

Central Administrative Tribunal, Principal Bench

O.A. No. 2238/2004

New Delhi this the 3rd day of ^{November} October, 2006

Hon'ble Mr. Justice .A. Khan, Vice Chairman (J)
Hon'ble Mr. V.K. Agnihotri, Member (A)

Shri P.K. Tyagi
S/o Shri R.N. Tyagi
Assistant Business Manager, Publications Division,
Ministry of Information and Broadcasting,
Soochana Bhavan,
New Delhi.Applicant

And Resident of B-158, Brij Vihar,
Ghaziabad (UP).

By Advocate: Shri Mukesh Vashisht.

Versus

1. Union of India
Through it's Secretary,
Ministry of Information and Broadcasting,
Shastri Bhavan, New Delhi.
2. The Director,
Publications Division,
Patiala House, New Delhi-110 001.
3. The Secretary,
UPSC Dholpur House, New Delhi.
4. Shri B.D. Prasad
Assistant Business Manager,
Ministry of Information & Broadcasting,
Publications Division, Patiala House,
New Delhi-110 002.Respondents

By Advocate: Shri A.S. Singh, Counsel for respondent Nos.1 to 3.

Shri M.K.Bhardwaj with Shri Yash Pal, Counsel for Respondent No.4.

ORDER

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

Present OA is filed for the following relief:-

- (a) To call the record and hold that the respondent No.1 and 2 were not justified to notified the draft seniority list and Office Order dated 1.6.2004 set aside/quash the same.
- (b) To call the record and hold that the respondent No.1 and 2 were not justified to notified the draft seniority list and Seniority List of May 2000 of the Sales Representative set aside/quash the same.

(c) That further holds that the applicant is senior most person as on 1.4.1988 to hold the post of Business Executive on regular basis.

(d) That the applicant is senior to Shri B.D. Prasad, respondent No.4 as on 16.11.1994 to hold the post of Assistant Business Manager on regular basis.

(e) To hold and declare that the applicant is entitled to get damages, consequential benefits of the suspension period from 19.1.2000 to 18.1.2001, etc. and action of respondents be declared as null and void, illegal and arbitrary.

(f) To implement the order passed by the Hon'ble High Court in CWP No. 4224/2001 dated 17.9.2001.

2. The applicant joined Publication Division of Ministry of Information and Broadcasting of Government of India as Sales Assistant on 17.1.1979. He was promoted to the post of Sales Representative on ad hoc basis on 24.12.1981 and was regularized on the said post with effect from 17.1.1984. On 24.5.1985, he was promoted as Business Executive on ad hoc basis and was regularized on this post with effect from 26.12.1993. He was again promoted to the post of Assistant Business Manager on ad hoc basis from 7.6.1995 to 25.10.1995 and from 10.7.1996 to 4.3.1997. In between, he was appointed as Business Manager in Directorate of Public Relations of the Ministry of Defence on deputation basis for 3 years w.e.f. 4.3.1997. But he was repatriated to the parent office as his parent department intended to initiate disciplinary proceedings against him for major penalty. On repatriation back to his office, he was appointed as Assistant Business Manager on ad hoc basis from 11.12.1998 and thereafter he was reverted to the post of Business Executive with retrospective effect from December, 1998. He was placed under suspension on 19.1.2000. The charge memo for departmental proceedings was served on him in January, 2000. The Inquiry Officer exonerated him of the charges. His suspension was revoked on 18.1.2001 and he was promoted to the post of Assistant Business Manager on 7.4.2003 on regular basis. He sent his representation for regularization of the suspension period as spent on duty.

3. Respondent No.4, Shri B.D. Prasad, on the other hand was appointed to the post of Sales Representative on 13.1.1984. He was promoted to the post of Business Executive on ad hoc basis in 1989. In 1990 he was transferred on deputation. On 31.5.1991 he was repatriated and posted as Business Executive. He along with others were reverted in 1991 while applicant was continued to work on the post of Business Executive. He was again promoted to the post of Business Executive retrospectively with effect from 1.4.1988 on

