

11

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.27 OF 1995
CUTTACK THIS THE 02nd DAY OF July 2001

B.C.Mohapatra

.....

Applicant(s)

- V e r s u s -

Union of India & Others

.....

Respondents.

For Instructions

1. Whether it be referred to Reporters or not? 45.
2. Whether it be circulated to all the Benches of Central Administrative Tribunal or not ? 40.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

G. Narasimham
(G.NARASIMHAM)
MEMBER (J)

12

16

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 27 OF 1995
CUTTACK THIS THE 02nd DAY OF July 2001

CORAM:

THE HON'BLE SHRI SOMNATH SOM,
THE HON'BLE SHRI G.NARASIMHAM,

VICE-CHAIRMAN
MEMBER (J)

Sri B.C.Mahapatra,
S/o- Late Lambodar Mohapatra,
aged 51 years,
Office Superintendent,
Central Excise & Customs,
Rajaswa Vihar,
Bhubaneswar-4.

..... Applicant.

By the Advocates

M/s P.C.Kar
J.Gupta

- V e r s u s -

1. The Secretary,
Central Board of Excise & Customs,
Indraprastha Bhawan,
North Block, New Delhi-110001.
2. The Chairman,
Central Board of Excise & Customs,
Indraprastha Bhawan,
North Block,
New Delhi- Pin 110001.
3. The Collector,
Central Excise & Customs,
Rajaswa Vihar,
Bhubaneswar-4
4. The Deputy Collector (P & V),
Central Excise & Customs,
Rajaswa Vihar,
Bhubaneswar-4.

- 13
- 17
5. The Additional Collector (P & V),
Central Excise & Customs,
Calcutta-I Collectorate,
15/1 Strand Road, Customs House,
Calcutta-1.
 6. Sri M.A.Jamil,
Administrative Officer,
Central Excise & Customs,
Cuttack Division,
Avinava Bidanasi, Cuttack-2.
 3. Sri Nityananda Das,
Administrative Officer,
Central Excise & Customs,
Balasore Division,
Badabazar, At.P.O.Dist.Balasore.
 8. Sri P.K.Rao,
Examineer of Accounts,
Central Excise & Customs,
Rajaswa Vihar,
Bhubaneswar.4.
 9. Sri B.C.Behera,
Office Superintendent,
Central Excise & Customs,
Rajaswa Vihar,
Bhubaneswar-4.
751004
 10. Sri Kamalendu Mishra,
Assistant Chief Accounts Officer,
Central Excise & Customs,
Rajaswa Vihar,
Bhubaneswar-751004.
 11. Sri R.C.Sahu,
Administrative Officer,
Central Excise & Customs,
Rayagard Division,
At.P.O.Dist.Rayagad.
 12. Sri Narayan Sarangi,
Administrative Officer,
Central Excise & Customs,
Sambalpur Division,
P.O.Budharaja, Dist-Sambalpur.
 13. Sri S.N.Pramanik,
Administrative Officer,
Central Excise & Customs,
Rourkela Division, Near Satsanga Vihar,
Rourkela. Dist-Sundargarh.
 14. Sri Debiprasad Mahanty,
Administrative Officer (Hqrs)
Central Excise & Customs,
Rajaswa Vihar, Bhubaneswar-4
Pin-751004.

..... Respondents

By the Advocates

Mr. S.B.Jena
A.S.C.

14

18

O R D E R

G.NARASIMHAM, MEMBER(JUDICIAL): On 11.1.95, applicant while serving as Office Superintendent, Central Excise and Customs, Bhubaneswar filed this Original Application with this following prayers:-

I) "Fix the seniority of the applicant above the respondent No.6 in the Grade of L.D.Clerk by following the principle of the date of regular officiation in the post and allow the promotion avenue to the next grade of U.D.C./D.O.S.LII/ D.O.S.LI/O.S./A.O. by stipulating the date on which his immediate junior i.e. Respondent No.6 has got the same benefit as both the applicant and respondent No.6 to 14 are continuing in the same Ministerial Streamline.

