

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

O.A 273 of 1993

Date of Decision : 30.04.2001

Mr. B. H. Hameti : Petitioner (s)

Mr. A. K. Clerk : Advocate for the petitioner [s]

Versus

Union of India & Ors. : Respondent(s)

Ms. P. B. Sheth : Advocate for the Respondent [s]

CORAM :

THE HON'BLE MR. A. S. SANGHVI : MEMBER [J]

THE HON'BLE MR. G. C. SRIVASTAVA : MEMBER [A]

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the judgment? *no*
2. To be referred to the Reporter or not? *no*
3. Whether their Lordships wish to see the fair copy of the judgment? *no*
4. Whether it needs to be circulated to other Benches of the Tribunal? *no*

Mr. B. H. Hameti
7, Shital Row House,
Opp : Rupal Park, Near
Ankur Bus Stop,
Navrangpura,
Ahmedabad 380 013.

- Applicant -

Advocate : Mr. A. K. Clerk

Versus

1. Union of India,
(to be served through the
Secretary to Government of India,
Ministry of Commerce,
Central Secretariat,
New Delhi 1.
2. Director General of Foreign
Trade, Maulana Azad Road,
Udyog Bhavan, New Delhi -1.
3. Jt. Director General of Foreign
Trade, Multi-storied Building,
Block-A, 11th Floor, Laldarwaja,
Ahmedabad.

- Respondents -

Advocate : Ms. P. B. Sheth

JUDGMENT
O.A 273 of 1993

Date : 30/04/2001

Per Hon'ble Shri. A.S. Sanghvi : Member [J].

Heard Mr. A. K. Clerk for the applicant and Ms. P. B. Sheth for

the respondents. The applicant who was working as an Assistant Chief Controller of Foreign Trade is aggrieved by the fixation of his seniority in the final seniority list dated 27.4.93 and has challenged the said list as being illegal, null and void. He has also prayed for a direction to the respondents to fix his seniority in the post of Assistant Chief Controller of Foreign Trade Grade III as it was shown in the draft seniority list of April 1992 showing his position at Sr. No. 48 in the said list. He has also challenged the Rule 8 (1) (C) of CTS (Group-A) Rules 1977 as unconstitutional, illegal, null and void. The applicant was directly recruited as Licensing Assistant on 2.8.1971 and was subsequently promoted as Section Head on 25.5.76. He was given ad hoc officiating promotion to the post of Controller on three occasions and was ultimately promoted as a Controller on regular basis w.e.f. 1.1.81. He was confirmed in that post on 30th April 1984. He was thereafter promoted as Assistant Chief Controller of Foreign Trade on 30th October, 1989 and since then he had been working as Assistant Chief Controller of Foreign Trade. The draft seniority list of officers in the grade of Assistant Chief Controller of Foreign Trade (Grade III of CTS) as on 1.4.92 was circulated by the respondents and in that draft seniority list the applicant's seniority was shown at Sr. No. 48. The applicant had not objected to the seniority shown in the list as the same was quite correct. However, when the final seniority list was circulated by the respondents by letter dated 27.4.93, he was shown at Sr. No.

a

103 in the seniority list and the forwarding letter stated that all promotes of '89 batch have been placed en-block below 1988 batch of direct recruits as per the instructions contained in office memorandum dated 3.7.86. The applicant has averred that the action of the respondents in altering his position in the draft seniority list is illegal, null and void and that the same has been done without giving him any opportunity of being heard. It is also averred by the applicant that Rule 8(1) (C) of the CTS (Group-A) Rules 1977 is amended by notification dated 20th December 1988 and by this amendment which substitutes the earlier rule the vacancy in the grade III of CTS were provided to be filled up by 100 % direct recruitment through the competitive examination held by the Commission in place of the earlier provision of the 75% vacancy to be filled up by direct recruitment. According to the applicant this amendment is violative of the fundamental rights of the Articles 14 and 16 of the Constitution and therefore the same is illegal, null and void. He has also made a grievance that by virtue of his seniority being shown in the final seniority list, he has been demoted and his promotional chances are adversely affected. He has not been given any notice or opportunity of hearing before changing his position in the draft seniority list and therefore also the seniority list requires to be quashed. He has also averred that he was promoted to the post of Assistant Chief Controller on 23.10.89 though he was eligible and entitled to be promoted as Dy.

