

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(7)

O.A. No. 3261 of 1992 Decided on: 11.3.98

Ishwar Singh Rathore & Ors. Applicant(s)
(By Advocate: Shri G.K. Aggarwal)

VERSUS

U.O.I. & Anr. Respondents

(By Advocate: Shri DushyantPal,)
Dept. Repr.

CORAM

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

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

S.R. Adige
(S.R. ADIGE)
VICE CHAIRMAN (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.3261 of 1992

New Delhi, this the 11th day of March, 1998.

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

Ishwar Singh Rathore
and 160 others
(As per amended cause title
filed on 13.02.1998)

...Applicants

(By Advocate: Shri G.K.Aggarwal)

Versus

Union of India: through

1. The Secretary
Ministry of Defence
South Block
New Delhi - 110 011
2. Jt.Secretary(Trg.) &
Chief Administrative Officer
Ministry of Defence
C-II Hutments
South Block
New Delhi- 110 011

...Respondents

(Through Sh.Dushyant Pal, CSO
Deptt. Representative)

J U D G M E N T

By Hon'ble Mr. S.R.Adige, Vice Chairman(A) -

Applicants seek the relief contained in Para
8 of the O.A.

2. Admittedly applicants were appointed as LDCs
in AFHQ Clerical Service after 29.02.1968 and received
subsequent promotions thereafter. The AFHQ clerical
service Rules and AFHQ Civil Service Rules admittedly
came into effect on 01.03.1968. It is not denied that
as per impugned rules all officers substantively
appointed to a grade shall rank senior to those
holding temporary or officiating appointments to that

19

grade, and on confirmation their inter se seniority is to be regulated in the order in which they are confirmed.

3. Applicants however pray that their seniority as LDCs/UDCs be determined on the basis of their date(s) of selection/DPC meeting/appointment/promotion in LDC/UDC grade with all consequential benefits and not from the date(s) of their confirmation.

4. We have heard applicants' counsel Shri Aggarwal and Departmental Representative Shri Dushyant Pal. When it was pointed out to Shri Aggarwal during hearing that AFHQ Clerical Service Rules, 1968 have been noticed by the Hon'ble Supreme Court in their judgment dated 21.02.1989 in Civil Appeal No.4133-4134/84 Shri D.P.Sharma & Ors. Vs. UOI & Ors., wherein it had been held that the aforesaid Rules did not have retrospective effect, from which it followed that its provisions would be applicable to those appointed as LDCs after 01.03.1968, Shri Aggarwal contended that the question whether seniority was to be determined on length of service or on the basis of date of confirmation was not specifically before the Hon'ble Supreme Court, and therefore it was still open to us to hold that the impugned Rules were bad in law, and applicants' seniority should be determined on the basis not of date of confirmation but on length of service. Various judgments were cited by him in support of his arguments including

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20

1977(3) SCC 399; 1990(2) SCC 715; 1992(Suppl.2) SCC 318; 1990(4) SCC 55; 1980(4) SCC 125; 1989(1) SCC 272; and JT 1995(7) SC 69.

5. We have given our careful consideration to these contentions.

6. In the background of the Hon'ble Supreme Court's judgment in D.P. Sharma's case (Supra), wherein it has been held that the AFHQ Clerical Service Rules, 1968 did not have retrospective effect, in our considered view it follows that its provisions would be applicable to those appointed as LDCs after 01.03.19⁷~~68~~ and it is no longer open to us to rule on the vires of the impugned rules as this would be tantamount to disregarding the aforesaid judgment.

7. That apart, it is not denied that the impugned AFHQ Clerical Service Rules, 1968, have been superseded by the AFHQ Clerical Service Rules, 1987 w.e.f. 01.08.1987 and applicants are therefore impugning rules which are no longer in existence.

8. Further more applicants are in effect seeking revision of their seniority from 1968 onwards, while this O.A. was filed on 26.11.1992, that is after a lapse of nearly 24 years. The Hon'ble Supreme Court in Govt. of A.P. ¹~~And~~ Vs. M.A. Kareem ²~~m~~ & Ors. and connected case (1991) 17 ATC 303 has held as follows: ^h

21
"Besides these infirmities, the petition filed before the Tribunal was hopelessly barred by limitation because it was filed 13 years after respondents' appointment in Chief Office. The courts and tribunals should be slow in disturbing the settled affairs in a service after such a long period. Moreover, the respondents did not implead their colleagues who have been prejudicially affected by the impugned judgment. It cannot be assumed that the respondents had no knowledge about them. They did not implead even the respondent mentioned by them. These two technical objections itself are sufficient to reject the appeal."

9. In the present O.A. also, applicants have not impleaded their colleagues who would be affected if the relief prayed for were granted, and none of the judgments relied upon by Shri Aggarwal give applicants a legally enforceable right to mandate respondents to unsettle a settled seniority position which has stood for decades.

10. Other ^{defences,}~~grounds~~, have also been taken by respondents, but the foregoing is in our opinion sufficient to establish that no interference is warranted in this O.A. which is accordingly dismissed. No costs.

Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)
Member(J)

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

/Kant/