

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD

(THIS THE 24 DAY OF Oct, 2010)

Hon'ble Dr.K.B.S. Rajan, Member (J)
Hon'ble Mr. S.N. Shukla, Member (A)

Original Application No.775 of 2004
(U/S 19, Administrative Tribunal Act, 1985)

K.D. Singh aged about 48 years, Resident of Q.No.GT-58, Larmour Bagh Cantt. Kanpur.

.... **Applicant**

Present for Applicant : *Shri R.K. Shukla*

Versus

1. *Union of India, through the Secretary, Ministry of Defence Production & Supplies, Govt. of India. New Delhi-11.*
2. *The Secretary, Ordnance Factory Board, 10-A, Shaheed Khudiram Bose Road, Kolkata-1.*
3. *The General manager, Ordnance Equipment Factory, Kanpur.*
4. *Shri Y.C. Pandey, Supervisor/NT (OTS), through the General Manager, Ordnance Equipment Factory, Kanpur.*
5. *Shri D.P. Sharma, Supervisor/NT through the General manager, Ordnance Equipment Factory, Kanpur.*

.... **Respondents**

Present for Applicant : *Shri R.K. Srivastava*

O R D E R

(Delivered by Hon. Dr. K.B.S. Rajan, Member-J)

1. The grievance of the applicant has arisen on account of rescheduling, in the year 2003, of his seniority position in the grade of Security Assistant Grade B from 01-12-1981 to 26-08-1982. According to the applicant, it is beyond the administrative powers of the respondent to unsettle the settled position.

2. The capsulated facts of the case with terse sufficiency are as under:-

(a) The applicant was appointed on casual basis as Security Assistant B in four spells, with a break of one day each as under:-

- (i). From 01-12-1981 to 25-02-2982
- (ii). From 27-02-1982 to 26-05-1982
- (iii). From 28-05-1982 to 24-08-1982
- (iv). From 26-08-1982 onwards.

(b) The applicant's services were regularized in the said post of Security Assistant Grade B, w.e.f. 26-08-1982, vide Annexure A-V Factory Order Part II No. 2557 dated 03-11-1982. Vide Annexure A-VI Factory order Part II No. 484 dated 11-03-1985, the date of regularization of the applicant along with certain similarly situated persons was advance to the initial date of appointment on casual basis and the period of break was covered by grant of leave.

(c) On the basis of the date of regularization in the grade of Security Assistant Gr. B w.e.f. 01-12-1981, reckoning the seniority of the applicant in the said Grade, the respondents considered him for promotion to the next higher Grade of Supervisor (Non Technical) and thus the

applicant was promoted to the said post w.e.f. 10-11-1986 vide Factory Order Part II No. 2304 dated 18-11-1986.

(d) While so, in the year 1988, the respondents had published annexure A-IV Part II order dated 07-03-1988 inter-alia canceling the earlier Part II Order No. 484 dated 11-03-1985 (Annexure A-6). This meant that the date of regular appointment was pushed back to 26-08-1982. However, this change was not incorporated in any of the seniority list of Security Assistant Gr. B, issued in 1995. It was in 2001 that this change was stated to have been effected in the seniority list of Supervisor NT.

(e) Private respondent No.4, had made a representation to the authorities claiming seniority in the grade of Security Assistant Gr.B above the applicant and the respondents had entertained the same and rescheduled the seniority of the said respondent, vide Annexure A-II order dated 22-11-2003. By this order, both respondent No.4 and 5 were placed above the applicant in the grade of Supervisor NT.

(f) The applicant preferred Annexure A-VII representation dated 28-11-2003, pointing out the fact that pushing back the seniority of the applicant was behind his back, without giving any opportunity to him; and that in yet another OA filed in 1999, wherein the applicant averred that his

seniority in the grade of Security Assistant Gr. B was from 01-12-1981, the respondents had not denied the same and thus, the issue of Part II order dated 07-03-1988 cancelling the earlier DO Part II order No. 484 dated 11-3-1985 appeared to be fake. It is arbitrary too.

(g) It was in response to the above representation that the respondents had issued Annexure A-III order dated 15th December, 2003, stating that as per rules, seniority is to reckon only from the date of regular appointment.

(h) Aggrieved by the above order, the applicant had preferred an appeal to the Chairman, Ordnance Factory Board, vide Annexure A-VIII dated 2412-2003 and had also filed OA No. 33/2004. As the Appeal was still pending, the OA was disposed of with a direction to the appellate authority to dispose of the appeal. Annexure A-IX refers.

