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Central Administrative Tribunal
Cuttack Bench: Cuttack.

Original Application No; 509 of 1989

Date of decision: 27.5.1992.

K.D.P.Singh

:Petitioner

-Versus-

Union of India and others

:Opp.Parties

For the Petitioner

: Mr.G.A.R.Dora, Advocate

For the Opp.Parties

: Mr.Aswini Kumar Misra, Sr.Standing
Counsel (CAT).

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CORAM:

THE HONOURABLE MR. K.P.ACHARYA, VICE-CHAIRMAN,

AND

THE HONOURABLE MR. C.S.PANDEY, MEMBER (ADMINISTRATIVE).

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- reporters of
1. Whether ~~the~~/Local News papers may be allowed to see the fair copy of the Judgment? Yes.
 2. To be referred to the reporters or not? *Yes*
 3. Whether Their Lordships wish to see the fair copy of the judgment? Yes.

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JUDGMENT

K.P.ACHARYA, V.C. In this application under section 19 of the Administrative Tribunals Act, 1985, the Petitioner prays to quash Annexure-A/8 and to declare that the Petitioner is senior to Opposite Party Nos. 4 to 8.

2. Shortly stated the case of the Petitioner is that he had made an application in response to an advertisement and after appearing at the interview for the post of Assistant Central Intelligence Officer (ACIO) (T) Grade-II alongwith Opposite Party Nos. 4 to 8, the Petitioner and the said Opposite Parties were selected and the Petitioner and Opposite Party No. 5 joined the said post on 25th September, 1963 and other Opposite Parties joined the post in question one day later. The Petitioner and Opposite Parties 4 to 8 were then promoted to the next higher post, namely, Field Officer (T) (F.O.) on 23rd April, 1970 on ad-hoc basis. After Aviation Research Centre (Technical) Service Rules, 1976 (contained in Annexure-5) came into force on 26th April, 1976, the Petitioner and the Opposite Parties were absorbed in a substantive capacity against permanent posts with effect from 26th April, 1976. Though the Petitioner figures as senior to the other opposite parties and even though the representation of Opposite Party No. 5 making a grievance about his seniority was rejected on 13th December, 1978 (Vide Annexure-3), by order dated 20th November 1989, the promotion of the said Opposite Parties to the post of A.T.O. has been anti dated to 15.11.1978, for which the

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Petitioner has a grievance and therefore, this application has been filed with the aforesaid prayer.

3. In their counter, the Opposite Parties maintained that the seniority of the Petitioner has been revised on the basis of appropriate examination and on the basis of natural justice to the Opposite Parties 4 to 8. It is further maintained by the Opposite Parties that the seniority of the petitioner in the grade of ACIO-II (WT) in IIBP was determined with reference to his position in the final examination result of W.T. training undergone by the Petitioner and the Opposite Parties. As the Petitioner ^{is} Junior to the Opposite Parties in the grade of ACIO-II (WT) his seniority in the grade of FO (Technical) was revised in 1983. The order antedating the promotion of Opposite Parties 4 to 8 to the ^{of} date / promotion of the Petitioner in the grade of ATO should stand on the benefits allowed to Opposite Parties to be determined according to their inter-se-seniority in the ⁱⁿ grade of ACIO-II (WT) and / the revised seniority in the grade of Field Officer (Technical). It is further maintained by the Opposite Parties that since the Petitioner and Opposite Parties 4 to 8 came from Indo-Tibetan Border Police, a reference was made to the said organisation seeking a clarification as to what would be the determining factor for fixing the seniority of the ^{petitioner and} said / Opposite Parties and in reply thereto, the authority of the Indo-Tibetan Border Police stated that the seniority of these officers was to be determined with reference to the final result of the W.T. training and examination which the Petitioner and the Opposite Parties had undergone and their seniority should be fixed

according to the marks obtained by each of them in the said test. On the basis of the decision of the Ministry of Personnel, their inter-se seniority was re-fixed and Annexure-8 was issued which should not be quashed as it is according to law. Hence, the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. G. A. R. Dora, learned counsel appearing for the applicant and Mr. Aswini Kumar Misra, learned Senior Standing Counsel (CAT) for the respondents at a considerable length.

5. The only question that needs determination is as to whether the seniority of the applicant vis-a-vis Respondents 4 to 8 has to be maintained according to the provisional seniority list of Field Officers (Technical) published on 27.10.1978 contained in Annexure-2 and the seniority list of Assistant Technical Officers as on 1.1.1988 contained in Annexure-7 or the revised seniority list contained in Annexure-8 making these respondents senior to the applicant and the promotion given to Respondents 4 to 8 with effect from 15.11.1978.