II) quash the motivated action of the Review D.P.C. held on 7.10.92 and 8.10.92 in the Grade of Office Supdt. and Administrative Officer for violation of the principle of Natural Justice.

III) issue directive to the Respondents No.3 and 4 to initiate the action by following the judgement of the Supreme Court of India's decision and follow the principle of date of joining as the criteria for determination of one's Seniority.

IV) direct the respondents No.3 & 4 to cancel the promotion order of the Administrative Officer released on or after 10/92 in order to accommodate the applicant in the post with the ground of the allocation of seniority to the seniors.

V) to direct the respondents 3 & 4 to allow consequential benefits to the applicant and financial benefits with retrospective effect and at par with the junior to the applicant.

VI) direct the respondents to pay full costs as it is a case of deliberate harassment to the applicant as the case is lying pending since long and the promotion orders are

being released without disposing the applicant's case".

2. Applicant was recruited as L.D.Clerk and joined on 15.12.64 under the then composite Calcutta and Orissa Collectorate, Central Excise and Customs, Calcutta. Private Respondent No.6 who is now senior to private Respondents 7 to 14 joined as L.D.Clerk on 19.12.64. On creation of separate Collectorate for Orissa in the year 1975, applicant and private Respondents came over to the Orissa Collectorate.

3. In the seniority list for the L.D.Clerks as on 1.10.1966 Respondents 6, 7 & 9 were shown senior to the applicant. In this process, Respondents 6 & 7 have maintained seniority over the applicant all through, i.e. in the cadre of U.D.C., Deputy O.A.S (ii), Deputy O.A.S(i), and Office Superintendent.

4. The grievance of the applicant is that he having joined earlier as L.D.Clerk, as per the principle laid down by the Apex Court, he should have been treated senior to Respondents 6 & 7 all through. His representation dtd.21.11.66 for correction of the seniority list of the L.D.Clerk was negatived. Yet ^{at} every _{in} stage he has been representing claiming seniority over Respondent No.6. Though he was promoted as Office Superintendent 27.3.91, in a review D.P.C held on 7.10.92 & 8.10.92 without intimating him and behind his back, he has been shown below Respondent No.9 who joined as Office Superintendent on 22.12.92.

5. Private Respondents No.6 to 14 inspite of due service or notice have neither entered/appearance nor contested the case. Departmental Respondents 1 to 5 in their counter maintained that as per the Government Memorandum 22.12.59(Annexure R/1),

Seniority is maintained with reference to the date of confirmation and not with reference to the date of appointment. Respondents 6 and 7 had been confirmed as L.D.C earlier than applicant. Similarly, at every stage in promotional cadars they have been confirmed earlier than the applicant and as such their seniority over the applicant has been maintained all through. Moreover, his representation for correction of seniority list in the L.D.C. grade having been rejected during Sixties, prayer for declaration of his as L.D.C over private Respondents in O.A. filed in 1995 is hopelessly barred by time. Moreover, the cause action in this regard arose much prior to the preceeding 3 years of the date of functioning of this Tribunal and as such this Tribunal lacks jurisdiction to consider the prayer under Section 21 of the Administrative Tribunal Act.

He has been reverted to the grade of Deputy D.O.S. (level 1) in a disciplinary proceeding for which he has moved this Tribunal in O.A. 376/92 and obtained order of stay. The review D.P.C. decision is consequential to his reversion in the disciplinary yet because of stay order he was allowed to continue as Office Superintendent. As he was found unfit by the D.P.C for the promotion to the post of Administrative Officer, he was allowed to continue in the grade of Office Superintendent. He has not challenged the finding of the review D.P.C which of course is a different cause of action.

6. In the rejoinder the applicant reiterated his stand.

7. We have heard Shri P.C.Kar, learned counsel for the applicant and Shri S.B.Jena, learned Additional Standing Counsel for the Department.

