

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 1782 of 1992

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New Delhi, dated this the 21st MAY 1997

HON'BLE MR. S.R. ADIGE, MEMBER (A)
HON'BLE DR. A. VEDAVALI, MEMBER (J)

1. Shri Bishan Singh,
14/839, Lodhi Colony,
New Delhi.
2. Shri Harkesh Sharma,
Sector V/561, R.K.Puram,
New Delhi.
3. Shri Balbir Singh,
WZ-45B Basai Darapur,
New Delhi-110015.
4. Shri Harbans Rai,
6/92, Lodhi Colony,
New Delhi.
5. Shri Raghbir Singh,
F-58, South Moti Bagh,
New Delhi.
6. Shri Ram Lal Sharma,
H-96, Sarojini Nagar,
New Delhi.
7. Shri Hari Ram Aggarwal,
Lodhi Colony,
New Delhi.
8. Shri Dip Lal Sharma,
C-249, Minto Road,
New Delhi.
9. Shri Ram Kishan Singh,
10. Shri R.D.Misra,
G-3/0, Srinivaspuri,
New Delhi.
11. Shri Inderjeet Chora. APPLICNTS

By Advocate: Applicants in person

VERSUS

1. Union of India through
the Secretary,
Ministry of Defence,
New Delhi.
2. The Chief Administrative Officer,
Armed Forces Headquarters,
Ministry of Defence,
New Delhi. RESPONDENTS

By Advocate: Shri E.X.Joseph

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JUDGMENT

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

(2A)

Applicants impugn respondents O.M. dated 21.12.63 and seek determination of their seniority from the date of their initial entry into Govt. service.

2. Applicants were appointed between 1941-48 as LDCs/equivalent posts in formations subordinate to Defence Ministry and were absorbed in AFHQ, Delhi between 1.8.51 and 1958. Seniority and confirmation against permanent vacancies available in AFHQ cadre as on 31.3.49 was governed by Defence Ministry O.M. dated 25.9.50 (Ann. A-6) whereby seniority in LDC grade was to be fixed on the basis of length of service in LDC/equivalent grade whether under the Central or Provincial Govt. of India or Pakistan. Applicants assert that this O.M. was based on an O.M. issued in 1949 by Home Ministry. These instructions were applicable for vacancies that became available till 1.8.51. Vacancies that arose after that date and upto 31.12.58 were governed by revised instructions contained in Defence Ministry's O.M. dated 12.8.59 (Ann. B) whereby seniority in grade of LDCs was to be determined inter alia as per length of service in AFHQ.

3. Applicants assert that on 22.12.59 MHA issued another O.M. cancelling the 1949 O.M. and providing that hereafter seniority would be determined not by length of service but with reference to date of confirmation. However, they state that as this O.M. was to have prospective effect, it did not, according to applicants affect their seniority as they were governed by the 1949 O.M. according to which seniority was to be determined by length of service.

4. Be that as it may instructions on seniority in LDC grade in respect of those appointed in AFHQ from 1.1.59 onwards was consolidated in Defence Ministry's O.M. dated 21.12.63 (Ann. R-1), which inter alia also provided that seniority in grade of LDCs was to be determined as per length of service in AFHQ.

5. This dispensation was challenged before Delhi High Court in CWP No. 192/72 Manohar Lal & Ors. Vs. UOI & Ors. and 941/72 M. Nazi Ahmed & Ors. Vs. UOI & Ors. in which fixation of seniority was sought in accordance with MHA's O.M. dated 22.6.49 and 22.12.59 along with a direction restraining respondents from fixing seniority in accordance with Defence Ministry's O.M. dated 12.8.59 and 21.12.63. Those CWP's were dismissed by judgment dated 22.4.76 on ground of delays and laches, but the Court expressed the wish that the authorities may reconsider the

matter. Thereupon after consideration of the various representations received, respondents sent a reply on 1.2.80 (Ann. E). Against the Delhi High Court's judgment dated 22.4.76, CWP No.5942/80 was filed in Hon'ble Supreme Court who dismissed the same on 27.8.87 with the following orders:

" We are satisfied that the matters in dispute in this writ petition are indeed very stale. In 1976 the High Court of Delhi thought that the matters were stale, and refused to interfere under Art. 226 of the Constitution. The High Court thought that some injustice had been done to the petitioners and that if possible the executive may try to redress the matters. The Executive having failed to redress their grievance, and the petitioners have come to this Court under Art. 32 of the Constitution. In 1976 the Delhi High Court thought that the matter is very stale, we do not think that we will be justified in reopening these stale issues at this distance of time. The writ petition is accordingly dismissed."

