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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

RA 223/93

O.A. No. 2809/92

199

~~Exhibit~~DATE OF DECISION 17.9.93D.V. Anand

Petitioner

K.L. Bhatia

Advocate for the Petitioner(s)

Versus

U.O.I. & Ors.

Respondent

M.L. Verma

Advocate for the Respondent(s)

O.N. Moolji for Respondents No.3.**CORAM**

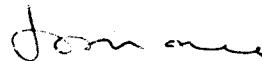
The Hon'ble Mr. J.P. Sharma, Member (J)

The Hon'ble Mr. B.K. Singh, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGEMENT

(delivered by Sh. B.K. Singh, Member (A)).


M.C.J.
J.

M.C.J.

Heard the learned Counsel Shri K.L. Bhatia for the applicant and Shri O.N. Moolri for Smt. Vanita(R-3) and perused the record of the case.

1. This has been filed against Order No.19-17/85-Estt.-I Part I Office Order No.134 of 12-10-92 issued by Dy. General Manager(Admn) of Delhi Milk Supply Scheme revising the seniority list placing Mrs. Vanita - Respondent No.3 above the applicant in the gradation list of senior Stenographer. This is Annexure A-I enclosed with the application.
2. The applicant joined Delhi Milk Supply Scheme under Ministry of Agriculture, Animal Husbandry in 1961. He was appointed as Sr. Stenographer on ad-hoc basis w.e.f. 8-12-72. The applicant was selected on merit, seniority and experience basis and appointed against a regular vacancy although on ad-hoc basis. This is Annexure-7 annexed with the application.
3. Ministry of Agriculture notified the rules of recruitment in 1976 vide their Notification No.3-17/74-LD dated 23-8-1976. Subsequent $66\frac{1}{2}\%$ vacancies were to be filled on the basis of competitive test from amongst Junior Stenographers having put in 3 years of service and $33\frac{1}{2}\%$ by promotion on the basis of seniority and merit having put in 3 years of service.
4. At the time of promulgation of Recruitment Rules of 1976 there were three posts, 2 held by Shri K.G.Gulati and the applicant and third vacancy was kept in abeyance which ultimately lapsed.
5. A civil writ petition No.1738/85 was filed in the High Court of Delhi Smt. Vanita Vs.U.O.I. & Others. On 8-3-83 two posts of Senior Stenographer were available to be filled up in accordance with the notified Recruitment Rules of 1976. These two posts were available due to appointment of Sh. V.K. Mittal

to the post of 1st P.A. to G.M. wef 9-11-82 vice Shri Sushil Kumar who went on deputation as Junior Analyst in Municipal Corporation of Delhi. A D.P.C. held on 8-3-83 promoted Shri D.V. Anand as Sr. Stenographer against 3rd promotion quota on adhoc basis. The second post was to be filled up by limited shorthand competitive test from amongst the internal candidates. The promotion quota was filled up vide Part I Office order No.59 of 1983 issued under No.8-4/82-Estt.I dated 10-3-83 promoting Shri D.V. Anand on regular basis. Thus he did not press his claim in the application No. T.A.711 of 1986 since he had been regularised making him senior to Respondent No. 3 Smt. Vanita. The applicant did not take up competitive shorthand examination in terms of Recruitment Rules 1976 in June, 1980. He was working on an adhoc basis. He was under the impression that he would be accommodated as a promotee having put in 3 years of service so why bother to be treated as a direct recruitment on the basis of limited competitive test. Respondent No. 3 appeared in the test as an internal candidate having completed 3 years of service and was declared to have cleared the competitive test held in June, 1980 and was accommodated against a leave vacancy caused due to the appointment ^{and S.P.A. & G.M. on return of Shri Mittal} of Shri V.K. Mittal and to avoid reversion she proceeded on deputation on 22.12.81 when Shri Mittal reverted to his post. The respondent No.3 reverted from deputation on 11.10.83. On her reversion Shri Mittal proceeded on long leave and she was accommodated against this leave vacancy.

Since Smt. Vanita respondent No. 3 was not given a regular vacancy she filed a writ in the High Court of Delhi CW 1738/85. On its first hearing on 13.7.85, she got an interim order whereby her

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reversion from the post of Senior Stenographer was stayed. In the meanwhile CAT Act of 1985 was promulgated and the writ was transferred and regd. as TA No.1166/86. The applicant was made Respondent No. 4.