8. Prayers I, III, IV and VI are interlinked. Similarly, Prayers no. I & IV are interlinked.

9. Though the applicant suppressed the fact of his reversion with effect from 1.8.92 in a disciplinary proceeding, he could not deny the averment ^{to} of this effect in the counter that O.A. 367/92 filed by the applicant challenging the order of the disciplinary authority was pending ^{when} ~~whether~~ the Original Application was filed. This Original Application 376/92 has since been dismissed on merits on 17.12.99. Though in the rejoinder the applicant averred that he had filed O.J.C before the High Court of Orissa against the order of this Bench, it is not his case that the order of this Bench has been stayed by the High Court. The review D.P.C. was held giving rise to change in his seniority. It is also the specific case of the Department at para 9 of the counter that subsequently the D.P.C considered his case for promotion to the level of Administrative Officer found ^{him} not suitable. Admittedly, the applicant had not challenged this decision of the Department. Hence we do not find any merit in prayers No. II & IV and same are accordingly disallowed.

10. In regard to his claim of seniority over Respondents 6 & 7 right from the cadre of L.D.C onwards, there is no dispute that he joined as L.D.C four days earlier than Respondent No. 6 and six days earlier than Respondent No. 7. It is also true that in the seniority list of L.D. Clerk as on 1.1.66 (Annexure-1), his position is much below than these two Respondents. It is his own version that he represented to the Department on 9.12.66

(Annexure-2) for correction of the seniority list and the same was negatived, shortly thereafter, the averments in the Original Application would reveal that he has been representing now and then at every stage claiming seniority over Respondent No.6 but without any desired result. Further the Original Application reveals that on some occasion the Respondents replied to him stating that his seniority had been fixed correctly according to Rules.

Assuming his seniority as L.D.Clerk on 1.1.66 was wrongly assigned and his representation dtd.9.12.66 (Annexure-2) for correction having been turned down in the year 1966 itself, can it be said that he has right to rake up this issue of seniority for the first time in this Original Application filed in the year 1995^{ca}, nearly 29 years there of and that too without filing any application for condonation of delay supported by an affidavit as required under Rule 8 (4) C.A.T (Procedure) (Rules) 1987 ? On this ground of abnormal delay alone the prayer in this regard is liable to be disallowed. The Constitution Bench of the Apex Court in S.S.Rathore case reported in AIR 1990 Supreme Court 10 clearly held that repeated representations will not save limitation.

11. Applicant in a recruitment was selected and appointed as L.D.Clerk. This is clear from the averment in the Original Application. Respondents 6 & 7 joined as L.D.C 4 to 6 days subsequent to his joining. Para 3 of his representation dtd.28.7.93(Annexure 9/A) would disclose that seniority list of L.D.C as on 1.1.66 was prepared according to the selection panel which would mean as per the merit list of the recruitment.

In other words, he admits in the recruitment Respondents 6 & 7 were above him in the merit list. Seniority in an initial grade for which recruitment is made is determined as per the merit list and not with reference to the dates of joining. Thus viewed from this angle, Respondents 6 & 7 are senior to the Applicant in the L.D.C cadre.

12. Be that as it may, M.H.A, D.M. dtd.22.12.59 (Annexure R/1) makes it clear that seniority follows confirmation. This Government instruction was in force till 4.11.92 on which date following the decision of the Apex Court on 2.5.90, in the case of Direct Recruit Class II Engineering Officers' Association Vrs. State of Maharashtra reported in AIR 1990 SC 1607, it was decided in Government Memmorandum dtd.4.11.92 that seniority of a person regulary appointed to a post according to Rule would be determined by the order of merit indicated at the time of initial appointment and not according to the date of confirmation. It was further made clear that this Memorandum will take effect from 4.11.92 and that seniority already determined according to the principle existing on the date of issue of the order will not be re-opened, even if in some cases seniority has already been challanged or is in dispute and it will continue to be determined on the basis of principles already existing prior to the issue of that order (page 1 of Swamy's Compilation of Seniority and Promotion in Central Government Offices, 1999 edition).

