

Reserved

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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No. 95 of 1988

K.L. Kureel

.... Applicant

Versus

Union of India and Ors.

.... Respondents

CORAM:

Hon. Mr. Justice U.C. Srivastava, V.C

Hon. Mr. K. Obayya, Member(A)

(By Hon. Mr. K. Obayya, Member(A))

In this application, the applicant has prayed for a direction to the respondents to fix his seniority on the post of L.D.C from the date of confirmation, and assign his correct seniority in the grades of U.D.C, O.S. Grade-II & O.S. Gr-I and to pay differential amount of pay and allowances besides other consequential benefits byquashing the orders dated 28.4.88 and 11.4.87(Annexures V and VI)

2. In the above said impugned orders, the case of the applicant for higher seniority as L.D.C and O.S. Grade-I was not acceded to.

3. The applicant is working as Office Superintendent O.S. Gr-I in the Ordnance Equipment Factory, Kanpur. His case is that he entered service on 18.5.62 against a reserved vacancy as Lower Division Clerk(LDC) and was confirmed on the said post vide letter dated 5.6.63. He was later on promoted as Upper Division Clerk

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on 1.17.1974. One Azijur Rehman was also promoted as Upper Division Clerk along with him, though the said Azijur Rehman was confirmed as Lower Division Clerk on 1.4.1969 much later than the applicant. He represented in this matter pointing out violation of Articles 26 & 29 of C.S.R, as the applicant would be deemed to have become permanent earlier, on the basis of the date of confirmation as such he should be placed above all those who were either officiating or were confirmed later. He was informed vide letter dated 28.4.88 that similar matter is being considered by the Ordnance Factory Board, and pending any further decision, the status-quo should be maintained. Regarding his seniority in O.S. Gr-1, he was informed that this is a centrally controlled post and his request can not be considered.

3. The grievance of the applicant is that there has been violation of articles 26 and 29 of C.S.R. and also instructions contained in O.M. No. 9/45/60 -Estt(D) dated 20.4.62 inasmuch as those who are permanent should rank en bloc senior to those who are officiating and that orders contained in Annexures V&VI have been passed without application of mind. There has been also violation of Articles 14 and 16 of the Constitution of India. The applicant contends that he is entitled for seniority on the basis of the date of his confirmation. Persons appointed as Lower Division Clerks from the post of Checkers in other sister factories were promoted earlier to the applicant though they have completed only 2 to 3 yrs of service in the lower category which is not in accordance

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with rules.

4. The case is opposed by the respondents and it is pointed out that the seniority is to be determined on the basis of length of service in accordance with Ministry of Home Affairs letter dated 22.6.1949 and that the persons appointed prior to 22.12.1959 to a particular grade on regular basis will rank en bloc senior to those appointed after that date. Promotions are made on the basis of assessment by D.P.C and ranking given by them. Seniority rules notified under rules 26 and 29 of C.S.R have been followed and there is no violation of seniority rules in the case of the applicant. It is also stated that Checkers promoted in other sister organisations will not give rise to any claim for higher seniority to the applicant as upto the level of O.S. Grade-II. Seniority is maintained at the local level by the different factories and it is only at the level of Grade-I the seniority is common, and that whatever promotions of Checkers or others are made, below the level of O.S. Grade-I that is no consequence and confers no rights of seniority to the applicant.

5. We have heard the counsel for the parties. The applicant's main contention is that the rules have not been followed correctly in this case. This has been denied by the respondents. So far as the general principles of seniority is concerned, they have been spelt out in O.M. No. 9/11/55-RPS dated 22.12.1959

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of Ministry of Home Affairs. In respect of direct recruits, seniority has to be determined by the order of merit in which selections were made and in respect of promotees-seniority will be reckoned from the order of their selection where promotions are made on the basis of selection by D.P.C, the seniority of such promotees shall be in the order in which they are recommended for such promotion by the Committee. Where promotions are made on the basis of seniority, subject to the rejection of the unfit, the seniority of persons considered fit for promotion at the same time shall be the same as the relative seniority in the lower grade, and the inter-seniority of direct recruits and promotees will continue to be determined in accordance with the principles in force prior to the issue of this O.M.

6. It is well settled that seniority has to be determined in accordance with rules so framed. In the absence of any rule the criteria of length of service on a post can be followed, while assigning interse seniority between the employees in the same grade or category. Seniority position in initial appointment is liable to be affected if juniors adjudged meritorious are promoted to the higher post or seniors have been bypassed having been assessed as unfit and in these circumstances juniors march over their seniors and are placed higher in seniority.

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The seniority earned because of promotion on merit or on consideration of fitness can not be challenged.

The applicant's case is that his seniority should be fixed correctly over his juniors i.e those who were appointed later. The applicant has mentioned some Checkers appointed as L.D.Cs. His claim for higher seniority over those appointed after him, is not tenable for the reasons that seniority upto the level of O.S. Grade-II is maintained separately on local basis for each factory and promotion of juniors in some other units confers no right to him. Promotions in different units depends upon vacancies and if vacancies arise earlier those senior ~~they~~ ^{have} may got to be promoted. There are no intertransfers and promotion on the basis of common seniority, hence whatever promotions were made in some other units even if they were appointed/promoted after the applicant that gives no cause of grievances, since the applicant is not eligible for promotion in factories other than the one ~~he~~ is working. It is only at level of O.S. Grade-I that there is common seniority list. The applicant has sought a blanket prayer that his seniority ever since he joined service in 1962 on the post of L.D.C, U.D.C, O.S. Grade-II and O.S. Grade-I should be determined. He has not come up with a definite case, as to when certain promotion was due to him, that was denied or that he was entitled to a particular seniority that was not given. Seniority in higher posts is relatable to date of promotions, and some of these promotions being on merit considerations seniority ceases to be the sole criteria.

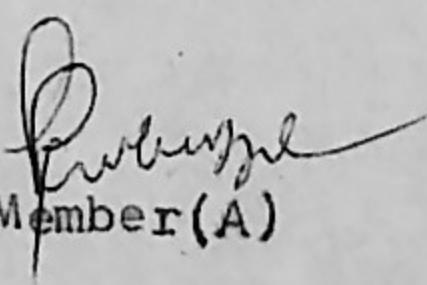
7. A Reference is made to the case Malcom Lawrence

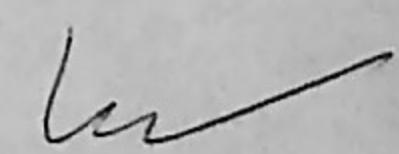
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Cecil D'souza Vs. Union of India and Ors (AIR 1976 SCC L&S) 115, wherein it was held that raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties and that it would be in the interest of smoothness and efficiency of service that such matters should be given quietus after a lapse of some time.

In the case G.C. Gupta Vs. N.K. Pandey (AIR 1988 SCC L&S page 260), the Supreme Court held that inordinate delay is not merely a factor for the court to refuse appropriate relief but also relevant consideration for not unsettling settled things.

Having considered the factual position and also the law on the point we are, of the view that no case has been made out by the applicant for our interreference. The application is without merit and accordingly, it is dismissed with no order as to costs.


Member (A)


Vice Chairman

Dated: 27th April 1993

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