6. Meanwhile besides applicants, a number of other person had joined AFHQ from 1951 onwards after being declared surplus from ~~one~~ lower formations in the ~~Army~~ ^{Defence Ministry}. Their confirmation was subject to their passing the UPSC's typing test. As some of them did not pass the typing test within the prescribed time limit, they were not confirmed and were relegated in seniority in LDCs' grade. Some of them filed CWP No. 423/75 in Delhi High Court, which was allowed by Single Bench judgment dated 8.4.81 (Annexure R-II). The High Court observed that the seniority of the petitioners in WP No.423/75 was to be decided by the length of

service i.e. the date of joining AFHQ as LDCs. That judgment was set aside by ^a Delhi High Court Division Bench on an LPA filed by UOI, but in Civil Appeal No. 4133-4134/84 Shri D.P.Sharma & Ors. Vs. UOI, etc. the Hon'ble Supreme Court by judgment dated 21.2.89 set aside the Division Bench's judgment, ^{and} restored that of the Single Bench. Some other similarly placed persons filed WP No.493/90 R.K.Khosla and Anr. Vs. UOI & Ors. in Hon'ble Suprme Court, why by their order dated 9.1.91 directed that the benefit of their judgment dated 21.2.89 in D.P. Sharma's case (Supra) would be applicable to all similarly placed persons. The U.OI. filed an interlocutory application pleading that while implementing the said judgment they were confronted with difficulties, and some other persons also filed a petition for intervention, but both were dismissed by Hon'ble Supreme Court on 8.8.91. The matter was also considered by C.A.T., Principal Bench in O.A. No. 115/90 H.L.Gauba & Ors. Vs. UOI & Ors. and connected cases, who by judgment dated 8.11.91 held that the Hon'ble Supreme Court's decision in D.P.Sharma's case (Supra) had to be implemented in ^{and} better spirit in respect of all similarly placed persons. Accordingly respondents published a final seniority list of LDCs on 20.4.92 (Ann. R.III).

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7. We have heard the applicants who argued their case in person and Shri E.X.Joseph, Sr. Counsel for respondents. We have also perused the materials on record and given the matter our careful consideration.

8. We note that the Delhi High Court in Nazir Ahmed's case (Supra) had specifically addressed itself to the question whether those petitioners, like the present applicants before us on absorption as LDCs in AFHQ between 1951 and 1958 could be allowed to count their service before appointment to AFHQ for purposes of seniority as LDCs in AFHQ. That petition was dismissed on grounds of delay and laches as far back as 22.4.76, wherein it was specifically observed that

"to give such a relief would cause dislocation, complication and undeserved ~~frustration~~ among the service which would apparently be out of all proposition to the relief one could give to the petitioners".

No doubt it was observed that there was a case for executive review of the matter to consider what relief could be given to those petitioners, but while making these observations the Delhi High Court made it clear that these observations represented only a pious wish of the Court and was neither a direction nor conferred any right on those petitioners. Further more we note that in ~~WP~~ No. 5942/80 in which Nazir Ahmed and Others had expressly challenged this

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judgment, the Hon'ble Supreme Court by the ~~the~~ order dated 27.8.87 dismissed the same on the ground that the issue had become stale even in 1976. We have no hesitation in holding that the Apex Court's order dated 27.8.87 which binds us absolutely, squarely hits the prayer of the present applicants who were also absorbed in AFHQ as LDCs after 1.8.51 on transfer from subordinate formations of the Defence Ministry, to count their service outside AFHQ for purposes of seniority as LDCs in AFHQ and we are therefore compelled to reject the same.

9. Applicants seek to support this claim on the basis of the Delhi High Court's Single Bench judgment dated 8.4.81 in CWP No.423/75 and connected cases, which was eventually upheld by the Hon'ble Supreme Court in D.P.Sharma's case (Supra), which was later extended in R.K.Khosla's case (Supra) and still later in H.L.Gauba's case (Supra), on the basis of which respondents published the final seniority list of LDCs in AFHQ on 20.4.92 but it must be remembered that in CWP No.423/75 the issue before the Delhi High Court Single Bench was not whether LDCs who joined AFHQ from lower formations in Defence Ministry were to be allowed to count their services outside AFHQ for the purpose of seniority as LDCs in AFHQ ~~as~~ not, but whether their seniority as LDCs in AFHQ would count

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from the date of their joining AFHQ (the principle of length of service) or from the date of confirmation upon their passing the UPSC typing test. It is the principle of length of service (i.e. from the date of joining AFHQ) which was upheld by the Delhi High Court Single Bench in CWP No.427/75 and was subsequently upheld in D.P. Sharma's case (Supra) and later extended in R.K.Khosla's case (Supra) and H.L. Gauba's case, on the basis of which Respondents have issued their final seniority list of LDCs in AFHQ on 20.4.92.

8. In the result this O.A. fails and is dismissed. No costs.

A. Vedavalli

(DR. A. VEDAVALLI)
Member (J)
/GK/

S.R. Adige

(S.R. ADIGE)
Member (A)