

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 27/5 DAY OF April, 2011)

Hon'ble Dr.K.B.S. Rajan, Member (J)

Hon'ble Mr. D.C.Lakha, Member (A)

Original Application No.951 of 2003

(U/s 19, Administrative Tribunal Act, 1985)

T. S. Chaudhary,
S/o Late Shri Gajpal Singh Chaudhary,
R/o Vill. & Post Kandoli,
Distt. Dehradun.

..... *Applicant*

Present for Applicant :Shri S. Narain, Advocate.

Shri A. Tripathi, Advocate.

Versus

1. Union of India, through Secretary, Ministry of Science & Technology, New Delhi.
2. The Surveyor General of India, Dehradun.
3. Shri J.S. Sodhi,) Through the Surveyor
Asstt. Head O/o) General of India,
Survey of India, Dehradun) Hathibarkala, Estate,
4. Shri S.L. Yadav,) Dehradun
Asstt. Head O/o,)
Survey of India,)
Dehradun.)

..... *Respondents*

Present for Respondents : Shri S. N. Chatterji, Advocate

ORDER

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

Fixation of Seniority is the spinal issue in this O.A. The applicant entered the service in 1962 and on 14-11-1985, he was offered the post of Head Clerk, which he had to decline due to certain pressing domestic circumstances. An order was issued on 06-08-1987 promoting the applicant as Head Clerk and posting him to Bhuvaneshwar stating that in case any person refused for promotion, he would not be considered for promotion for a period of one year. Later on in 1988 the applicant and respondent No. 4 were promoted.

2. The High Court of Karnataka in Writ Petition No. 165 of 79 filed by one Shri V.T. Rajendran, had held as under:-

8. *When persons are promoted or appointed to a particular cadre, by whatever source it may be, they can reckon their services only from the dates of their appointments and they cannot reckon their services prior to their appointments. From this itself, it follows that confirmations in the department against permanent vacancies that arose in the department, must necessarily conform itself to the principle of seniority and the available number of vacancies in the department. In making confirmations, quota rule cannot by any stretch of imagination be made applicable. In this view itself, the contention of the petitioner is unanswerable.*

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3. The above judgment of the High Court was challenged before the Apex Court by the Union of India, but the same was dismissed on 10-07-1990. In pursuance of the above, the respondents had prepared a seniority list on 20-08-1993, in which the name of the applicant figured in at serial No. 142, while that of Respondent No. 4 at 143 and Respondent No. 3 at 188. The revision of seniority as above entailed review of promotion to the grade of Head Clerk/Assistant and the revised promotion list disturbed the date of promotion of the applicant and the private respondents in such a manner that made respondent No. 3 and 4 senior to the applicant in the seniority list prepared on the basis of date of promotion to the grade of Head Clerk/Asst. Annexure A-5 refers, wherein the details are as under:-

	Seniority	Date of initial appointment	Date of present post	Deemed date of promotion
Applicant	142	17-09-1962	25-05-1988	23-05-1981
Respondent No. 3	72	26-11-1962	16-05-1991	27-02-78
Respondent No. 4	134	17-11-1962	18-08-1988	23-05-1981

4. Representation filed by the applicant entailed no fruitful result as the respondents stated that nothing could be done in seniority already fixed, vide Annexure A-6.

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5. The above resulted in the applicant's filing OA No. 99/95 before the Tribunal, which, along with certain other OAs came to be decided on 17-04-2001 vide Annexure A-7, which mandated the respondents to ensure that the seniority list is prepared strictly in terms of the judgment of Karnataka High court. On the same lines yet another batch of OAs was disposed of vide Annexure A-8. On his representation as to the implementation of the order of the Tribunal as above, the applicant was informed that necessary review DPC would be conducted, vide Order dated 05-04-2002 at Annexure A-9. Despite such a commitment as nothing came through, Contempt Petition No. 97/02 in OA No. 99/95 was filed. It was at that juncture that Annexure A-10 communication dated 20-09-2002 was issued by the respondents to the applicant stating that the seniority position of the applicant had been correctly fixed in the grade of UDC and further promotion to the grade of Head Clerk, which was based on merit, was made whereby the private respondents due to their merit position stole a march over the applicant and that the applicant was found to be below in the grading. It is the case of the applicant that when in 1985 and 1987 the applicant was offered the higher post (which he could, of course, decline due to domestic circumstances), private respondents were not even considered and as such,

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contention raised in order dated 20-09-2002 was not understood.

