

Q (7) 14
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application No. 173 of 1991

Date of Decision: January 18, 1994

T. Natarajana

Applicant(s)

Versus

Union of India and others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? Yes

H. Rajendra Prasad
(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

18 JAN 94

K.P. Acharya
(K.P. ACHARYA)
VICE-CHAIRMAN

km 18/1/94

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

Original Application No. 173 of 1991

Date of decision : 18 January, 1994

| | | |
|-------------------------------|------|--|
| T. Natarajana | | Applicant |
| Versus | | |
| Union of India and others.... | | Respondents |
| For the Applicant | | M/s. Devanand Misra, Deepak Misra, R.N.Naik, A. Dee, B.S.Tripathy, Advocates |
| For the Respondents | | Mr. Ashok Misra, Senior Standing Counsel (Central). |

C O R A M :

THE HONOURABLE MR. K. P. ACHARYA, VICE- CHAIRMAN
A N D

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

J U D G M E N T

K. P. ACHARYA, V.C. In this application under section 19 of the Administrative Tribunals Act, 1985, the petitioner prays for a declaration that the petitioner is senior to Opposite Party Nos. 5 and 6 and it is further prayed that the seniority list be accordingly modified giving him consequential benefits that may accrue by such re-fixation.

V.R.

8

3

2. Shortly stated the case of the petitioner is that at the time of filing this application, he was working as Junior Technical Officer -I (Instrument) in the Aviation Research Centre, Charbatia. Petitioner was appointed as an Instrument Mechanic vide Annexure-1 dated 14th May, 1970. Petitioner joined on 30th May 1970. Opposite Party No.5, Shri K.S. Sudan, initially came on deputation from Air Force and he joined in Aviation Research Centre, Charibatia on 12th March, 1970. Later Shri Sudan, Opposite Party No.5, resigned from the Air Force and was adjusted in Aviation Research Centre Charibatia under the re-employment Scheme. Opposite Party No.6, Shri R.P. Anand joined on 25th May, 1970 as an electrical mechanic. In the year 1974, a draft seniority list was prepared in which the petitioner Shri T. Natagajan was placed against Sl. No.10, Opposite Party no.6, Shri R.P. Anand was placed against sl.no.11, H.M. Phull (who was since resigned) was placed against Sl. No.12 and Shri K.S. Sudan (Opposite Party No.5) was placed against Sl.No.13. This placement was made in the draft seniority list keeping in view of the guidelines governing the field as the applicant stood first in the merit list. The said draft seniority list is contained in Annexure-3 dated 29th July, 1974. Therefore, Shri R.P. Anand, Opposite Party No.6, was designated as Instrument Mechanic with effect from 24.8.1973 whereas the applicant was working in the cadre since 1970. In the

year 1981, a seniority list was published wherein Opposite Party No.5, Shri K.S.Sudan was placed against Sl.No.10, above the petitioner, who was placed against Sl.No.11 and Opposite Party No.6 Shri R.P.Ananda was placed against Sl.No.12, as indicated in the seniority list contained in Annexure 4 dated 4th December, 1981. Further case of the petitioner is that on 14th April, 1982, the Deputy Director (Administration) issued a Memorandum contained in Annexure 5 stating that Shri RP Ananda appears to have been placed below that of Shri T.Natarajan inadvertently. According to their date of appointment in the grade Shri RP Ananda is senior to Shri T.Natarajan and it was further directed that necessary correction be made in the seniority list. Representations made by the petitioner did not yield any fruitful result. Hence this application has been filed with the aforesaid prayer.

4. In their counter, the Opposite Parties maintain that true it is in Annexure A, the petitioner Shri T.Natraljan was placed above M/s.R.P.Anand (Opposite Party No.6) and K.S.Sudan (Opposite Party No.5) on the basis of the guidelines issued by the Government regarding fixation of seniority but after the ARC Air wing staff Recruitment Rules came into force on 15th March, 1977 the seniority list was fixed as per the rules. It is further maintained by the Opposite Party Nos.1 to 4 that Opposite Party No.5 originally came on deputation

