prior thereto. Cases where cause of action accrued prior to the enforcement of the Act are covered by sub-section (2) of Section 21 while cases in which cause of action accrued after the enforcement of the Act are covered by sub-section (1). The applicant's case is not covered by sub-section (1) as the cause of action accrued to him much prior to the enforcement of

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the Act. His case is covered by sub-section (2) which reads thus -

"(2) Notwithstanding anything contained in sub-section (1), where -

- (a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and
- (b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later."

The applicant's claim cannot be entertained by means of the above provision. Under sub-section (3) there is power conferred upon the Tribunal to relax the period of limitation if sufficient cause is shown for not approaching the Tribunal earlier. The only cause shown by the applicant is that the list was not published which we are not inclined to accept. Accordingly, there is no explanation for the delay in approaching the Tribunal. The application, therefore, is liable to be rejected on this short ground.

7. The departmental representative has placed before us office order dated 25.2.1982 in which the principle for determination of seniority between those recruited from limited departmental competitive examination and

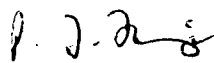
those recruited through the Staff Selection Commission has been laid down. The order reads as follows :-

"The undersigned is directed to refer to the Department OM No.7/4/82 (S.II dated 8.2.1982 on the subject mentioned above and to say that the qualified candidates on the result of the above examination allocated to your Ministry/Department may be placed en bloc junior to the candidates allocated on the result of Departmental Examinations (bimonthly) held by the Staff Selection Commission in February & April, 1981 and en bloc Senior to those candidates of the Departmental Examinations held during June, August, October & December, 1981."

8. It is undisputed that the process of selection through the Staff Selection Commission started in the year 1975 when the written examination was held, but it was concluded in the year 1976 when the practical examination was taken. So far as the departmental candidates are concerned, the entire process of selection started in 1976 itself. It is obvious that those selected through the Commission faced a tougher selection than those who came through limited departmental examination; the former faced a wider field while the latter faced a limited field. In such a situation, the charge of arbitrariness cannot be sustained if those belonging to the former category were given seniority over the latter. It also needs to be pointed out that the process of selection by the Commission started earlier. It is only their actual appointment which is latter. The delay may be on account of completion of formalities which a direct recruit has to go through, like medical examination, police verification etc. Accordingly, we are not satisfied that the applicant has any case even on merit.

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9. In view of the above, the application is dismissed but without any order as to costs. Interim order, if any operating, shall stand discharged.


(P. T. Thiruvengadam)
Member (A)


(S. C. Mathur)
Chairman

/as/