(i) It was in compliance with the order of the Tribunal that the respondents had considered the appeal and had passed the impugned Annexure A-1 order, dismissing the appeal.

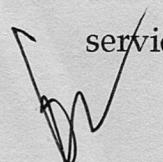
(j) Aggrieved by the above said decision, the applicant has challenged Annexure A-1 to A-IV.

The following are the prayers made:-

- (i). To issue a writ, order or direction in the nature of certiorari quashing the order dated 24.04.2004 (Annexure A-I) and order dated 22.11.2003 (Annexure A-II) and 15.12.2003 Annexure A-III) assigning seniority to the respondent No.4 and 5 in the grade of Supervisor/Non-Technical (Other than stores) over and above to the petitioner.
- (ii). To issue a order or direction in the nature of certiorari quashing the order No.522 dated 7.3.1988 (Annexure A-IV) amending the petitioner's date of appointment from 1.12.1981 to 26.8.1982 passed by the respondent No.3.
- (iii). To issue a writ, order or direction in the nature of Mandamus commanding the respondent No.3 to promote first to the petitioner on the post of Chargeman Grade II/NT before promoting to the respondent No.4 & 5.
- (iv). To issue any other direction or order as this Hon'ble Tribunal may deem fit and proper in the circumstance of the case.
- (v). To award cost throughout to the applicant.

3. Official Respondents have contested the O.A. Though notices were issued to the private respondents, they had not entered appearance. This was recorded in the docket order dated 24-04-2006. Thus, they had to be set ex-parte.

4. In their reply respondents, after giving the brief facts of the case, submitted that initially the applicant's services were regularized only w.e.f. 26-08-1982 (from which date he had continuous uninterrupted service) but later, by mistake date of regularization of his services had



been advanced to 01-12-1981, which was the date of his initial appointment on casual basis. In fact, as per rules, it is only the uninterrupted services that counted for regularization. It was on realizing the bona fide mistake committed by the respondents, that the earlier order of regularization of the applicant from 01-12-1981 was cancelled and the date of regularization reckoned from 26-08-1982. The appointment of the private respondents 5 and 6 in the post of Security Assistant Gr. B being anterior to the date of regularization of the services of the Applicant in the post of Security Assistant Gr. B, they ought to have been shown as senior to the applicant. However, by inadvertence, the effect of cancellation of the date of regularization w.e.f. 01-12-1981 vide DO part II order dated 07-03-1988 was not incorporated in the seniority list. Thus, the revised date of seniority of the applicant was not reflected in the seniority of the applicant published in 1995 and it continued to be w.e.f. 01-12-1981. However, the same was reflected in the 2001 seniority list of Supervisor NT while maintaining the seniority of the applicant intact in that grade. The private respondent No. 4 having observed the above, had penned a representation stating that his date of regular service in the grade of Security Assistant Gr. B being anterior to that of the applicant, the same warranted revision of seniority in the said grade and consequently, even in the grade of Supervisor Gr. B, his name should be above that of the applicant. Considering the rule position, the representation of the said private respondent was allowed and the impugned order at

Annexure A-2 came to be passed. The other orders impugned are on the basis of subsequent events as narrated in the O.A.

5. The applicant has filed the rejoinder in which he had reiterated the contents of the O.A.

6. Written arguments have also been filed by the applicant as well as the official respondents.

7. On the date of final hearing, while the counsel for the official respondents was promptly present, counsel for the applicant was, however, not available. Counsel for the official respondents had submitted that written arguments are available from the side of the respondents as well as of the applicant. He had reiterated the stand taken in the said written argument. As this is a matte of 2004 vintage, and as written submission is already available in the file, the case had been reserved for judgment invoking the provisions of Rule 15 of the CAT (Procedure) Rules, 1987.

8. Pleadings and written arguments perused and analyzed.

The main thrust of the argument by the applicant is as under:-

(a) Change of seniority entailing civil consequences, before making change in seniority list, the applicant should have been afforded with opportunity of hearing. Failure to do so would mean violation of principles of natural justice. Smt Sudha Sharma and Another vs UOI



and Others ATJ 2003(1) P. III CAT PB New Delhi, based on R

Sulochana Devi vs DM Sujatha and others ATJ 2005 (1) 671 is relevant.