10

(11) (8)

to the organisation and he was absorbed as an Instrument Mechanic on reemployment as Civilian with effect from 12th March, 1970 whereas the petitioner joined as instrument mechanic with effect from 30th May, 1970. So far as Opposite Party No.6 is concerned, he was asked to join as Electrical Mechanic in the exigency of Public Service and subsequently he was treated to be an instrument mechanic with effect from 24.8.1973. It is further maintained that though Opposite had initially Party No.6 joined as Electrical Mechanic yet Opposite party No.6 had joined in the organisation on 25th May, 1970 and the petitioner has joined the organisation on 30th May, 1970. Opposite Party No.6 is bound to be treated as senior to the petitioner. Hence according to the Opposite Parties, seniority of the petitioner vis-a-vis Opposite Party Nos.5 and 6 had been correctly fixed according to rules and the seniority list should not be unsettled - rather it should be sustained.

5. Written statement has been filed on behalf of the Opposite Party No.6 only and his case is practically in par with the averments finding place in the counter filed on behalf of Opposite Party Nos.1 to 4

6. We have heard Mr. Deepak Misra learned and Mr. Ashok Misra learned Senior Standing Counsel (Central). From Annexure A dated 29.7.1974 (draft seniority list of instrument mechanic), it is found that the petitioner Shri T. Natrajan was placed against Sl. No. 10, Shri RP Anand

(12)

(6)

Opposite Party No.6 was placed against Sl.No.11 and Shri K.S.Sudan Opposite Party No.5 was placed against sl.No.13. We have not particularly mentioned the name of Shri H.M.Phul, who was placed against Sl.No.12 in the draft seniority list because admittedly he has since resigned from service. The final seniority list contained in Annexure 4 was published on 4th December, 1981 placing Opposite Party No.4 above Shri T.Natarajan(Petitioner) and Shri R.P.Ananda, Opposite Party No.5 below the Petitioner Shri T.Natarajan. Further more it is found from the averment finding place in the counter filed on behalf of the Opposite party Nos.1 to 4 that the draft seniority list was published on 29th July, 1974 prior to formation of the cadre rules and soon after the cadre rules came into force, the seniority of the petitioner vis-a-vis Opposite Party Nos.5 and 6 was reviewed and accordingly the seniority was fixed as per the statutory rules. In paragraph 4(e) of the Petition, it is stated that maintained the seniority was fixed as in Annexure A dated 29th July, 1974 as per the office Memorandum which in otherwards was a set of guidelines issued by the Government for fixation of the seniority of different incumbents which includes the petitioner

and Opposite Party Nos.5 and 6. In reply to this averments, in paragraph 6 of the counter, it is stated that the draft seniority list was published on 29th July, 1974 prior to formation of the cadre rules which formed subject matter of Annexure A1. Soon after the recruitment rules came into force, the seniority was revised. There was absolutely no dispute presented before us that in Annexure A, the petitioner was placed above Opp. Party Nos.5 and 6 on the basis of the guidelines issued by the Government. In view of this admitted position, the Bench is required to find out as to whether the seniority position could be revised with retrospective effect after the recruitment rules came into force without giving any notice to the parties concerned. especially the petitioner who is being adversely affected by the revised order. At one point of time the courts in India did not lay down that principles of natural justice would apply to administrative orders. But in gradual process of time, the courts in India have accepted the English Law holding that principles of natural justice also applies to administrative orders. While accepting the English Law, on the subject, especially applicability of the principles of natural justice to an administrative order, Hon'ble Mr. Justice Ranganath Misra (As my Lord Chief Justice of India then was) speaking for the Court observed in the case of K.I. Shephard Vs. *W.*

13

Union of India and others reported in AIR 1988 SC 686 as follows:

On the basis of these authorities it must be held that even when a State agency acts administratively, rules of 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 own behalf; (b) or to appear at a hearing or enquiry (if one is held); (c) effectively to prepare their own case and to answer the case (if any) they have to meet".

His Lordship on behalf of the Court quoted with approval the observations of Sarakaria J. in the case of *Swedeshi Cotton Mills Vs. Union of India* reported in AIR 1970 SC 2042 which runs thus:

"During the last two decades the concept of natural justice has made great strides in the realm of administrative law. Before the epoch-making decision of the House of Lords in *Ridge V. Baldwin* (1964) SC 40, it was generally thought that the rules of natural justice apply only to judicial or quasi-judicial proceedings; and for the purpose, whenever a breach of the rule of natural justice was alleged, Courts in England used to ascertain whether the impugned action was taken by the statutory authority or Tribunal in the exercise of its administrative or quasi-judicial power. In India also this was the position before the decision of this court in *Dr. Binapani Dei's case* (AIR 1967 SC 1269) (supra); wherein it was held that even an administrative order or decision in matters involving civil consequences, had to be made consistently with the rules of natural justice. This supposed distinction between quasi-judicial and administrative decision which was perceptibly mitigated in *Binapani Dei's case* (supra) was further rubbed out to a vanishing point in *A.K. Kraipak's case* AIR 1970 SC 150 (supra)....".

