

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Dated : This the 8th day of August, 2002.

Original Application no. 682 of 1996.

Hon'ble Maj Gen K K Srivastava, Member (A)  
Hon'ble Mr. A K Bhatnagar, Member (J)

Subhash Chandra, S/o Sri K L Kanaujia,  
r/o 40 Sadar Bazar, Allahabad.

... Applicant

By Adv : Sri K K Mishra

Versus

1. Union of India, through the Director General,  
Ministry of Labour, Jaisalmer House, Man Singh Road,  
New Delhi.
2. Welfare Commissioner, Labour Welfare Organization,  
555-A/2, Mumfordganj, Allahabad.
3. Rajiv Kumar Jaitley, C/o Welfare Commissioner,  
Labour Welfare Organization,  
555-A/2, Mumfordganj, Allahabad.

... Respondents

By Adv : Sri P Mathur, Sri S C Lal  
Sri R Singh

O R D E R

Hon'ble Maj Gen K K Srivastava, AM.

In this OA, filed under section 19 of the A.T. Act, 1985, the applicant has prayed that respondent no.2 be directed to treat the applicant as senior to respondent no. 3 in the cadre of senior clerk in the pay scale of Rs. 1200-2040.

2. The facts, in short, giving rise to this OA are that the applicant was appointed as Junior Clerk on 22.3.1995 through Staff Selection Commission (in short SSC) and was posted in the respondent's establishment. He

successfully completed the probationary period of 2 years on 29.3.1987 and by order dated 11.7.1987 (Ann A2) the applicant was appointed as temporary Junior Clerk. The respondent no. 2 issued a tentative seniority list on 4.2.1988 (Ann A3) in which the name of the applicant is shown at sl no. 9 whereas that of respondent no. 3 at sl no. 10. Respondent no. 3 represented against his seniority and his representation dated 15.3.1988 was favourably decided on 31.7.1989 (Ann A4). The applicant made a representation on 8.8.1989 (Ann A5) that the date of joining of the applicant in the department is 29.3.1985 whereas that of respondent no. 3 is 3.5.1985. In the office order dated 29.10.1991 issued on the basis of recommendation of Departmental Promotion Committee (in short DPC) list of confirmed staff was published. The applicant has been confirmed on 29.3.1987 and his name was placed at sl no 2, whereas the name of respondent no. 3 has been confirmed on 3.5.1987 and the name of respondent no. 3 stands at sl no. 3 (Ann 6). Six posts of Senior Clerk fell vacant in the office of respondent no. 2. The applicant represented on 24.6.1992 that he should be considered on the basis of reservation policy being a Scheduled Caste (in short SC) candidate. When the authorities did not consider the earlier representation, the applicant filed another representation on 14.10.1993. The applicant again represented on 18.12.1993 that his case should be decided in view of the OM no.36012/37/93-Estt. (SCT) dated 19.8.1993 of Govt. of India, Department of Personnel and Training. The applicant

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also represented to the Commissioner SC/ST, New Delhi, who also called for the parawise comments on the representation made by the applicant from Secretary, Ministry of Labour, Govt. of India, Shram Shakti Bhawan, New Delhi vide letter dated 20.3.1996. The applicant was promoted as Senior Clerk in pay scale of Rs. 1200-2040 by order dated 20.6.1995 (Ann A15) showing him junior to respondent no. 3. The applicant filed another representation regarding anomaly in the promotion order for the post of Senior Clerk dated 20.6.1995, which has not been decided. Another office order was issued on 11.7.1995 (Ann A18) showing the applicant junior to respondent no. 3. The applicant filed a representation on 3.7.1995 before Member, DPC Labour Welfare Organization, Allahabad. The Member DPC addressed the Welfare Commissioner, Labour Welfare Organization, Allahabad on 3.7.1995 and again on 24.7.1985 but the controversy was not resolved. Hence this OA which has been contested by the respondents by filing counter affidavit.

3. Sri K K Mishra, learned counsel for the applicant submitted that the applicant has been senior to respondent no. 3 in tentative seniority list dated 4.2.1988 because he joined the department on 22.3.1985, completed the probationary period on 29.3.1987, whereas respondent no. 3 joined on 3.5.1985 and was confirmed later on. Therefore, the respondent could not challenge the seniority of the applicant without giving him show cause. The respondents have committed illegality in deciding the representation of respondent no. 3 by order dated 31.7.1989

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(Ann A4), without any information to the applicant.

Sri Mishra further submitted that inspite of letter dated 31.7.1989 deciding the representation of respondent no. 3 in his favour, the confirmation list dated 29.10.1991 shows the applicant as senior to respondent no. 3. The learned counsel submitted that ~~this~~ reservation policy has been issued in view of the judgment of Hon'ble Supreme Court in Indra Sahani's case where-in it has been held that the "reservation for SC/ST in the matter of promotion is to be continued."

4. Learned counsel for the applicant submitted that the applicant has been all along ~~been~~ senior to respondent no. 3 as a Junior Clerk. However, it is for the first time on issue of order dated 20.6.1995 promoting and appointing the applicant as Senior Clerk purely on adhoc basis that the applicant came to know that his seniority has been disturbed because in the promotion order dated 20.6.1995, respondent no. 3 has been shown as senior to the applicant. No notice for disturbing the seniority was ever given which as per laid down principles is necessary. Prior opportunity had to be afforded to the applicant before deciding the representation of respondent no. 3 and disturbing the seniority of the applicant. Learned counsel for the applicant placed reliance on the decision of Hon'ble Supreme Court in Sushma Mutteja Vs. Union of India & Ors, 2001 SCC (L&S) 972 and also the decision of Patna Bench of this Tribunal in Arun Prasad Vs. Union of India & Ors (1991) 18 ATC 875. Learned counsel also submitted that the date of confirmation is to be reckoned for seniority. He has placed reliance on the decision of this Tribunal, Ernakulam Bench in KC Jamaludheen Vs.