13. Though in the Original Application the applicant on many occasions made mention of Apex Court ^{decision} ~~desions~~ the references

24

of which are not clear or complete but from his representations some of which have been mentioned. It is clear that on the basis of this Apex Court decisions in Direct Recruit Engineering Case (Supra) he wants his seniority from the level of LDC has to be changed and he should be declared senior over Respondents No.6 & 7. This decision of the Apex Court has been pronounced by Constitution Bench. The seniority was decided with reference to certain Rules and Regulations of the concerned State Government, Maharashtra and Gujrat. Nowhere there was mention or discussion over this Office Memorandum dtd.22.12.59 (Annexure R/1). No decision was cited at the Bar about quashing of this Government Memorandum or making it in-operative. On the otherhand, a 3 Judges Benche of the Apex Court in Union of India Vrs. M.Rabivarma reported in 1972 SLR (Volume-7) page 211 dealt this Memorandum 22.12.59 in regard to dispute over seniority, yet did not strike down this Memorandum and did not lay down that seniority has to be counted from the date of substantive appointment ^{and} not from the date of confirmation. Despite this, an instruction in a Government Memorandum cannot be disregarded ^{and not contrary to any statute.} so long it is in force. Hence we do not find any illegality or infirmity in the orders of the Department in determining seniority with reference to confirmations.

If the applicant ^{raises} ~~urges~~ his claim on the Apex Court decision of the Engineering Officers' Association Case (Supra) he should have approached the Tribunal in time instead of waiting nearly 5 years from the date of pronouncement of the judgement. In other words, this Original Application filed on 11.1.95 is beyond the period of limitation under Section 21 of the A.T. Act, even

if 2.5.90, i.e. date of the pronouncement of this Apex Court is taken into account. As earlier stated the law is well settled that repeated representations do not save limitation. This apart it is not as though for the first time the Apex Court on 2.5.90 gave ruling that seniority should be counted from the date of appointment. The Apex Court merely reiterated its ruling in decision dtd.4.5.77 in S.Patvardhan Vrs. State of Maharashtra reported in A.I.R. 1977 SC 2051. This Patavardhan case decided by 3 Judges is indeed a Landmark judgement. On this point as some of the affected parties question^{ed} the correctness of Patavardhan decision in Direct Recruit Engineering Officers' Association case, the Constitution Bench of the Apex Court had to examine the same and ultimately upheld the previous decision. In fact, the applicant cited this decision in his representation dtd.9.7.94 (Annexure-16). It would therefore follow the cause of action for challenging the seniority in the LDC cadre or UDC cadre, as per the averment made in the Original Application would necessarily arise on 4.5.77 on the day when S.B.Patavardhan case was decided. If this date is taken into account the Original Application is still more delayed. That apart on the basis of this date 4.5.77, this Tribunal will lack jurisdiction to entertain a Original Application under Section 21(2)(a) of A.T. Act because 1977 is long prior to the 3 years preceeding the date on which this Tribunal has started functioning i.e. on 1.11.85.

14. There is yet another ^{glar} ~~flow~~ in this Original Application. The main prayer in regard to seniority from the level of L.D.C onwards is mentioned at para 9(I). Prayers under para 9 (III)

22

(V) and (VI) are consequential to this main prayer. But prayers under para 9(II) is a distinct prayer the cause of action being the decision in the Review DPC held on Oct 92 is not promoting him to the cadre of Administrative Officer and prayer under 9(IV) is consequential to it. These two prayers under 9(II) and (IV) are in no way consequential to main prayer regarding seniority from the level of LDC onwards. Under Rule 10, C.A.T(Procedure) Rules 1987(Framed in exercise of powers U/s 35 and 36 of the Administrative Tribunal Act, 1985), an application U/s 19 of A.T.Act, 1985 shall be based on a single cause of action and may seek one or more reliefs if they are consequential to one another. In otherwords, an Original Application containing two distinct prayers, as in this case, is not maintainable.

15. In the result, this Original Application containing plural remedies with different causes of action besides being not maintainable is also devoid of any merit. The O.A. is therefore dismissed but without costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

2.7.01.
(G.NARASIMHAM)
MEMBER (J)