44.

14

The latest pronouncement of the Hon'ble Supreme Court on the doctrine of 'LEGITIMATE EXPECTATION'^{is}, reported in Judgments Today 1992(5)SC 621, Navjyoti Co-operative Group Housing Society etc. Vs. Union of India and others the observations of Their Lordships of the Hon'ble Supreme Court are as follows:

"An aggrieved person was entitled to judicial review if he could show that a decision of the public authority affected him of some benefit or advantage which in the past he had been permitted to enjoy and which he legitimately expected to be permitted to continue to enjoy either until he was given reasons for withdrawal and the opportunity to comment on such reason... The doctrine of 'legitimate expectation' impose in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such 'legitimate expectation'. Within the conspectus of fair dealing in case of 'legitimate expectation' the reasonable opportunities to make representation by the parties likely to be affected by any change of consistent past policy, come in".

7. In view of the above quoted pronouncements of Their Lordships in all the three judgments stated above, it is now incumbent upon the administrative authority to give notice regarding the action proposed to be taken in respect of a particular employee who may be adversely affected. In the present case, admittedly no notice was given to the present petitioner, while changing his seniority position vis-a-vis Opposite Parties 5 and 6. Therefore, in our opinion principles of natural justice has been violated.

V/V

8. Next coming to the merits of the case it would be found that as per Annexure-A, the seniority position of the Petitioner vis-a-vis Opposite party Nos. 5 and 6 was fixed on the basis of certain guidelines issued by the Ministry. Later i.e. on 15th March, 1977 the ARC(Airwing staff) Recruitment Rules came into force. Law is well settled and it was not rightly and fairly disputed at the Bar that a particular rule has no retrospective operation unless and until specifically directed in the Rules. In the above mentioned rules, there is no provision giving retrospective effect to the different provisions contained in the said rules. Therefore, in our opinion, the administrative instructions/guidelines prevalent on the field, on the relevant date, has to be the sole basis for fixing the seniority of different incumbents. Our view gains support from a judgment of the Full Bench of the Central Administrative Tribunal forming subject matter of Original Application No. 128 of 1990 disposed of on 2nd January, 1991 (Shri S.K. Balia Singh Vs. Union of India and others). In the opening paragraph of the judgment it was stated as follows:

"The question that falls for consideration is when there is a change in the guidelines or executive instructions or new guidelines or executive instructions not inconsistent with the rules are framed, after the preparation of the list and before the post actually falls vacant would such changed guidelines or new guidelines, as the case may be apply for the consideration to promote?".

In the case of Balia Singh certain rules/instructions guidelines were issued and prevalent by the date the case

16

(17) ~~14~~

of Balbir Singh was to be reconsidered. The question needs to be determined as to whether the rules/guidelines/administrative instructions prevalent on the field on the date of consideration would be relevant or the changed guidelines which came into force on the later date would govern the case of the parties. The Full Bench held as follows:-

"We would therefore, observe that the guidelines issued vide O.M. dated 10.4.89 would not be applicable to a recommendation made by the DPC or ACC before it became effective. But it became effective only from 10.4.1989 and not before".

9. In the circumstances stated above, we affirm our view that seniority of the petitioner vis-a-vis Opposite Parties 5 and 6 has to be fixed according to the guidelines issued prior to the date on which the above mentioned rules came into force i.e. 15th March, 1977. We would therefore, restore the seniority list contained in Annexure-A dated 29th July, 1974 placing Shri T. Natarajan, Petitioner, above Opposite Party Nos. 5 and 6.

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

1.5.1.1

MEMBER (ADMINISTRATIVE)

18 JAN 94

for
18.1.94
VICE-CHAIRMAN

Central Admn. Tribunal,
Cuttack Bench/K. Mohanty
18.1.94.