

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2917/92

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T.A.No.

DATE OF DECISION 4-6-99

Sh.N.L.Kanojia

....Petitioner

Sh.George Paracken

....Advocate for the
Petitioner(s)

VERSUS

UOI & Ors

....Respondent

Sh.Amresh Mathur

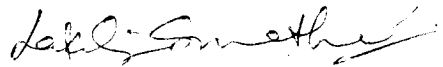
....Advocate for the
Respondents.

CORAM

The Hon'ble Shri S.R. Adige, Vice Chairman (A)

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

1. To be referred to the Reporter or not? YES
2. Whether it needs to be circulated to other Benches of the Tribunal? No.


(Smt. Lakshmi Swaminathan)
Member(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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O.A. No. 2917/92

New Delhi this the **4th day of June, 1999**

Hon'ble Shri S.R. Adige, Vice Chairman (A)
Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Shri N.L. Kanojia,
R/o C.421 Timarpur,
Delhi Admn. Flats,
Delhi

Applicant

(By Advocate: Shri George Paracken)

... Versus

1. The Delhi Admn.
Through the Chief Secretary,
5 Sham Nath Marg,
Delhi.
2. The Labour Commissioner,
Delhi Admn.
15 Rajpur Road,
Delhi.
3. Shri S.C. Jain,
Labour Officer ad hoc
O/O the Labour Commissioner,
15 Rajpur Road,
Delhi.
4. Shri K. Singh,
Labour Officer ad hoc
C/o the Labour Commissioner,
15 Rajpur Road,
Delhi.

Respondents

(By Advocate: Shri Amresh Mathur)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The applicant who is working with Respondent 2 is aggrieved by the seniority list of Inspecting Officers published by them on 20.8.1990, in which Respondent 3 is shown senior to him.

2. The brief facts of the case are that the applicant who is a Scheduled Caste candidate was appointed as a direct recruit Inspecting Officer on the recommendations of the Staff Selection Board (SSB) w.e.f.

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31.12.1981 on ad hoc basis. According to him, a vacancy of Inspecting Officer had arisen as far back as 1976 and the same was reserved for a Scheduled Tribe candidate. Since no Scheduled Caste candidate was also available then, one Shri S.C. Jain, Respondent 3 from the general category had been appointed on ad hoc basis. He has submitted that in 1980, there was another vacancy of Inspecting Officer in the general category which was filled on a regular basis by one Shri R.K. Mehta also on ad hoc basis. In 1981, the applicant was appointed ^{as Inspecting officer, B} which according to him was against a Scheduled Caste vacancy of 1977 which was carried forward and adjusted against an unreserved vacancy. He has submitted that he was regularized in the said post w.e.f. 31.12.1981 vide order dated 26.8.87, as he had been duly selected by the SSB. Applicant's grievance is that though Respondent 3 had been appointed earlier on 15.6.1976, which was purely on ad hoc basis against a reserved ^B vacancy, and he was later appointed on regular basis w.e.f. 8.4.1982, the applicant himself had been appointed regularly w.e.f. 31.12.1981. Respondent 3 had been promoted as Labour Officer w.e.f. 23.2.1987 and the applicant w.e.f. 29.1.1988. In the impugned seniority list, Respondent 3, has been shown at Serial No. 2 while the applicant's name is at Serial No. 4. The applicant has also submitted that he has raised objections to the tentative seniority list which was issued on 16.10.1989 on the ground of the senior position being shown to Shri Jain. His contention is that without taking into account his representation, the respondents have finalized the seniority list on 28.6.1990 which is exactly the same as the impugned list of 20.8.1990. He has submitted that he has again made a representation against the seniority list which has also been ignored. The

applicant has submitted that he had also made another representation against the DPC which was held for appointment of Labour Officers in 1992.

3. The main contention of Shri George Paracken, learned counsel of the applicant is that Respondent 3 being neither a SC nor ST candidate, he cannot claim his appointment or seniority from 15.6.76 against a post reserved for a S.T. candidate, to the disadvantage of the applicant who is a SC candidate. He submits that the department has not followed the prescribed procedure for dereservation of SC/ST posts so as to appoint Respondent 3 on regular basis from 1976. Furthermore, he has also submitted that Respondent 3 has been selected by SSB as a fresh candidate only in April 1982 against a regular vacancy, by which time the applicant had already been appointed as an Investigating Officer. In the circumstances he has also challenged the further promotion given to Respondent 3 as Labour Officer in August, 1990. Learned counsel has relied on DOP&T OMs dated 20th July, 1974, 7th May 1975 and 25th February 1976 (Extracts placed in the file). According to him as per the reservation policy, 15% and 7-1/2% of vacancies are reserved for SC/ST candidates, respectively in promotion by selection from Group 'C' to Group 'B', within Group 'B' and from Group 'B' to the lowest rank or category in Group 'A' where the element of direct recruitment does not exceed 75%. His contention is that even if the post of Investigating Officer was a single post falling on the reserved point in the roster, and a Scheduled Tribe candidate was not available, that vacancy could have been exchanged only with a SC candidate and could not have gone in any case to Respondent 3, who is neither a SC nor ST. Shri Paracken, learned counsel, therefore, very vehemently submitted that under no circumstances could the respondents have allowed