29

regular basis on the assumption that point of promotion fell for reserved candidate of ST quota but it was not so as this fact was disclosed in the affidavit filed by the respondents in OA No. 962/1999 filed by Shri V.S. Rawat. The respondent therein admitted that Shri B.D. Prasad was junior to the applicant Shri V.S. Rawat. Shri B.D. Prasad was promoted to the post of Assistant Business Manager on ad hoc basis in 1994 and was regularized on the said post on 16.11.1994. According to the applicant, he was senior to Shri B.D. Prasad, respondent No.4, who has been wrongly placed above him in the seniority list of Assistant Business Executive (Group 'B' Gazetted). The applicant, as such, challenged the seniority position of Shri B.D. Rawat, respondent No.4, in the draft seniority list of Assistant Business Manager issued vide Office Memorandum dtd 1.6.2004 on the abovementioned facts claiming himself to be senior to the respondent No.4 in the grade of Sales Representative and Business Executive and he has prayed for grant of consequential benefits.

4. The official respondents have termed the present OA as frivolous application since according to them the applicant had been apprised of all the facts from time to time and he himself is also the beneficiary of administrative lapses like the respondent No.4 Shri B.D. Prasad. It is submitted that the applicant joined the Publication Division as Sales Assistant on 17.1.1979 from which post he was promoted to the post of Sales Representative on ad hoc basis with effect from 24.12.1981. He was regularized in that grade with effect from 17.1.1984. Shri B.D. Prasad, respondent No.4, on the other hand, had joined the Publication Division as Sales Representative directly on the recommendation of the SSC against direct recruitment quota with effect from 13.1.1984, Shri V.S. Rawat, the then Business Executive, had filed OA No. 962/1999 questioning the appointment of Shri B.D. Prasad to the post of Business Executive with retrospective effect against a vacancy which became available on 1.4.1988. The application was subsequently withdrawn but the fact furnished by Shri V.S. Rawat in the application necessitated review of the appointment/promotion made in the past. From the scrutiny of the record, gross administrative lapses were discovered. Even the seniority list in the grade of Sales Representative, Business Executive and Assistant Business Manager were required to be finalized to rectify the irregularities committed due to unavailability of authentic seniority list. The respondent No.2 prepared the draft seniority list and gave

M

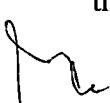
opportunity to all the persons concerned to submit their legitimate grievances. A comprehensive OM dated 19.3.2001 was issued to all the persons who were likely to be affected in the course of initiation of remedial measures. The applicant and respondent No.4 was also among them. The applicant had been granted unauthorized ad hoc promotion with effect from 24.5.1985 to the post of Business Executive grade although he was not eligible for such promotion as he had not rendered required three years' regular service in the grade of Sales Representative. Moreover, while making regular promotion of the applicant in the Business Executive grade, the rotation of the vacancies among Direct Recruitment quota and Promotion Quota were not followed and he was appointed against a vacancy meant for direct recruitment quota and that too with retrospective effect. At the same time, the respondent No.4 was unauthorized beneficiary of retrospective promotion in the Business Executive grade with effect from 1.4.1988 against the mistaken vacancy of ST without a proper DPC recommendation. The vacancy actually was not reserved for ST. When the respondent No.2 tried to initiate remedial measures to rectify the administrative lapses as mentioned above, the applicant as well as respondent No.4 filed OA Nos. 1546/2001 and 1545/2001 respectively before this Tribunal. The Tribunal allowed these OAs and directed that the applicant herein be treated in Business Executive grade with effect from 26.12.1993 and Shri B.D. Prasad shall be deemed to have been promoted as Business Executive with effect from 1.4.1988 and as Assistant Business Manager with effect from 16.11.1994 with all consequential benefits. As such, the respondent No.4, Shri B.D. Prasad was appointed as regular Sales Representative and as Business Executive much prior to the applicant, so he was senior to the applicant.

5. While the applicant was working as Business Executive (Circulation) in Employment News within the year 1990-1992, he along with some other persons was found to have abused his official position by making false payments to M/s Parcham-e-Hind which was in contract with Employment News for forwarding/dispatching/transporting the copies of Employment News/Rozgar Samachar to various agents located in U.P., Punjab, Haryana etc. The CBI investigated into the charges and had recommended for initiation of regular departmental proceedings against the applicant, the then Business Executive. The CVC agreed with the reference made by