6. In this O.A. the applicant has prayed for the following relief :-

- (i) To set aside the order dated 20.9.2002 (Annexure A-10 to this original application with compilation No. I`
- (ii) To set-aside, the order dated 9-12-1994 (Annexure A-6 to this original application with compilation No.I).
- (iii) To modify the seniority list dated 28.2.1994 (Annexure A-5 to this original application with compilation No. I), of Asstt. /Head Clerk and place the petitioner above to the respondents No. 3&4.
- (iv) To modify the deemed date of promotion of petitioner as Asstt./Head Clerk earlier to the respondents No. 3 & 4.
- (v) This Hon'ble Tribunal may kindly direct the respondet No. 2 to grant promotion on the post of office Superintendent, Establishment & Accounts Officer prior to the respondent No. 3 and also monatory benefits in respect of Pay & Allowances which he could have drawn after being promoted earlier to the respondent Nos. 3 and 4.
- (vi) This Hon'ble Tribunal may also direct the respondents to fix the pension of petitioner from the date of his promotion i.e. earlier to respondent No. 3 & 4.
- (vii) This Hon'ble Tribunal may also direct the respondents to grant all consequential benefits including monatory benefits along with arrears of

pay and allowances after deducting the payment which has already been paid to the petitioner, along with interest @ 24 % per annum.

7. Respondents have contested the O.A. According to them, the lower grading of the applicant, followed by the refusal of promotion offer given to him resulted in this lower position in the seniority list. The details given are as under:-

- (a) *Since the promotion from grade of UDC to that of Assistant prior to 1989 were strictly on the basis of selection-cum-merit and seniority in the grade of Assistant/Head Clerk was based on the order of merit in the selection panel, the respondent number 4 and respondent number 5 in O.A. No. 99/95 superseded the petitioner in the review DPC 1981, 1982 respectively on the basis of better grading in their ACRs.*
- (b) *The Petitioner could not find place in the "Select Panel" in Review DPC for the year 1983 and 1984.*
- (c) *Review DPC for the year 1985 - As per Minutes of the Review DPC the person had refused promotion were considered ineligible for placement in the seniority list in the year of refusal as per the instructions on the subject. The petitioner refused the promotion on 14.11.1985. A true copy of the refusal letter is attached as Annexure CA-3 to this affidavit.*
- (d) *No original DPC was held in 1986 hence no Review DPC was held in 1986.*
- (e) *The Petitioner could not find place in "Select Panel" in review DPC 1987.*
- (f) *The Petitioner was selected by promotion to the post of Assistant in Review DPC, 1988.*

8. Counsel for the applicant argued that there is no justification in the applicant's position in the seniority list lowered. In addition, written submissions were permitted to be given. However, no written arguments were received.

9. Pleadings perused. The criteria for fixation of seniority are the date of taking over the appointment. Thus, admittedly, the initial date of appointment of the applicant is anterior to those of the private respondents. Thus, he was offered the post of UDC in 1985 which he declined for his personal reason. The bar of promotion for one year on refusal is not merely that promotion for one year is postponed but it brings in its train the loss of seniority to the corresponding extent. That might have deferred the date of promotion and consequent lowering of seniority position of the applicant. There cannot be a quarrel in that regard. However, what perplexes is that the date of deemed promotion of Respondent No. 3, shri J.S.Sodhi had been advance to 1978, while his initial date of appointment as LDC is later than that of the applicant. It is this question that the applicant has raised. For, the said Shri Sodhi was not offered the appointment either prior to or at the time in 1985 when the applicant was offered the post of Head Clerk. **It is not the case of the respondents that at that time it was seniority which determined the criterion for promotion, while in the review DPC it was based on merit.** Such a contention cannot also be pressed into service, since, as per the **Government of India decision, the criterion adopted in normal DPC cannot be varied at the time of Review DPC.** Under such circumstances, it is not understood how the said Shri Sodhi could be deemed to have been promoted in the year 1978 itself. Karnataka High Court judgment