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Respondent 3 who is neither a SC/ST candidate to be appointed regularly against the 1976 vacancy reserved for a ST candidate. He has also relied on another OM of Ministry of Home Affairs dated 25th March, 1970. His submission is that in terms of para 4 of this OM, any vacancy reserved for SCs/STs which were not filled by that respective community, has to be carried forward to three subsequent recruitment years. Therefore, relying on the judgements of the Supreme Court in P.K. Singh vs. Bool Chand Chhablani and Ors. (1999 Lab.I.C. 617) and The Direct Recruit Class II Engineering Officers' Association and Ors. vs. State of Maharashtra and Ors. (JT 1990 (2) SC 264), learned counsel has submitted that since the appointment of Respondent 3 to the post of Investigating Officer is, de hors the rules and instructions, he cannot be given the benefit of appointment or seniority w.e.f. 15.6.76. He has also relied on Dr. Anuradha Bodi & Ors. Vs. Municipal Corporation of Delhi & Ors. [(1999) (1) AISLJ 1).

4. We have seen the replies and heard Shri Amresh Mathur and Shri R. Vasudevan, learned counsel for the respondents. Both the respondents have taken a preliminary objection that the O.A. is belated and barred by limitation as the seniority list under challenge is dated 20.8.1990 whereas the OA has been filed on 9.11.1992. They have submitted that the representation of the applicant dated 20.10.1989 had been rejected on 10.8.90. Thereafter, the seniority list was published on 20.8.90. In the circumstances they have submitted that as the applicant was guilty of misrepresenting the facts, the OA should be dismissed on this ground alone.

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5. On merits also, the respondents have controverted the applicant's claims. They have submitted that Respondent 3, Shri S.C. Jain, was appointed to the post of Investigating Officer (Bonus) on ad hoc basis on 15.6.76 due to non availability of a Scheduled Tribe candidate and he continued in that post till 8.4.82 when again he was appointed to that post on the recommendations of the SSB. They have also submitted that even the applicant was appointed initially on ad hoc basis against a post which was an unreserved post at point No.26 in lieu of reserved point No.19 of 1977. Shri Amresh Mathur, learned counsel has submitted that as there was no Scheduled Caste candidate available against the vacancy of 1976, Respondent 3 was appointed and the reservation for the Scheduled Tribes was carried forward for the next three recruitment years as required under the instructions. The respondents have submitted that the appointment of Respondent 3 is valid as per the rules and instructions and hence he was regularised in the post of Investigating Officer w.e.f. 15.6.1976 by Memo dated 7.9.1989. Thereafter, he was promoted as Labour Officer w.e.f. 23/2/87 as he was the seniormost candidate. Learned counsel has also submitted that while the post of Investigating Officer (Bonus) was in existence since 1968 against which Respondent 3 had been appointed, the post of Investigating Officer (Contract Labour) was created in 1973 and different sets of Recruitment Rules were framed. It was only later in 1989 that all these posts were amalgamated and common Recruitment Rules were notified.

6. Shri Vasudevan, learned counsel for Respondent 3 has also relied on a number of judgements of the Hon'ble Supreme Court (copies placed on record). He has submitted that neither Scheduled Caste nor Scheduled Tribe candidate was

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available for the vacant post of Investigating Officer in 1976, the same had been filled by a general candidate, i.e., Shri S.C. Jain which was in accordance with the rules and instructions on the subject. At that time applicant was not even in the department. He has, therefore, contended that since Shri Jain has been appointed to the post of Investigating Officer in 1976 in accordance with the rules and instructions, in accordance with proposition 'A' laid down in Direct Recruits case (supra), his seniority has to be counted from the date of his initial appointment. He has, therefore, submitted that there is no illegality in the impugned seniority list whereby Respondent 3 has been shown senior to applicant who joined the grade of Investigating Officer only on 31.12.1981.