(b) The other person who had also been regularized w.e.f. 01-12-1981 had not been disturbed and he has higher promotion.

(c) Though respondents claim that the revision of seniority has been effected in the seniority list of Supervisor NT, the same has not been filed.

(d) Rescheduling of seniority list after 20 years is against the provisions of Art. 14 and 16 of the Constitution. R.S. Sadashiv Swamy vs State of Tamil Nadu AIR 1974 SC 2271, Cecil D Souza vs Union of India (1976) SCC (L &S) 115, B.S.Bajwa and another vs State of Punjab (1998) SCC (L&S) 611 refer.

9. In their written arguments, the respondents have stated as under:-

(a) Date of regularization of the applicant w.e.f. 01-12-1981 had been erroneously fixed and on realizing the same, the said order was cancelled. However, the same could not be incorporated in the seniority list of 1995 but reflected in the seniority list of Supervisor NT published in 2001.

(b) It is settled law that seniority of a Government employee shall be counter from the date of regular service in the grade and adhoc/casual service cannot be counted for seniority as held in the case of Krishna



Kant Rawat Vs. Union of India and others reported in 2002 (3) ATJ 126,
Lucknow Bench of Central Administrative Tribunal September part of
2003.

“6. That it is also settled law that seniority of a Government employee shall be counted from the date of regular service in the grade and adhoc/casual service cannot be counted fro seniority as held in the case of Krishna Kan Rawat Vs. Union of India and Others reported in 2002(3) ATJ 126, Lucknow Bench of Central Administrative Triubnal September Part of 2003. Besides, the Hon’ble Supreme Court in the case of Neki Ram and others Vs. Ama Raamgodaru and others reported in 2002(2) S.C. Service Law Judgments 303 has also held that adhoc services cannot be counted for seniority and promotion.”

10. Certain vital legal issues involved in this case are as under:-

(a). Whether the respondents were or were not right in entertaining the request of the private respondent No. 4 as late as in 2001 to rectify the seniority position as of 1988.

(b). Whether in allowing the request of the private respondent, the applicant has been meted with certain civil consequences?

(c). If such civil consequences resulted in the action on the part of the respondents, whether principles of natural justice were violated as alleged by the applicant.

(d). On merit, whether on rescheduling the seniority of the applicant and private respondents the same could result in deprivation of promotion chances of the applicant to the post of Chargeman Gr. II.

11. The above issues are analyzed ad seriatim as hereunder:-

Point (a) to (c) : Admittedly, the applicant's seniority in the grade of Security Assistant Gr. B, was originally reckoned w.e.f. 26-08-1982, the date of continuous appointment on casual basis without any break and later on modified as effective from 01-12-1981, the date of initial appointment on casual basis. Along with him was another candidate by name P.K. Chaturvedi in whose case also regularization took place from the date of initial appointment on casual basis. It was on the basis of this seniority, that the applicant was promoted as Supervisor NT in 1986. At that time, there was absolutely no objection from any corner either as to the fixation of seniority of the applicant w.e.f. 01-12-1981 or for that matter, as to the promotion of the applicant to the higher grade on the basis of this seniority. Though the respondents stated that they had cancelled the DO Part II order whereby the applicant's seniority was restored to 26-08-1982 whereby the date of regularization of the applicant in the post of Security Assistant Gr. B was fixed at 01-12-1981, admittedly the same was not incorporated in the seniority list of Supervisor NT published in 1995. It was however, submitted by the respondents that in the 2001 seniority list the change in the date of regularization of the applicant was effected. However, no copy of the said seniority was filed by the respondents nor was it averred that there was sufficient notice to the applicant in this regard. It was as late as in 2003 that the private respondent's request for revision of seniority was considered and the seniority of the applicant was disturbed. Here again, such a change in the seniority position of the applicant was effected without notice to the applicant who, by that time had at his

credit service of 17 years in the promotional post. This is a settled position of seniority and thus, a vested right having been crystallized by the applicant, unsettling the settled seniority position at this distance of time, that too without notice to the applicant, is wholly illegal and arbitrary. We are supported in this regard by various decisions of the Apex Court as hereinafter mentioned.

