

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 30th day of May 2002.

Original Application no. 1036 of 1995.

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

Sri Prem Chandra, S/o Sri Palak Dhari,
R/o 64/15, Gadaria Mohal, Kanpur.

... Applicant

By Adv : Sri B.P. Srivastava
Sri R.K. Pandey

Versus

1. The Union of India, through the Secretary,
Ministry of Defence, New Delhi.
2. The General Manager, Ordinance Equipment Factory,
Kanpur.
3. Sri Sheoji Harijan, S/o Sri Ganga Ram, Ticket No. 33,
T.R. Ordinance Equipment Factory, Kanpur.

... Respondents

By Adv : Sri A. Sthalekar, Sri Shesh Kumar
Sri P.K. Basaria

ORDER

Hon'ble Maj Gen K.K. Srivastava, AM.

In this OA, filed under section 19 of the A.T. Act, 1985, the applicant has challenged the order dated 1.9.1995 (Ann A1), reverting the applicant from the post of Die Sinker HS II to Die Sinker (Skilled) and also the factory order dated 22.9.1995 and has prayed that the impugned orders dated 1.9.1995 and 22.9.1995 be quashed and the applicant be deemed senior to respondent no. 3, Shri Sheoji Harijan.

2. The facts, in short, giving rise to this OA are that the applicant was offered appointment as Labour 'B' on 26.4.1980 and he joined on 6.5.1980. Respondent no. 3 was also appointed as Labour 'B' on the same day. The applicant was promoted on the post of Die Sinker TR on 1.8.1984, again promoted in the cadre of Die Sinker (Skilled) in the pay scale of Rs. 950-1500 by order dated 12.1.1990. The applicant was further promoted as Die Sinker HS II in the scale of Rs. 1200-1800 by order dated 20.12.1993. As per applicant he has all along been senior to respondent no. 3. He has been reverted by impugned orders dated 1.9.1995 and 22.9.1995. Hence this OA, which has been contested by the respondents by filing counter reply.

3. Sri B.P. Srivastava, learned counsel for the applicant submitted that the applicant ^{has} all along been senior to respondent no. 3, Sri Sheoji Harijan. Learned counsel for the applicant invited our attention to annexure A-4 which is the promotion order dated 1.8.1984 and submitted that the applicant's name finds place at sl no. 14 whereas the name of respondent no. 3 is at sl no. 2. The applicant ^{has} at every stage has been promoted only after passing the required trade test. In the promotion order dated 20.12.1993 of Die sinker HS II the applicant is placed at sl no. 1 whereas the respondent no. 3 at sl no. 2. Thus there should be no doubt that the applicant is senior to respondent no. 3 right from the date of appointment.

4. Sri B.P. Srivastava, learned counsel for the applicant further submitted that respondent no. 3 never

challenged the seniority of the applicant right from 1980 onwards. The action of the respondents in reverting the applicant from Die Sinker HS II to Die Sinker (Skilled) is irregular, discriminatory and against rules. Sri Srivastava also submitted that the seniority of any employee cannot be changed after a lapse of many years. In the instant case the seniority of the applicant has been ⁱⁿ changed ⁱⁿ after a lapse of 14 years. Learned counsel for the applicant relied upon the judgment of Hon'ble Supreme Court in Malcom Lawerence Cecil D'Souza Vs. Union of India & Ors 1976 SCC(L&S)115 in which it has been held that the seniority list cannot be challenged after a lapse of 14 or 15 years. Subsequent seniority list reflecting the seniority already determined afforded a fresh right. The second case on which the learned counsel for the applicant has placed reliance is that of K.R. Mudgal & Others Vs. Union of India & Others 1987 SCC (Lab) 6 holding a similar view. Learned counsel for the applicant concluded his arguments submitting that the impugned orders should be quashed and the applicant should be given relief.

5. Resisting the claim of the applicant, Sri S.K. Pandey brief holder of Sri A. Sthalekar, learned counsel for official respondents submitted that the seniority of respondent no. 3 vis-a-vis the applicant has been correctly fixed. Respondent no. 3 was granted temporary status one day prior to the applicant and, therefore, the respondents have rightly ⁱⁿ been ⁱⁿ taken the action to correct the seniority. The proper opportunity has been given to the applicant and a show cause notice was issued on 16.5.1995 and only after receiving the reply and considering the grounds advanced by the

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applicant, the impugned order dated 1.9.1995 was issued reverting the applicant from higher post, which is a single post, to his correct post.

