

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Allahabad this the 07th day of February 2002

Original Application no. 962 of 1998.

Hon'ble Mr. Justice R.R.K. Trivedi, Vice-Chairman
Hon'ble Maj Gen K.K. Srivastava, Member (A)

Nityanand Debnath, S/o Late H.M. Debnath,
R/o 68 (old) Tewaripur-2, Manasvihar Jajmau,
Kanpur.

... Applicant

By Adv : Sri O.P. Gupta

V E R S U S

1. Development Commissioner, Small Scale Industries,
Ministry of Industry, Govt. of India,
Nirman Bhawan (South Wing) 7th Floor Maulana Azad Road,
New Delhi.
2. Union of India through Secretary (S.S.I & A.R.I.),
Ministry of Industry Govt. of India, Udyog Bhawan,
New Delhi.
3. Sri Patha Ray Director (Leather/Footwear)
in S.I.D.O. S.I.S.I Industrial Estate,
Patana.

... Respondents

By Adv : Km. Sadhana Srivastava

O R D E R

Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

By this OA under section 19 of the A.T. Act,
1985, the applicant has challenged the order dated 6.8.1998
(Ann 1) by which the representations of the applicant dated
13.6.1998 & 14.6.1998 questioning the seniority ^{had} been
rejected.

2. The claim of the applicant in short is that he was appointed as Deputy Director as direct recruitee vide order dated 24.11.1988. He actually joined the post on 17.4.1989. It is further submitted that respondent no. 3 Sri Patha Ray was appointed as Deputy Director, on the basis of promotion w.e.f. 10.7.1990. The grievance of the applicant is that though the respondent no. 3 was appointed subsequent to the applicant, he has been shown senior to him in the seniority list circulated vide letter dated 13.09.1993 (Ann 5). The submission of learned counsel for the applicant is that the quota of the promotees and direct recruitees for the post of Deputy Director, Leather/Footwear is 75% ~~now~~ for promotees 25% for direct recruitees. As per Govt. order of 1959, the appointments were used to be made against the slots kept vacant for the promotees and direct recruitees and the seniority was used to be assigned according to the date of vacancy of a particular slot. It is submitted that this position has been reversed by subsequent O.M. dated 07.02.1986 and the seniority list prepared by the respondents is incorrect and illegal. The O.M. dated 7.2.1986 has been filed as annexure 1 to the Misc. Appl. no. 1133/00. The learned counsel for the applicant about has also submitted that the applicability of the O.M. dated 7.2.1986, the Chandigarh Bench of this Tribunal considered and decided the issue and the order has become final. Copy of the order dated 5.11.1999 in OA 460-JK/1998 has been filed as annexure 2 to the Misc. Appl. no. 1133/00. Learned counsel for the applicant has also placed reliance in the Judgment of Hon'ble Supreme Court in case of Rudra Kumar Sen vs. U.O.I. & Ors, 2000 SCC (L&S) 1055. Learned counsel for the applicant has submitted that in view of the aforesaid the seniority list is liable to be quashed and respondents be directed to prepare the correct seniority list.

3. Km. Sadhana Srivastava, learned counsel for the respondents on the other hand submitted that the seniority list has been correctly prepared. The respondent no. 3 was appointed against the vacancy which had arisen earlier than the vacancy against which the applicant had been appointed, hence the respondent no. 3 has rightly been shown senior to the applicant.

4. We have considered the submissions of learned counsel for the parties. In fact the question of determination ~~was~~ about applicability of the O.M. dated 7.2.1986. Chandigarh Bench of this Tribunal considered the case at length and has concluded the legal position in the following words:-

"..... However, the situation may arise where total posts available for either of the quotas were not available. Under it, a decision was taken which was made effective through OM dated 7.2.1986. Under the OM of 1959 (supra) slots were maintained for each quota and they were assigned seniority as per the slots. However, by 1986 OM, finding that keeping vacant of slots sometimes gave unintended seniority to direct recruits over promotees who are already in position, this practice was done away with. After this notification, under the law accepted now and laid down by the judgment of the Hon'ble Supreme Court in various cases, seniority is determined by the length of service in a particular cadre read with maintenance of rotation, if that is possible."

The Bench also relied on the judgment of Full Bench. Para 11 of the order is being reproduced below :-

"A similar controversy, though on facts in reversed position, as compared to the facts of the present case, came up before the Hyderabad Bench of C.A.T. before a Full Bench and subsequently before a D.B. in this case, the OM dated 7.2.1986



it was held that this OM is prospective in operation and even those employees empanelled and selected prior to 1.3.1986 but actually appointed after 1.3.1986 will be covered by this OM for the purpose of seniority. Considering the ration of this judgment as reported in the case of J.V. Hanumantha Rao & Others Vs. Secretary, Ministry of Defence, Naval Headquarters, New Delhi, 1999 (2) Administrative Total Judgments, page678, respondents no. 2 and 3 shall have to be placed in seniority below the applicant who was appointed on 20.2.1986 before OM dated 7.2.1986 was on record w.e.f. 1.3.1986 while respondents 2 and 3 were recruited in subsequent year of recruitment, i.e. 1987."

5. From the aforesaid judgments thus it is clear that the seniority list prepared by the respondents requires re-consideration in view of the OM dated 7.2.1986. The representation of the applicant has not been correctly decided. The applicant is entitled for the relief.

6. For the reasons stated above the OA is allowed. The order dated 6.8.1998 (Ann 1) is quashed. The representation of the applicant dated 13.6.1998 and 14.6.1998 stands revived and shall be considered again and "shall be" decided in the light of OM dated 7.2.1986 and the judgment of the Chandigarh Bench of this Tribunal. This exercise shall be completed within four months from the date copy of this order is filed. If the contention of the applicant is accepted the applicant shall be considered for the benefit for which he may be legally entitled on account of his changed seniority.

7. There shall be no order as to costs.



Member (A)



Vice-Chairman

/pc/