

Central Administrative Tribunal
Principal Bench, N. Delhi

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O.A. No. 87/91

New Delhi, this the 5th Day of April, 1995.

HON'BLE SHRI J.P.SHARMA, MEMBER(J)
HON'BLE SHRI K.MUTHUKUMAR, MEMBER(A)

Lal Singh son of Late Sh. Chhattar Singh,
resident of House No. 1265, Old Vijay Nagar,
Ghaziabad, U.P. and Section Officer (Retd.)
of the Cabinet Secretariat, Room No. 8-B,
South Block,
New Delhi.

Applicant

(By Shri P.L.Mimroth, Advocate)

Versus

1. The Union of India through
The Cabinet Secretary,
Government of India,
New Delhi.
2. Director (Pers.),
Cabinet Secretariat,
Room No. 8-B, South Block,
New Delhi.
3. The Under Secretary (Pers.III),
Cabinet Secretariat,
Room No. 8-B, South Block,
New Delhi.

Respondents

(By Shri M.K.Gupta, Advocate)

Judgement (Oral)

Delivered by Hon'ble Shri J.P.Sharma, Member (J)

The applicant who sought voluntary retirement with
effect from 30th November, 1988 filed a representation with
the respondents on 7.5.1990. In that representation, the

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applicant has prayed that the earlier seniority list dated 10th November, 1986 be restored in view of the decision given by the Hon'ble Supreme Court of India in the case of Direct Recruits Class-II Engineers Association V/S. State of Maharashtra reported in 1992 Vol. II SEC Page 715. The respondents have replied this representation of the applicant by the Memo dated 28th June, 1990 informing the applicant that the authority given by the Hon'ble Supreme Court of India in the case of Direct Recruits Class-II Engineers Association is applicable to the case of the engineers only and cannot be made automatically applicable to the case of the applicant unless and until it is covered by the general Govt. orders extending the same to all the government departments.

2. The applicant filed this application in January, 1991 praying for the grant of the reliefs that impugned order dated 28th June, 1990 be quashed with a direction to the respondents to give the benefits of promotion as Section Officer under NBR since 26.8.1974 as was given to his junior one Shri K.C. Nijahawan, alongwith all other consequential reliefs, benefits & entitlements from that date. The applicant may also be further considered being granted the deemed promotion to the post of Under Secretary after re-structuring part-II of the seniority list sent by I.B. (Ministry of Home Affairs).

3. When the case came up before the Tribunal it was admitted and notices were issued to the respondents who filed their replies opposing the grant of the reliefs prayed for. The applicant has also filed an amended O.A. and the reliefs prayed for in the amended O.A. are the same adding one more relief that respondents be directed to initiate stern action as per provisions of Ministry of Home Affairs against the delinquent official who committed gross mis-conduct with malafide intention by way of submitting a wrong and disputed seniority list of the applicant before the D.P.C. conducted for considering the promotion to the post of Under Secretary.

4. The stand of the respondents is that the application is barred by limitation and is not maintainable. The applicant in fact, prays that the cancellation of the order of promotion of the applicant which was issued in the year 1982 be judicially reviewed in the present application filed in 1991. On merits, it is stated that the order dated 5.5.1982 where the pay of the applicant was directed to be fixed under NBR with reference to the promotion of junior was cancelled by the order dated 1.12.1982 passed by the Cabinet Secretariat. It was done because the seniority was restored on the basis of the High Court's Judgement which was challenged before the Hon'ble Supreme Court of India and since the matter became subjudiced before the Hon'ble Supreme Court of India, the aforesaid order of 5.5.1982 was cancelled. Subsequently, the Hon'ble Supreme Court of India in an appeal filed

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against the order of the High Court ~~was~~ allowed and ^{the appeal} the original seniority was, therefore, ~~sustained~~ ^{sustained}.

The applicant could not be granted the benefit of NBR Vs. Nijahawan because the case of Direct Recruits Class-II Engineers' Association came subsequently in May, 1990 when the criterion for laying down the seniority was effectivly ~~from fixing it~~ from the date of the order of confirmation and not on the basis of continuous officiation.

5. The applicant has also filed the rejoinder.

6. We have heard Shri P.L. Mimroth counsel for the applicant at considerable length and Shri M.K. Gupta counsel for the respondents. The judgement delivered by the apex court lays down the law prospectively. If the

~~law~~ prospective operation of the law is taken, as contended by the learned counsel for the applicant then all these matters which have been settled up to the date of the judgement which, according to the applicant's counsel, has changed the mode of fixation of seniority, will be unsettled. Even in the Direct Recruits' case while concluding, the Hon'ble Supreme Court of India observed in the last but one paragraph that the matters which are once settled should not be unsettled after a long time.

This clearly lays down that the judgement has been prospective in operation, thus, the applicant cannot get a cause of action for revision of his seniority viz-a-viz Nijahwan from the date when he was given continuous seniority.

on continuous length of service.

7. We also find that the applicant has since been retired and that he cannot invoke a decision arrived and declared by the Hon'ble Supreme Court of India much after his retirement. We are fortified in our view by the recent decision of the constitution bench in the case of E.S.I.C. V/s. K.Karunakaran reported in JT 1993

(6) SC Page 1, which has reviewed the judgement of Ramzan Khan's case decided in November, 1990 regarding the proposition of law of supply of copy of the Enquiry Officer's report to the delinquent employee before disciplinary authority finally passes an order in the enquiry proceedings. It was held by the Hon'ble Supreme Court of India that K.Karunakaran's case shall have prospective operation as earlier to that, the position of law was a fluid state and there were views in various decisions arrived by the apex court on either way. Thus, the applicant cannot aspire after his retirement to get the revision of the seniority list in view of the law laid down by the Hon'ble Supreme Court of India in the case of Direct Recruits Class-II Engineers' Association.

8. Thirdly, we also find that the seniority list drawn for consideration of promotion to the grade of Under Secy. was ^{in vogue} revoked at that time. In any case the applicant was free to make representation and thereafter to seek a

judicial review if there were any errors according to him or advised to him on the extant seniority list of the Section Officers or Assistants. If he has not raised the issue at the relevant point of time, he cannot do so after his retirement w.e.f. November, 1988 in an application filed in January, 1991. If a benefit is claimed by an employee and by the grant of the benefit a series of employees are to be affected in the sense that if the revised seniority list gives a benefit to the employee to place him senior to those who have been once junior to him then all those have to be made a party in the proceedings. The applicant cannot carve out a case for himself alone for revision of seniority list.

9. In view of the above facts and circumstances, we find that the present application is totally devoid of merit and is dismissed accordingly leaving the parties to bear their own costs.


(K. MUTHUKUMAR)
MEMBER (A)


(J.P. SHARMA)
MEMBER (J)

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