the CBI. At that time the applicant was on deputation as Business Manager with Directorate of Publication Relation in Ministry of Defence. In contemplation of the departmental proceedings, the applicant was placed under suspension and he was repatriated on 11.12.1998. He was taken on the strength of the Division as Assistant Business Manager on ad hoc basis, the post on which the applicant was working before proceeding on deputation. But it was not approved by the appointing authority as the report of the CBI revealed commission of serious misconduct on his part. The applicant, therefore, was taken on the strength of the Division as Business Executive with effect from 11.12.1998 which he was holding in a substantive capacity. Applicant filed OA 2584/1999, which was disposed of on 6.2.2001 with a direction to the respondents to pay the pay and allowances of the emoluments from the date of repatriation, i.e., 11.12.1998 to 31.1.1999. The applicant filed Writ Petition No. 4224/2001 in the Delhi High Court in which respondent No.2 was directed to re-examine and re-consider the matter and pass fresh order. The respondent No.2 thereafter appointed the applicant as Assistant Business Manager on ad hoc basis with effect from 11.12.1998 to 1.6.2000, the date till his immediate junior Shri S.L. Kothari was holding the post on ad hoc basis by office order dated 9.1.2002. He was also paid full pay and allowances for the said period. This benefit was extended to the applicant even when he was under suspension pending departmental proceedings for major penalty due to the fact that his junior had been holding the post of Assistant Business Manager on ad hoc basis. The respondents have, therefore, rebutted the allegation of the applicant that he was senior to respondent No.4.

6. Respondent No.4, Shri B.D. Prasad, in a separate counter-reply has alleged that the applicant is challenging the seniority list of Sales Representative as on 1.1.1998 issued in May 2000 (Annexure B) and the seniority list of Assistant Business Manager as on 1.6.2004 along with certain other orders. The OA is barred by limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985. The applicant is challenging the seniority list dated 1.6.2004 which is a repetition of the seniority list of ADM's issued from 26.6.1997 and thereafter on 19.8.1997, 12.1.1998, 25.9.1998 and 23.4.1998. He himself was promoted as Assistant Business Manager on 16.11.1994, whereas the applicant had been promoted to the said grade only on 9.4.2003. The applicant's name, therefore, do not appear in the said seniority list but it has now been updated vide



impugned OM dated 1.2.2004. The applicant is also raking the seniority list of Sales Representative after a period of 21 years, which is not permissible. The OA is also barred by principles of res judicata. The seniority question has already been decided by the Tribunal vide order dated 2.8.2001 in OA 1545/2001. The seniority list of Sales Representative as on 1.1.1984 was issued vide letter dated 17.2.1984 and the name of the applicant was at S.No.17. The seniority list of Sales Representative as on 1.1.1984 was also issued on 17.2.1984. There were two Sales Representatives and the name of respondent No.4 is at S.No.2 of the list. In 1983, 4 posts of Business Executive became available. The method of recruitment was 50% by direct recruitment. For promotion of Sales Representative three years' regular service was needed. The applicant, who was appointed as regular Sales Representative in 1984, had no claim for promotion as Business Executive. He was promoted as Business Executive on ad hoc basis after rendering 1 year 4 months as Sales Representative in contravention of recruitment rules. He was appointed for six months as a stopgap arrangement. The respondent No.4 was senior to the applicant as Sales Representative. He was also a reserved category ST candidate. He was not promoted since he had not completed 3 years regular service as Sales Representative. He was promoted as Business Executive on regular basis after completing requisite years of regular service. Other allegations made by the applicant were rebutted and the seniority assigned to the respondent No.4 in the grade of Assistant Business Manager was justified.

7. In the rejoinder the applicant has reiterated his own case.
8. We have heard the learned counsel for the parties and have perused the record.
9. The preliminary objection was raised by the respondents that the OA is barred by time as the applicant is challenging the seniority list of the Sales Representative issued in May, 2000. Indeed the applicant has filed the present OA only on 15.9.2005 as such he cannot be allowed to challenge the seniority list and unsettle a settled position after 4 years. Moreover, applicant had been working as Sales Representative on ad hoc basis with effect from 24.12.1981 and on regular basis on 17.1.1984. He had been promoted to the post of Business Executive on ad hoc basis on 24.5.1985 and had been regularized on the said post with effect from 26.12.1993. In OA No. 1546/2001 filed by the applicant along with Shri S.L. Kothari, this Tribunal by order dated 2.8.2001 (Annexure R-2) had