5. This T.A. was heard on 8-2-86, 30-4-86, 22.5.86, 26.8.87 and on 4-12-88. It was listed in its turn and finally heard on 6-7-92 and a copy of the judgement has been enclosed as Annexure A-3 to the applicant. The operative portion of the judgement read as follows:

"In the light of the foregoing discussion this petition is allowed in terms of the following direction. The petitioner is held entitled to be promoted a Senior Stenographer in the Delhi Milk Scheme wef 21.10.80 or any date subsequent thereto on which one of the two posts of senior stenographer including 1st PA to Chairman fell vacant on a regular basis. It is clear that one such post fell vacant on a regular basis in March, 1983 when respondent No.4 namely Shri D.V. Ananda was appointed as such on regular basis. The post should have gone to the competitive test quota as the recruitment rules were in force at that time and one post under 33 $\frac{1}{3}$ % quota was already occupied by Shri V.K. Mittal. As Shri D.V. Ananda has already been regularised wef 10.3.83 the respondents are directed to create a supernumerary post by simultaneously keeping in abeyance a post of Junior stenographer wef the date Shri D.V. Ananda was appointed as Sr. Stenographer on regular basis in March, 1983 and to regularise the petitioner on that post from the date. The supernumerary post need not be created against the additional posts ~~were~~ sanctioned in 1989."

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and that post can be adjusted against the newly sanctioned post. The petitioner shall also be entitled to all consequential benefits including difference of pay between what she is entitled to and what she has drawn, if any, as also the seniority".

6. As a result of this judgement the respondent No.3 has been made senior to the applicant since her appointment has been given retrospective effect from 21-10-80, and the seniority list has been revised accordingly.

7. We have heard the arguments of the learned counsel Shri K.L.Bhatia for the applicant & Mr.Moolri for Respondent No.3. The main contention of the learned counsel for the applicant is that his client was given regular promotion w.e.f. 10-3-83 and respondent No.3 was appointed to this post on 11-10-83 as was reflected in the seniority list issued on 31-10-84. He stated that in one of its observations Hon'ble Supreme Court had held that seniority list should not be disturbed after a lapse of time and as such the seniority list issued now in respect of Respondent No.3 as senior to the applicant be restored to its pristine form as issued on 11-3-84 and the impugned order dated 12-10-92 may be modified accordingly. The learned counsel for the respondent No.3 argued that the petition is barred by res judicata since the issues regarding the seniority of the applicant vis-a-vis respondent No.3 have already been adjudicated upon and judgement delivered on 13-7-92. The parties are the same and the issues are the same and as such it is tantamount to a review of the orders passed and scope of review under CAT Act 1985 is limited. There is no error in respect of facts or law and as such there is hardly any scope for review and modification of the seniority list issued on 12-10-92 by Delhi Milk Supply Scheme

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8. We have considered all aspects of the matter and have come to the conclusion that Respondent No.3 who appeared in the limited competitive test in June, 1980 and qualified was eligible for promotion to the rank of Senior Stenographer since one post of promotion quota was already held by Mr.V.K.Mittal and the Recruitment Rules 1976 had come into operation as a result of which two posts were required to be filled up by direct recruitment on the basis of competitive test and only one could go to the promotion quota. Shri D.V.Ananda was working only on an adhoc basis in 1980 and did not take up the limited examination meant for internal candidates. Adhoc promotion could not have entitled him for a regular promotion when Recruitment Rules of 1976 were notified. As per established procedure after passing the written test respondent No.3 became eligible for promotion on a regular basis against 66 $\frac{1}{2}$ % direct recruitment. Fair play and justice demanded reversion of the applicant since no right or claim had accrued to him in 1980 since he was given promotion on an ad-hoc basis and regularised only on 10-3-83. Since one post of promotion quota was held by Shri V.K.Mittal the second and third posts could go only to direct recruits. Since Respondent No.3 passed the test and had completed 3 years she was fully entitled to be promoted against second vacancy after reverting Shri D.V.Ananda, Delhi Milk Supply Scheme authorities allowed things to drift without adhering strictly to recruitment rules of 1976 as a result of which there was a suit in Court of sub-judge and again a writ petition in Hon'ble Delhi High Court and finally in Principal Bench of CAT, New Delhi. It is a sad commentary on the functioning of Govt. offices that they make the rules and they observe it in its breach. The seniority list revised on 12-10-92 as a result of judgement of this Hon'ble Tribunal dated 13-7-92 is legally and factually in order and there is no scope for review of modification and accordingly the

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the original application is dismissed as devoid of any merit or substance.

The R.A. No.223/93 filed against interim order has become infructuous and is dismissed.

There will be no order as to costs.


(B.K. SINGH)
MEMBER (A)


(J.P. SHARMA) 17.9.93
MEMBER (J)