6. In paragraph 4(1) of the petition it is stated by the applicant, Shri K. D. P. Singh that he had applied in response to an advertisement and was called to the interview for the post of Assistant Central Intelligence Officer (A. C. I. O.) (T) Grade II and Respondents 4 to 8 were applicants along with him. They were all selected and applicant and Respondent No. 5 joined on 25.9.1963 and the other respondents joined one day later. In paragraph 3

of the counter it is stated as follows :

" It is stated that 4(i-iii) of the application are admitted as facts of the case only. "

Therefore, it can safely be presumed that the applicant and Respondents 4 to 8 had made applications in response to an advertisement and after undergoing interview they were selected and appointed. This order of appointment is contained in Annexure-A/1 dated 8.9.1976. But it is to be found ~~from there~~ ^{kn} that the appointment has taken effect from 26.4.1976. At this stage it is worthwhile to mention the reason for which the effective date was from 26.4.1976 which would have a considerable bearing for determining the issue at hand. Annexure-A/5 contains the copy of the Rules called as Aviation Research Centre (Technical) Service Rules 1976 (hereinafter to be referred to as the Rules). In regard to short- title and commencement, it is stated that these Rules shall come into force at once. That means ~~namely~~ ^{kn} the date on which the President gave his sanction with regard to framing of these Rules and that is dated 26.4.1976. Therefore, it can also be safely presumed that though the appointment order is dated 8.9.1976, such appointment having taken effect from 26.4.1976, such appointment is according to the said Rules. In Annexure-A/1, the applicant Shri K.D.P. Singh has been placed against serial No.7 i.e. topmost amongst Respondent No.4 (against serial No.10), Respondent No.6 (against serial No.8), Respondent No.3 (against serial No.9) and Respondent No.7 (against serial No.11). The provisional seniority list of Field Officers (Technical) as contained in Annexure-A/2 was published on 27.10.1978 and in the said provisional

seniority list the applicant was placed against serial No.34 and respondents 5, 6, 8 and 4 were placed against serial Nos.35, 36, 37 and 38 respectively. Though there is no averment by either of the parties, it is to be presumed that official course of business was duly performed and objections to this provisional seniority list must have been invited and no change to the seniority list occurred till 1.1.1988 when the seniority list of Assistant Technical Officer was published as contained in Annexure-A/7. In the said list the applicant was placed against serial No.13 and others were placed against serial Nos.19 to 22. All those seniority lists referred to above are said to have been nullified by the Office order No.216/ARC/TECH/89 dated 20.11.1989 contained in Annexure-A/8. It is stated therein, consequent on the revision of seniority of the posts of Field Officer(Technical) and approval of the Departmental Promotion Committee and competent authority the Field Officers(Technical) namely Respondents 4 to 8 are promoted to the Assistant Technical Officer with effect from the date shown against each of them on notional basis and such notional promotion was made effective with effect from 15.11.1978, ^{from}disentitling to any arrears of pay and allowance. This has been sought to be quashed.

7. In their counter, the respondents maintained that since the applicant and the respondents 4 to 8 came from the same Department and were recruited in the same batch, necessity was felt that their inter se seniority should be examined in the grade of Field Officer(Technical) in which they were absorbed and therefore, a reference was made

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to their parent department namely Indo-Tibetan Border Police and in reply thereto the said organisation stated that the seniority of these officers was to be determined with reference to the final result of the W.T. Training and examination which the applicant and the respondents 4 to 8 had undergone. Furthermore it is maintained by the respondents that for determining the interse seniority to grade of Assistant Central Intelligence Officer-II (WT), that is ⁱⁿ the lower grade in which they were recruited and came on ^{the} transfer basis from the Indo Tibetan Border Police to the Aviation Research Centre, the Rules framed by the said Organisation were to be followed. Hence, the seniority of the applicant K.D.P. Singh in that particular grade was determined with reference to his position in the final examination result of WT Training undertaken by the applicant and the said respondents vide Annexure-R/3. Undoubtedly in Annexure-R/3 the applicant has been placed below the said respondents. The moot question for determination is whether the rules of Indo Tibetan Border Police Force governing the interse seniority of the applicant vis-avis the Respondents 4 to 8, is to be taken into consideration or the 1976 Rules contained in Annexure-A/5 would govern the applicant and the Respondents 4 to 8. Though, in the counter, the respondents 1 to 3 have maintained that the applicant and Respondents 4 to 8 came on transfer basis but there is no such indication in the order of appointment contained in Annexure-A/1. On the contrary, at the cost of repetition