Chief Controller in Grade II. According to him having taken work from him of the post of Assistant Chief Controller w.e.f. 23.10.89, the respondents cannot deny him seniority on that basis and he cannot be pushed down below 1988 batch of direct recruits. He ought to have been given seniority on the basis of his promotion to the post of Assistant Chief Controller. On all these grounds he has prayed for re-fixation of his seniority in the final seniority list and has also challenged Rule 8(1) (C) of CTS (Group A) Rules 1977 as unconstitutional, illegal, null and void.

2. The respondents in their reply have inter alia contended that the applicant has no right to challenge the vires of Rule 8 (1) (C) of CTS (Group-A) Rules 1977 as he was governed by the old rules. It is also contended that as per the then existing recruitment rules the post in Grade III of the Assistant Chief Controller of Foreign Trade, which is the lowest rank of service was required to be filled in 75 % through direct recruitment and remaining 25% by promotion from the Feeder grade of Controller and Enforcement Officer. The direct recruitment to this cadre is started only from 1985 and the candidates selected through Central Civil Services Examination (CCS) 1985 joined the department in 1986. Thereafter direct recruitment was made on the basis of 1986, 1987 and 1988 Central Civil Service Examination results. The promotional quota vacancies of 25% for the departmental candidates were not filled in

the year 1986, 87 and 88 and these vacancies for each year were filled in the year 1989 from the candidates who become eligible in those years. Thereafter, since the rules were amended by notification dated 20th December, 1988 providing for 100 % direct recruitment to this post through Civil Service Examination, no further promotions were given. Since no seniority list of Grade III of I.T.S. was prepared, a draft seniority list as on 1.4.92 was prepared and circulated inviting remarks and objections against the seniority or error and omissions in the list within a period of one month. Several representations were received against the seniority shown of the direct recruits and one Mr. M. K. Mero, a direct recruit Assistant DGFT has specifically mentioned the name of the applicant and pointed out that the applicant was promoted w.e.f. 31.10.89 whereas he (Mero) had joined w.e.f. 4.2.87 but the applicant was given seniority at Sr. No. 48 while he (Mero) was given seniority at Sr. No. 67. All these representations were examined in consultation with DOP & T and accordingly the draft seniority list was corrected as per the advice given by the DOP & T and as per the rules governing the subject and the final seniority list was circulated on dated 27.4.1993. The respondents have maintained that the final seniority list is as per the extent rules and takes care of the objections raised against the draft seniority list. They have also contended that the applicant being a departmental candidate was promoted only in the year 1989 against the vacancy

for the year 1988 and therefore was rightly placed below direct recruits of 1988. They have also contended that since the seniority list inviting representations etc., from the employees shown therein and the final seniority list was prepared after due consideration of the representations received and in the light of the relevant rules on the subject, there was no question of hearing the applicant in revising the draft seniority list or giving any opportunity to the applicant prior to the finalisation of the seniority list. They have maintained that the applicant has been rightly placed at the proper place in the final seniority list and the grievance made by the applicant is quite misplaced and baseless. They have prayed that the O.A be dismissed with costs.

3. We have heard the learned advocates of both the parties at length and carefully considered their submissions as well as documents produced on record.

4. At the out set we may point out that in the light of promotion having been given to the applicant under the old rules i.e. un-amended rules, Rule 8 (1) (C) of CTS (Group-A) Rules 1977, the applicant is not entitled to challenge the amendment to the rules which had come into effect after 1988. No doubt the amended rules substituting the old rules provide for the filling up of the vacancies by 100% recruitment from direct recruits and does away with the

provisions of the filling up of the 25 % of vacancies by promotions from the feeder cadre. However since the applicant was held promoted under the old rules, he cannot be heard to challenge the subsequent amendment to the rules as he is not the person aggrieved by the amendment of the rules.