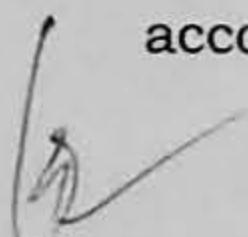
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only states that confirmation should be strictly on the basis of date of seniority. And date of appointment would determine the date of seniority for the purpose of promotion. Thus, in so far as the applicant is concerned, his initial date of appointment being anterior to that of respondent No. 3, there is no question of the deemed promotion of the said respondent prior to that of the applicant.

10. In so far as the fourth respondent is concerned, his date of initial appointment is also posterior to that of the applicant. However, if the deemed promotion is to be antedated to the actual date of promotion, then that the applicant had to decline his promotion in 1985 cannot be taken into account. For, had the applicant been promoted anterior to 1985, there would have been every chance of the applicant not declining to accept the promotion. Thus, while fixing the seniority of the applicant vis-à-vis the fourth respondent also, the respondents have erred in taking into account the factum of the applicant's declining the promotion to the post of Head Clerk in 1985.

11. Thus, in so far as fixation of seniority is concerned, the applicant has made out his point that he cannot have been made junior to the two respondents.

12. Now, the question is what would be the result of the same. The applicant has been agitating against the erroneous fixation of seniority right from the beginning. His initial filing of OA No. 99/95, subsequent filing of contempt petition etc., would prove that the applicant has been conscious of his entitlement right from the beginning and accordingly approaching the Tribunal. He had



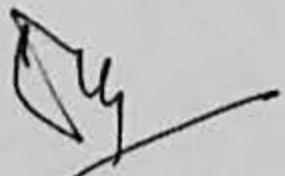
superannuated on 30-04-2001 as Office Superintendent. At this distance of time, to re-fix the seniority and hold review DPC would serve no purpose. There appears some error in fixation of the deemed date of promotion of Respondent No. 3. If this is an error, on the basis of that error, the applicant cannot claim the same benefit. However, in so far as respondent No. 4 is concerned, we may safely hold that the seniority of applicant in the post of Head Clerk cannot be after that of the said respondent No. 4. Thus, the applicant's seniority as head clerk would be kept at a place above that of respondent No. 4, which would govern his further promotion. As the post of Superintendent happened to be only a group C post, for which the normal criterion is seniority subject to rejection of unfit, it would be appropriate if the applicant is deemed to have been promoted along with one of his juniors i.e. respondent No. 4 to the post of superintendent so that the benefit of notional fixation of pay and consequent revision of pension would be made available to him.

13. In view of the above the O.A. is disposed of to the following extent:-

- (viii) Order dated 20.9.2002 (Annexure A-10 to this original application with compilation No. I) is set aside.
 - (ix) Order dated 9-12-1994 (Annexure A-6 to this original application with compilation No.I) is also set aside..
 - (x) The seniority list dated 28.2.1994 (Annexure A-5 to this original application with compilation No. I), of Asstt./Head Clerk is modified to the extent that the name of the applicant is placed just above private respondent No. 4
- [Signature]*

- (xi) The deemed date of promotion of petitioner as Asstt./Head Clerk earlier to the respondents would remain intact as the date of deemed promotion is the same for the said private respondent No. 4 and the applicant.
- (xii) The applicant is deemed to have been promoted to the grade of office Superintendent, from the date the junior Shri S.L. Yadav, respondent No. 4 was promoted and so is the case with reference to the higher promotion, if any, to the post of Establishment & Accounts Officer prior to the respondent No. 4.
- (xiii) The promotion to the above posts shall be notional without any benefit of actual pay, while arrears of pension arrived at on the basis of revised last pay drawn shall be actual, which the applicant is entitled to.
- (xiv) The respondents shall pass suitable orders on the basis of the above direction and make available revised PPO and also pay the arrears to the applicant.

14. This order shall be complied with, within a period of six months from the date of communication of this order. No cost.


(D.C.Lakha)
Member (A)


(Dr. K.B.S. Rajan)
Member (J)

Shashi