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Union of India & Ors, (1996) 34 ATC 257, in which it has been held that confirmation date has to be taken for deciding the seniority and also on the judgment of Hon'ble Supreme Court in Major Ydgendra Narain Yadav Vs. Bindeshwar Prasad & Ors, (1997) 2 SCC 150.

5. Resisting the claim of the applicant, Sri P Mathur, learned counsel for the respondents submitted that both the applicant as well as respondent no. 3 were selected to be appointed as Junior Clerk in the respondents establishment through SSC. Respondent no. 3 secured higher merit than the applicant and, therefore, as per <sup>in over the applicant</sup> rules respondent no. 3 is to be given seniority. The date of joining in such cases, when the candidates are selected through SSC, does not affect seniority. There is no illegality in the order of respondents dated 31.7.1989 (Ann A4) by which the respondent no. 3 has been considered to be senior to the applicant as Junior Clerk.

6. Sri P Mathur further submitted that in the confirmation list dated 29.10.1991 (Ann 6) due to clerical mistake respondent no. 3 has been shown junior to the applicant. Learned counsel for the respondents submitted that the case of Arun Prasad (supra) relied upon by the learned counsel for the applicant will not apply. A copy of the letter dated 31.7.1989 (Ann A4) was marked to the applicant and the applicant cannot plead ignorance about the same. The applicant was apprised of the seniority position and he did not challenge the same for long time.



7. Sri P Mathur, learned counsel for the respondents also submitted that as per procedure of appointment time is given to join the post within a specific period and, therefore, the date of joining has no relevance. The seniority of respondent no. 4 was restored by letter dated 31.7.1989. In view of the rule of MHA OM no. 7/23/71 Estt (D) dated 6.6.1978 (Ann CA 6), the seniority is to be determined according to the order of merit and due to office mistake the same cannot be depressed.

8. Learned counsel for the respondents finally submitted that the applicant was informed about his seniority in 1989 itself and his contention that he came to know about it only on 20.6.1995, when the promotion order dated 20.6.1995 (Ann 15) was issued, cannot be accepted. The period of limitation will run from 1989 and the OA is barred by period of limitation as it has been filed on 2.7.1996.

9. Sri S C Lal, learned counsel for the respondent no. 3 submitted that in view of what has been argued by Sri P Mathur and also that the respondent no. 3 is higher in order of merit he cannot be placed junior to the applicant.

10. Learned counsel further submitted that there are number of occasions when a person lower in merit joins earlier. The date of joining cannot be taken as date for fixing seniority specially when the seniority is to be decided on the basis of merit.

11. We have heard learned counsel for the parties, carefully considered their submissions and closely perused records.



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12. Admittedly, the applicant and respondent no. 3 have been selected for appointment as Junior Clerk, through the same examination conducted by SSC. It is also admitted that respondent no. 3 was senior in order of merit in the said examination. The main contentions of the learned counsel for the applicant are, firstly that the applicant has not been informed about the disturbance in his seniority and the respondents ought to have given him the notice before taking any decision and secondly, the date of confirmation should be a criterion for fixing the seniority. We do not agree with the plea that the applicant came to know that he has been ranked junior to respondent no. 3 only when he received the promotion order dated 20.6.1995 (Ann A15). as the same has no substance. The very fact that the copy of the order dated 31.7.1989 (Ann A4) addressed to respondent no. 3 deciding that the position stated in his representation was found to be correct and he was considered to be senior to the applicant, was given to the applicant, the applicant cannot express his ignorance about existence of the same. The applicant failed to challenge letter dated 31.7.1989. Judgment in case of Arun Prasad (supra) will not apply. Even the judgment of Hon'ble Supreme Court in case of Sushma Muteja (supra) will also not be helpful. It is easily distinguishable as case pertains to determination of seniority on change of cadre which is not so in this case. The mistake committed by the office in the confirmation list dated 29.10.1991 would not change the position. In our opinion the respondents committed no error of law in fixing the seniority of respondent no. 3 vis-a-vis the applicant.

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13. We also do not find much substance in the submission of learned counsel for the applicant that the date of confirmation is to be the basis of seniority. Ernakulam Bench of this Tribunal in KC Jamaludheen's case (supra) has decided that as the result of earlier joining the applicant completed probation period earlier than other candidates and also was confirmed from the date earlier than the date from which the other candidates was confirmed, therefore, he was entitled to be ranked senior to the candidate who was senior in the merit list to join later. The facts of the case are easily distinguishable. The case of Jamauldheen (supra) is regarding selection for the post of driver on the basis of interview only and there was no competition held for selection. In the instant case the selection is through the competitive examination conducted by SSC. The merit has to be the criterion for fixing seniority. Hence the law laid down in Jamaludheen's case (supra) will not be helpful. Even the facts of the case of Maj Yogendra Narain Yadav's case (supra) are distinguishable and the law laid down by Hon'ble Supreme Court *in that case* too will be of no help to the applicant.

14. We are inclined to accept the contention of the learned counsel for the official respondents that since the position of seniority was informed to the applicant in 1989 itself, the period of limitation will start from 1989 itself. The present OA has been filed on 2.7.1996 after about 7 years when the first cause of action arose and, therefore, it is liable to be dismissed *on the ground of limitation as well as time barred.*

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15. In facts and circumstances and our aforesaid discussions the OA is devoid of merit and also time barred and, therefore, liable to be dismissed. The OA is accordingly dismissed.

16. There shall be no order as to costs.

*Dee*  
Member (J)

*W. M. M. S.*  
Member (A)

Dated : 08/08/2002

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