

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No.311/2013

Reserved on :05.04.2021

Pronounced on: 07.04.2021

**Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Mrs. Hina P. Shah, Member (J)**

Shyam Kumar s/o Pooran Chand, by cast Harijan, aged about 40 years, r/o H.No.40, Harijan Basti, Sanganeri Gate, Jaipur presently working as Safai wala, in the Dispensary No.5, C.G.H.S. Jyoti Nagar, Jaipur.

...Applicant.

(By Advocate: Shri B.K.Jatti)

Versus

1. Union of India, through the Secretary to the Government of India, Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi.
 2. Director General, CGHS, Nirman Bhawan, New Delhi.
 3. Additional Director, CGHS, Kendriya Sadan Parisar, Block-B, Ground Floor, Sector-10, Vidhya Dhar Nagar, Jaipur.
 4. Maya Devi w/o Suresh Kumar, presently working in the CGHS Dispensary, Near Sai Baba Mandir, Chaura Rasta, Jaipur.
 5. Hari Kishan, presently working as Safaiwala in CGHS Head Office, Kendriya Sadan, Vidhyadhar Nagar, Jaipur.
 6. Rakesh Kumar, presently working as Safaiwala in CGHS ply clinic, Bajaj Nagar, A.G. Colony, Jaipur.
 7. Mukesh Kumar, presently working as Safaiwala in CGHS No.4 Dispensary, Kaushalya Marg, Bani Park, Jaipur.
- ...Respondents.

(By Advocate: Shri N.C.Goyal)

ORDER**Per: Dinesh Sharma, Member (A):**

In this OA, the applicant has prayed for placing his name above Respondent Nos.4 to 7 in the seniority list of C and D employees, and to quash the order dated 20.11.2012 (Annexure A/1), which has been passed by the respondents rejecting the applicant's representation in this matter, following a direction of this Tribunal in OA No.176/2009. The applicant states that he has been a regular appointee of 28.01.1987, while the Respondents Nos.4 to 7 were appointed in later years (1988 to 1989). The seniority list of C and D employees on 01.01.2008 (Annexure A/3) shows his name below these employees which is wrong. His representation against this was finally considered by the respondents, on direction by this Tribunal and has been wrongly rejected. The fact is that the applicant is a regular employee since 1987 and has also been granted ACP, payable after completion of 12 years, in the year 1999. Hence, he should be placed above the Respondent Nos.4 to 7.

2. A reply has been filed by the official respondents denying the claim of the applicant. It is stated that a provisional seniority of employees in C and D categories was

(3)

prepared in the year 2002, where the name of the applicant was below the Respondents Nos.4 to 7. The applicant submitted his representation, dated 31.02.2002 against this. This was considered by the competent authority, along with other representations, and a final seniority list was published vide OM dated 15.01.2003. The applicant has not challenged this seniority list until 2008, and has filed his representation against the provisional seniority list of 2008. This, according to the respondents, is raising a stale and time-barred issue, which cannot be revived just because an OA was filed by the applicant that was disposed of by a direction to pass a speaking order. The speaking order passed by the respondents gives reason why the applicant was put under the respondents. The respondents, though came in employment after the applicant, were confirmed against clear vacancies before the applicant (in the years 1990-1991, as against 1992, when the applicant was confirmed). The respondents have cited the judgment of the Hon'ble Supreme Court in the case of **Union of India** vs. **M.K.Sarkar** (2010) 2 SCC 61 in support of their claim of applicant's case being time barred. No reply was filed by the private respondents despite sufficient opportunities granted to them for doing so.

(4)

3. The applicant has filed a rejoinder denying the claims made in the reply. Besides reiterating the claims made in the OA, it is stated that the applicant was never informed about the final seniority list in 2003 and that is the reason for his not agitating against it. He has been agitating this matter since the provisional list of 2008 was published. Since the seniority list is prepared every year, it is a recurring cause of action, and thus not time-barred.

4. The matter was heard through video conferencing on 05.04.2021. Learned counsels of both the parties argued their case repeating their respective pleadings.

5. After going through the pleadings and hearing the learned counsels of both the parties, it is clear that there is no dispute regarding applicant getting into employment earlier than the private respondents but getting confirmed later than them. It is also not disputed that the applicant was aware of his name having been put below private respondents in a seniority list published in 2002 and he had objected to it. Though he claims that he was not made aware of the final seniority list published in 2003, the fact remains that he did not do anything after filing representation against the 2002 list. The learned counsel for the applicant argued that the applicant was not informed

(5)

about the alleged final seniority list said to have been published in the year 2003. We are not told anything about what the applicant did when he allegedly got no response to his objection to the 2002 seniority list. If he was serious about his claim, he should have made attempts to find out and take action for further redressal of his grievance which he has apparently not done. This definitely amounts his sleeping over his claim for seniority and can be taken as his acquiescence with his lower position in the seniority vis-a-vis private respondents. Therefore, we agree with the claim of the official respondents that the applicant's claim for the seniority before this Tribunal is barred by period of limitation. An order, following this Tribunal's order to pass a reasoned order, does not, *ipso facto*, amount to renewing the cause of action. We also do not agree with the argument of the applicant that this is a recurring cause of action since a person, once put down in the order in a seniority list, is not expected to rise automatically above from that position without any reason. Thus, calling this a recurring cause of action only because of seniority list being an annual exercise, would be stretching an argument too far. This would also work against the applicant, since, if he believes the seniority list to be an annual exercise, his inaction, in not trying to find out his position in the list for 6 years after 2002, would also amount to his sleeping over his rights.

(6)

6. As described above, we find that the applicant is raising an issue which he has apparently not raised for long years and thus it amounts to his acquiescence with his lesser position in seniority vis-a-vis private respondents. The respondents have given a prima-facie maintainable reason for putting him below the private respondents (since they got confirmed before the applicant). The applicant got the ACP in 1999, which he claims as a proof of his having being in regular employment since 1987. This is not denied by the respondents but they have stated it to be not a ground for claiming his position in the seniority list, that was determined on the basis of the date of confirmation. The learned counsel for the applicant argued that there are decisions of the Higher Courts where it is decided that the seniority should not be changed because of the dates of confirmation and it should be based on the order of merit (in the selection process/examination). We do not think that those decisions (not specifically quoted by the learned counsel of the applicant, and hence not cited here) can be applicable to the facts of this case where there is no regular selection on the basis of an examination. The appointments in the present OA were made against casual or ad-hoc vacancies and hence if the respondents have determined seniority on the basis of dates of confirmation against

(7)

regular posts, it cannot, prima-facie be considered arbitrary or unjust.

7. The OA, therefore, fails on ground of it being barred by period of limitation and also for not having prima-facie strong case of substantive merit. The applicant has apparently slept over whatever civil right he had and thus lost his claim for redressal through judicial intervention. We have also not found any substantive merit in the claim of the applicant since the respondents' action, in placing him lower in the seniority list vis-a-vis private respondents, has prima-facie strong justification.

8. The OA is, therefore, dismissed. No costs.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

/kdr/