directed that the applicant shall be treated to have been regularized in the grade of Business Executive with effect from 26.12.1993. This order has become final. At the same time another OA filed by respondent No.4, Shri B.D. Prasad bearing No.1545/2001 wherein also a direction was given to treat the applicant (respondent No.4) to have been promoted as Business Executive on regular basis with effect from 1.4.1988 and to the post of Assistant Business Manager with effect from 16.11.1994. That order has not been challenged and has become final. The relevant seniority position of the applicant and Shri B.D. Prasad both have been taken care of by these two proceedings. In view of these orders, the seniority position of the applicant and Shri B.D. Prasad, respondent No.4 in the grade of Sales Representative and Business Executive cannot be reexamined and the applicant cannot be allowed to rake up the issue which has long been settled by judicial orders.

10. As regards the seniority in the grade of Assistant Business Manager, the provisional seniority list was issued on 23.4.2004. Objections against this list were invited from the affected persons. The applicant has submitted his representation which has been considered and disposed off vide order dated 1.6.2004. In this order the draft seniority list issued vide OM dated 23.12.2003 was treated as final subject to review in case of appointment of a candidate to the post of Assistant Business Manager under direct recruitment quota nominated by the UPSC in the year 2001 and in the light of the decision taken by the Ministry of Information and Broadcasting on the representation of the applicant. The draft seniority list has finally been approved by the department. The seniority position of the applicant and Shri B.D. Prasad as such has been finalized as per the above-mentioned orders of the Tribunal passed in their OAs which are reflected in the seniority list also.

11. At the time of hearing, learned counsel for the applicant has submitted that the grievance of the applicant in the present OA is limited to the extent that the respondent No.4 Shri B.D. Prasad has been assigned seniority above him. The question whether Shri Prasad was correctly promoted with effect from 1.4.1988 on the assumption that the vacancy against which he was given promotion was reserved for an ST category candidate, to our view, cannot be challenged in view of the decision in the OA which was filed by the applicant bearing OA 1546/2001 in which the Tribunal had directed the

respondents to treat the applicant having been appointed on regular basis as Business Executives with effect from 26.12.1993. Shri B.D. Prasad had also filed a similar OA against similar orders by which their seniority and promotion were to be back-dated at the same time. The applicant's OA was numbered as OA 1546/2001 and that of B.D. Prasad were numbered as OA 1545/2001. Both were decided by separate orders by the same Bench but on the same date. Shri B.D. Prasad was directed to be promoted to the post of Business Executive on regular basis with effect from 1.4.1988 and to the post of Assistant Business Manager from 16.11.1994. The applicant on the other hand was promoted to the post of Assistant Business Manager with effect from 9.4.2003. The applicant, therefore, fully knew about the OA filed by Shri Prasad and the order of the Tribunal in that OA.

He did not challenge that order. The applicant now cannot challenge the order dated 1.6.2004 by which his representation has been rejected by raking up the dispute about the seniority of respondent No.4 in the grade of Business Executive Manager or in any other grade or his appointment as Assistant Business Manager with effect from 1.4.88.

12. The OA suffers from gross delay and latches. The applicant by challenging the draft seniority list of Assistant Business Managers issued in 2004 is trying to unsettle the seniority position of the respondent Nos.4 in the grade of Sales Representative and Business Executive. The respondent No.4 was appointed to these grades on ad hoc basis in the year 1984 and 1989 and regularized in the grade of Business Executive with retrospective effective, i.e. 1.4.1988 under the order of the Tribunal. The applicants own appointment in the grade of Business Executive in 1984 was in contravention of the Recruitment Rules. The applicant cannot be allowed to raise seniority question on the ground that he came to know late that the respondent No.4 was assigned seniority with effect from 1.4.1984 in the grade of Business Executive on a mistaken assumption that the vacancy was reserved for ST category candidate. That does not permit the applicant to challenge the seniority of respondent No.4 in lower grades of Sales Representative and Business Executive while challenging the seniority list of the grade of Assistant Business Manager.

13. Learned counsel for the applicant has fairly submitted that the applicant does not press for any relief other than the position of Shri Prasad giving him seniority position above the applicant.

14. For the reason stated above, we need not go into the other question raised by the respondents. Accordingly, the OA does not have any merit and it is dismissed. No costs.



(V.K. Agnihotri)
Member (A)



(M.A. Khan)
Vice Chairman (J)

Rakesh