7. We have carefully considered the records and submissions made by the learned counsel for the parties.

8. Dealing first with the preliminary objection whether this OA is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985, we will refer to the relevant facts as mentioned by the applicant himself. He has stated that when the first tentative seniority list was issued by the respondents on 16.10.89, he had made a representation on 20.10.89. His contention in the OA is that without finalising this list, department again came up with another tentative seniority list on 28.6.90 on the same pattern as the earlier one against which also he made a representation on 12.7.1990. He has categorically stated in paragraphs 4.9 and 5.8 of the OA that the respondent department has ignored both his representations, which made him to give another representation on 27.5.91 as a reminder, followed by yet

another detailed representation on 12.10.1992 (Annexure VIII). According to the learned counsel for the applicant these facts show that the OA is not barred by limitation. However, on page 4 of his representation given in 1992, applicant has stated as follows:

"But my representation was not examined by the department properly and was summarily rejected without assigning any reason. Ignoring my legitimate claim, the department issued the final seniority list vide letter No.F.2(6)/68-88/LC/Estt/Vol.II/75 dated 20.10.1990 assigning seniority to Shri S.C. Jain w.e.f. 15.6.1976." (emphasis added).

9. The respondents in their reply have categorically submitted that they had issued the impugned seniority list on 20.8.1990 after considering the representations received by them, including that of the applicant. They have also stated that his earlier representation, after due consideration, was rejected and duly communicated to him on 10.8.1990. During arguments, the learned counsel for the respondents had submitted that the reference given by the applicant in his representation dated 12.10.92 to his representation being summarily rejected by the department without assigning any reason is to this communication received by him on 10.8.90, against which he had made further representations in 1991 and 1992. Shri R. Vasudevan, learned counsel for respondent 3 had also forcefully submitted that in the light of the facts mentioned by the applicant himself in his representation dated 12.10.1992, the averments made by him in paragraphs 4.10, 5.7 and 5.8 of the OA that the respondents did not give any reply to his earlier three representations is far from the truth and he was, therefore, trying to conceal the facts. However, the

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real picture is disclosed in applicant's own representation dated 12.10.92 where he refers to an earlier rejection of his claims by the department.

10. From the facts mentioned above, it is seen that the applicant has himself admitted that he has made a number of representations against the seniority assigned to him and respondent 3 as Investigating Officer. In his representation dated 12.10.1992, he has submitted that his representation dated 12.7.80 was not examined properly by the respondents and was summarily rejected without assigning any reasons. Thereafter, the final impugned seniority list was issued on 20.8.90 assigning seniority to Shri S.C. Jain over him. We find merit in the submissions made by the learned counsel for the respondents on this point that the applicant had received a reply from the Department to his earlier representation made in 1990 which he alleges was done summarily without assigning any reason. While that may be so, the submission made by the applicant in the OA that he has not received any reply from the respondents to his representations cannot be accepted as correct. If he was dissatisfied with the reply given by the department, on 10.8.90 he could have challenged the same in time on all grounds available to him, including that it was a non-speaking order which he has failed to do. On the contrary, since the applicant has in fact received a reply from the respondents as far back as 10.8.90, his repeated representations thereafter will not have the effect of extending the cause of action so as to bring the same within the period of limitation as provided under Section 21 of the Administrative Tribunals Act, 1985. [See the judgments of the Hon'ble Supreme Court in Bhoop Singh Vs. Union of India (JT 1992 (3) SC 322; K.R. Mudgal & Ors. vs. R.P. Singh &

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Qrs.: (1986) (4) SCC 531 and P.K. Ramachandran Vs. State of Kerala & Qrs. II 1987 (8) SC 1821. It is also relevant to note that other than merely stating in para 3 of the OA that the application is within the limitation period, there is not even a Miscellaneous Application explaining the delay or praying for condonation of delay in this case.

11. We cannot also overlook the fact that the applicant has tried to misrepresent and conceal the facts in the O.A. regarding non receipt of any reply from the Department to his earlier representation in May, 1990 on which he gave further representations. However, to his misfortune his own representation of 12.10.92 has fortified the respondents' stand. It is settled law that any applicant who does not come to the Court with clean hands is not entitled to any relief. In the facts and circumstances the contention of the learned counsel for the applicant that the case is within the period of limitation is rejected. The O.A. ^{also is} is liable to be dismissed on the ground of attempt at concealment of relevant facts for which we could have imposed costs against the applicant, but take a lenient view in the circumstances of the case.

12. In this view of the matter, we do not consider it necessary to express our views on the merits of the case. Besides, it is also settled law that in matters of appointment and seniority in service matters, it is not in the interest of service to unsettle the settled position as held by the Supreme Court in Direct Recruits (supra) case. The Hon'ble Supreme Court has held that "....the decision dealing with important questions concerning the particular service matters given after careful consideration should be respected rather

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than scrutinised for any possible error". Therefore, taking into account the totality of the facts and circumstances of the case, we consider these observations of the Supreme Court are fully applicable to the present case, and the decision of the Department need not be scrutinised for finding out any possible error to "unsettle a settled position", and that too at a belated stage.

13. In the result, for the reasons given above, we do not find any justification to interfere in the matter. The application fails and is accordingly dismissed. Parties to bear their own costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

S.R. Adige

(S.R. Adige)
Vice-Chairman(A)

'San.'