(i) *H.S. Vankani v. State of Gujarat*, (2010) 4 SCC 301, wherein the Apex Court has held as under:-

38. Seniority is a civil right which has an important and vital role to play in one's service career. Future promotion of a government servant depends either on strict seniority or on the basis of seniority-cum-merit or merit-cum-seniority, etc. Seniority once settled is decisive in the upward march in one's chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It instills confidence, spreads harmony and commands respect among colleagues which is a paramount factor for good and sound administration. If the settled seniority at the instance of one's junior in service is unsettled, it may generate bitterness, resentment, hostility among the government servants and the enthusiasm to do quality work might be lost. Such a situation may drive the parties to approach the administration for resolution of that acrimonious and poignant situation, which may consume a lot of time and energy. The decision either way may drive the parties to litigative wilderness to the advantage of legal professionals both private and government, driving the parties to acute penury. It is well known that the salary they earn, may not match the litigation expenses and professional fees and may at times drive the parties to other sources of money-making, including corruption. Public money is also being spent by the Government to defend their otherwise untenable stand. Further, it also consumes a lot of judicial time from the lowest court to the highest resulting in constant bitterness among the parties at the cost of sound administration affecting public interest.

39. Courts are repeating the ratio that the seniority once settled, shall not be unsettled but the men in power often violate that ratio for extraneous reasons, which, at times calls for departmental action. Legal principles have been reiterated by this Court in Union

of India v. S.K. Goel, T.R. Kapoor v. State of Haryana and Bimlesh Tanwar v. State of Haryana.

The above decision is going in tandem with the decision in the case of *Cecil D Souza (1976) SCC (L & S) 115*, relied upon by the Applicant vide his written arguments.

(ii) In *K.R. Mudgal v. R.P. Singh*, (1986) 4 SCC 531 the Apex Court has held as under:-

9. We may also refer here to the weighty observations made by a Constitution Bench of this Court in *Malcom Lawrence Cecil D'Souza v. Union of India* which are as follows:

"Although security of service cannot be used as a shield against administrative action for lapses of a public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one's position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time."

(iii). In *B.S. Bajwa v. State of Punjab*, (1998) 2 SCC 523 the Apex Court has observed:

It is well settled that in service matters the question of seniority should not be reopened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable.

(iv). In *Basanti Prasad v. Bihar School Examination Board*, (2009) 6 SCC 791, it has been held;

22. We do not think it necessary to burden this judgment with reference to various decisions of this Court, where it has been

emphasised time and again, that, where there is inordinate and unexplained delay and third-party rights are created in the intervening period, the High Court would decline to interfere. However, if the delay is properly explained, and if the third-party rights are not going to be affected, the High Court may entertain the petition and consider the case of the aggrieved person on merits.

12. Point d : The post of Supervisor NT is stated to be a selected post. In this regard, para 23 of the OA refers. This has not been rebutted by the respondents in their counter reply. Thus the applicant has reiterated this aspect in his rejoinder too. In the written argument of the applicant also, this legal point has been emphasized. In so far as promotion to the selection post is concerned, seniority does count for working out the zone of consideration but promotion is granted on the basis of merit (tempered with seniority). In this regard, the decision of the Apex Court in *Central Council for Research in Ayurveda & Siddha v. K. Santhakumari (Dr)*, (2001) 5 SCC 60, is relevant and the same is as under:-

In the High Court, the appellants herein failed to point out that the promotion is in respect of a "selection post" and the principle to be applied is "merit-cum-seniority".

In *N. Suresh Nathan v. Union of India*, (2010) 5 SCC 692, the Apex Court has observed as under:-

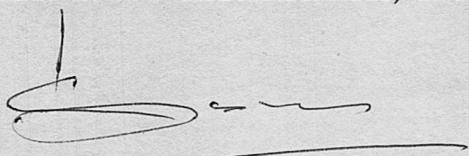
42. The person, who is most meritorious, is the most suitable person to be promoted for the selection post. Merit, in other words, is the sole criterion for promotion to the selection post.

13. Yet another legal flaw is that the respondents had simply treated the private respondents as having been promoted to the grade of Supervisor NT, without holding any review DPC. This is impermissible as the post is selection post and merit cum seniority is the criterion.

14. In view of the above, we have no hesitation to hold that the applicant has made out a cast iron case in his favour and consequently, this O.A. is allowed. The impugned orders at Annexure A-1 to A-IV in

so far as the applicant is concerned is quashed and set aside. Respondents shall not disturb the seniority of the applicant on the basis of his initial appointment as Security Assistant B w.e.f. 01-12-1981 and the consequential benefits arising out of the same shall not be denied to him.

15. Under the above circumstances, there shall be no orders as to cost.



Member-A



Member-J