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we may say that the appointment is with retrospective effect from 26.4.1976, the date on which the rules came into force. Learned counsel for the respondents invited our attention to Annexure-R/7 which contains the minutes of the Departmental Promotion Committee. In paragraph 4 it is stated that the applicant and Respondents 4 to 8 came on deputation to Aviation Research Centre in the initial stage and therefore being influenced by the decision already taken in consultation with the Department of Personnel and Training that in such cases the seniority of a particular group of Officers should be fixed on the basis of merit during selection, training or at the time of promotion to the grade persuaded the members of the D.P.C. to fix their seniority as in the erstwhile parent department and accordingly the D.P.C. did so, but the erroneous impression under which the ^{members of the} D.P.C. were moved ^{is} that the applicant and Respondents 4 to 8 had come on deputation about which nothing has been mentioned in Annexure-A/1. To our mind it appears that the provisional seniority list of Field Officers contained in Annexure-A/2 and the seniority of the Assistant Technical Officers contained in Annexure-A/7 were on the basis of direct recruitment and according to the Rules of 1976. Our view gains support from Annexure-A/4 which contains the Memo No. ARC/CC/104/78 dated January 3, 1979 in regard to a representation made ~~by~~ by one Shri T.O. Joshua, Field Officer (Technical) making a grievance about his seniority. Therein it is stated that the absorption of officers in different grades at the initial constitution of the Aviation Research Centre (Tech-

Technical) Service Rules, 1976 as per Rules 6(2) and 7. It is also mentioned therein that the Rules were shown to Shri Joshua and he was given an option to indicate his willingness in the grade of F.O. (Technical) according to these rules and having given his option for absorption according to those rules, he cannot now object to his seniority being fixed in terms of these rules. Similarly, by virtue of the fact that initial appointment contained Annexure-A/1 having been made effective from 26.4.1976, (though the order was passed on 8.9.1976) the applicants and Respondents 4 to 8 acquiesced to the position that their appointment was made according to the 1976 Rules and therefore, we are of opinion that 1976 Rules would apply to the parties before us.

8. Rule 6(1) runs thus :

" All persons holding as on the appointed day, any one of the categories of posts specified in rule 4, whether in a permanent or temporary or officiating or on deputation basis, shall be eligible for appointment to the service at the initial constitution thereof."

Rule 7 runs thus :

" Seniority of persons appointed on permanent basis in each grade at the initial constitution of the service shall be (illegible) the order in which they are shown in the relevant list prepared in accordance with provisions of rule 6."

At this stage it may be mentioned that in Annexure-1 the applicant K.D.P. Singh has been placed against serial No. 7 and Respondents 4 to 8, Sri S.S. Moghe, Shri L.V.K. Sinha, Shri S. Gangadharan and Shri T.P. Gour have been placed below the applicant, K.D.P. Singh.

Rule 10 runs thus :

" Seniority in a particular grade shall be

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Reckoned with reference to the date of appointment to the post in that grade by direct recruitment or by promotion."

Therefore, in our opinion, Shri K.D.P.Singh having been placed topmost in the list of appointment in substantive capacity against permanent posts his seniority has to be reckoned according to the provisions contained in Rule-7.

9. There appears to us another serious incurable infirmity appearing in this case vide Annexures 1, 2 and 7, Petitioner Shri K.D.P.Singh was placed topmost in the lists and this was since 8.9.1976, 27.10.1978 and 1st January, 1988. This long standing seniority position if intended to be re-fixed to the extent of Shri K.D.P.Singh being affected, due notice should have been given to Shri Singh to have his say in the matter. Such a procedure not having been complied, there is clear violation of the principles of natural justice. Our view gains support from the judgment of the Honourable Supreme Court in the case of K.I.Sephard and others etc.etc v. Union of India and others reported in 1988 All India Services Law Journal(Vol.27)103. After considering the dictum laid down by the Hon'ble Supreme Court in several judgments, Hon'ble Mr. Justice R.N.Misra(as my Lord Chief Justice~~ly~~ then was) speaking for the court was pleased to observe as follows:

"On the basis of these authorities it must be held that even when a State agency acts administratively, rules of natural justice would apply. As stated, natural justice generally requires that persons liable to be directly affected by proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed so that they may be in a position(a) to make representations on their

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own behalf; (b) or to appear at a hearing or enquiry (if one is held): and (c) effectively to prepare their own case and to answer the case (if any) they have to meet".

10. In our opinion, the aforesaid dictum laid down by Their Lordships ^{full} applies ~~in force~~ to the facts of the present case.

11. Taking into consideration, the facts and circumstances stated above, and in view of the discussions made above, we are of opinion that the seniority of Shri K.D.P. Singh as contained in Annexures 2 and 7 should continue and should not be disturbed and in furtherance thereof, the consequential service benefits including promotion etc. should be given to Shri K.D.P. Singh ^{as had arisen in the past} as and when occasion arises. At the same time, we do not like to disturb the order passed in Annexure 8 giving promotion to Opposite Party Nos. 4 to 8 to the post of Assistant Technical Officer on notional basis with effect from 15.11.1978, if such a promotion is due to them with effect from such date without disturbing the seniority position of the Petitioner Shri K.D.P. Singh as indicated above.

12. Thus, the application is accordingly disposed of leaving the parties to bear their own costs.

Chaudhary
MEMBER (ADMINISTRATIVE)



27.5.92
VICE CHAIRMAN

Central Administrative Tribunal
Cuttack Bench/Saenghi/Mohanty