5. Now so far the challenge of the applicant to the seniority list is concerned, we find that the challenge is quite misconceived and is mainly based on the premises that in the draft seniority list he was shown at Sr. No.48. So far the circulation of the draft seniority list is concerned, since the said list was only a draft list, it goes without saying that the same was susceptible to changes on the representations received from the employees shown therein. The applicant was aware of the fact that it was not the final seniority list and was susceptible to changes after the objections and representations were received by the department. Under the circumstances, the averment of the applicant that his seniority shown in the draft list was changed without his being heard and thereby the final seniority list is invalid and void, cannot be upheld. So far the question of the correctness of the seniority of the applicant shown in the final seniority list is concerned, the respondents have given valid reasons for the same. It transpires from the reasoning given by the respondents that direct recruitment as provided under the rules was made to the post of

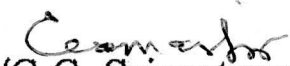
a

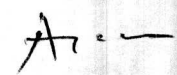
Assistant DGFT in the year 1986, 87, 88 and 89. However 25% vacancies were to be filled in by promotion as per the 1977 rules for the years 86, 87 and 88 were not filled up till the year 1989. Ms. Sheth for the respondents in response to our queries had provided the information relating to the vacancies for the years 1986, 87 and 88 and as per this information, in the year 1986 there were 18 vacancies to be filled up from promotion quota which were carried forward to 1987 and no new vacancies had arisen in the year 1987 and therefore these 18 vacancies were carried forward to 1988. 6 vacancies had arisen in 1988, thereby making it in all 24 vacancies in the year 1988. Now against the direct recruitment quota for the year 1986, 11 vacancies were filled in the year 1986 itself while 3 vacancies were filled in '87 and 20 vacancies were filled in 1988. No vacancies from the promotion quota were however filled in 1986, 1987 and 1988 and the applicant and others were given promotion in the year 1989. The DPC for promotional quota was held only in the year 1989 and hence the applicant was given promotion w.e.f. 30th October 1989. Ms. Sheth has pointed out that the applicant was promoted to the post of Controller w.e.f. 30th April 1984 and as such he had become eligible to be considered for promotion to grade III only in the year 1987. According to her he was duly considered by the DPC held in 1989 for the 1987 vacancy but was given promotion w.e.f. 30.10.89. According to her if the applicant was aggrieved by his promotion in the year 1989 he

ought to have taken the redressal step within the time limit and now he cannot be heard to say that he was wrongly promoted in the year 1989.

6. There is lot of substance in the submissions of Ms. Sheth. The applicant though getting promotion w.e.f. 30.10.89 has not made any grievance regarding the same and only when his name in the final seniority list was altered, he had challenged the seniority list by filing this O.A. Under the circumstances, he cannot be heard to challenge the promotion given to him w.e.f. 30.10.89. So far the question of the modification of the draft seniority list is concerned we find that the letter dated 27th April 1993 circulating the final seniority list as on 1.4.92 provides the reasons for the change in the draft seniority list. It is categorically stated therein that in view of the representations given by several direct recruits, promotes of 1989 batch have now been placed en-block below to 1988 batch of direct recruits as per instructions contained in DOP & T O.M No. 220/11/7/86 Estt. dated 3.7.86. Since the final seniority list has been prepared as per the directions of the DOP & T and these directions are not challenged by the applicant and also since the applicant is not the only person affected by these directions as the direct recruits prior to '89 were en-blocked placed senior to the promotes of '89, no question of the discrimination also arises. We therefore find that the challenge to the final seniority list to the post

of Assistant Controller Foreign Trade Grade III is quite misconceived and devoid of any merit. We do not see any necessity to interfere with the final selection list as circulated by the respondents and hold that the O.A is devoid of any merit. The O.A is therefore rejected with no order as to costs.


(G.C. Srivastava)
Member (A)


(A.S. Sanghvi)
Member (J)

Mb

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, AMMEDABAD BENCH

QA/TA/RA/CE/ 273/93 of

B. H. Hameti

APPLICANT (S)

VERSUS

Govt of

RESPONDENT (S)

I N D E X - S H E E T

SR.NO.	DESCRIPTION OF DOCUME-NTS	PAGE
	<u>CH</u>	<u>1-24</u>
	<u>W. Reply</u>	<u>25-43</u>
	<u>Rejoinder</u>	<u>44-47</u>
	<u>Reply</u>	<u>48-50</u>
	<u>Subd 1/2 30/4/01</u>	<u>11 page</u>

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, AMMEDABAD BENCH

'C' part

19 page

Certified that the file is complete in all ~~aspect~~

Signature of S.O. (J)

Signature of Dealing Hand