6. Shri Shesh Kumar, learned counsel for the respondent no.3 submitted that in the OA the applicant has not filed seniority list at all. He has only filed promotion order which cannot be taken to be seniority list. Sri Shesh Kumar, further submitted that the applicant has not challenged the factory order dated 14.11.1994 and, therefore, it has received finality. Since the impugned order of reversion is ^{an} consequence ^{an} to factory order dated 14.11.1994, by which respondent no. 3 has been placed senior to the applicant, and the factory order dated 14.11.1994 ^{an} ^{an} have not been challenged, no relief can be granted to the applicant.

7. We have heard learned counsel for the parties, perused records and considered the pleadings on records.

8. The main controversy is whether the applicant is senior to respondent no. 3 or not and in case it is found that he was senior to respondent no. 3, he cannot be reverted from the post of Die Sinker HS II as there is only one post of Die Sinker HS II. From perusal of records it is not disputed that both the applicant and respondent no.3 joined as Labour 'B' on the same day, were promoted as Die Sinker ^{an} ^{an} (TR) together by the same order, further promoted to the cadre of Die Sinker (skilled) by the same order and the order dated 20.12.1993 for promotion to the cadre of Die Sinker HS II in respect of the applicant and respondent no. 3 is the same. Since there is only one post and the

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applicant has been shown at sl no. 1 he was promoted to work as Die Sinker HS II. However, by the impugned order dated 1..9.1995, 22.9.1995 the position has been reversed.

9. Learned counsel for respondent no. 3 submitted that the applicant has filed only promotion orders which cannot be the basis for deciding the seniority of the applicant viz-a-viz respondent no. 3. We do not find any substance in this submission. In any promotion order the names are always shown serial wise according to the seniority and in the promotion orders dated 1.8.1984, 12.1.1990 and ~~20.12.1993~~ 20.12.1993 the name of the applicant is always shown earlier than that of respondent no. 3. It leaves no doubt in our mind that the applicant has all along ^{been} ~~with~~ treated as senior to respondent no. 3.

10. We would like to observe that the respondent no. 3, if he had any grievance about the seniority, should have raised the issue much earlier. ^{He} ^{has} even the respondents should have woken up earlier than 16.5.1995 when they issued the show cause. Sri S.K. Pandey has pointed out during the course of argument that this fact was detected only in 1994 that respondent no. 3 was granted status of temporary servant one day earlier than the applicant and the action of the respondents is only the rectification of the mistake committed by the department. An averment to this effect has been made by the respondents in para 15, 18 & 19 of their counter affidavit. Learned counsel for the respondents also submitted that in order to rectify their mistake, the factory order dated 14.11.1994 was issued. ^{He does not agree with this.} In case of Malcom Lawrence Cecil D'Suza (supra) the Hon'ble Supreme

Court has held as Under:-

"It is essential that anyone who feels aggrieved with an administrative decision affecting one's seniority should act with due diligence and promptitude and not sleep over the matter. 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."

^{hm} Similarly ^{hm} ~~their~~ ^{hm} lordship of Hon'ble Supreme Court have taken ^{hm} ~~the~~ ^{hm} similar view in K.R. Mudgil's case (supra).

11. Another arguments raised by learned counsel for the respondents that the factory order dated 14.11.1994 assumes finality as it has not been challenged by the applicant. We do not agree with this submission. ^{hm} ~~so well~~ ^{hm} The wrong has been done to the applicant by reverting him specially when he continued being treated as senior for 14 years and, therefore, the applicant is eligible for protection ^{hm} ~~of~~ ^{hm} his interest.

12. In the facts and circumstances and our aforesaid discussion, the OA is allowed. The impugned reversion order dated 1.9.1995 (Ann A1) and the factory order dated 22.9.1995 (Ann A2) are quashed. The applicant will continue to work as Die Sinker HS II. ~~He has been continued on the post because of interim order dated 11.10.1995.~~

13. There shall be no order as to costs.