

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No. OA 180 of 96

Date of order : 21.6.2002

Present : Hon'ble Mr.L.R.K.Prasad, Administrative Member

Hon'ble Ms.Meera Chibber, Judicial Member

BHUDEB RANJAN DHAR & ANR.

VS

UNION OF INDIA & ORS.

For the applicants : Mr. Samir Ghosh, counsel

For the respondents : Ms.U.Sanyal, counsel

O R D E R

Meera Chibber, J.M.

By this OA the two applicants are seeking following reliefs :

- a) leave under "rule 4(5)(a) of Central Administrative Tribunal (Procedure) Rules, 1987, be given to the applicants to move this application jointly since the cause of action and the relief, prayed for, are identical in nature.
- b) to cancel, withdraw and/or rescind the impugned order dated 23.1.96;
- c) to direct the respondents to extend the benefits of the judgment dated 21.9.93 passed in OA 46/90 by the Hon'ble Tribunal, Cuttack Bench, and fix the seniority position of the applicants above the respondent No.5 herein;
- d) to direct the respondents to give the applicants promotion to the post of Assistant from the date when the said respondent No.5 was given the said promotion and given all consequential benefits including the monetary benefits thereof;
- e) to direct the respondents to produce the entire records of the case before this Hon'ble Tribunal for adjudication of the points at issue;

2. The grievance of the applicants in the present case is that even though they had joined the service as LDC on 20.10.71 and 14.6.72 respectively and were promoted as UDC on 30.12.82 and 29.11.82 on ad-hoc basis where they continued without any break and were regularised on 27.1.84 yet the respondent No.5 who was promoted

only on 5.3.84 as UDC has been assigned higher seniority than the applicants i.e. in the seniority list of UDC issued on 24.12.91 the applicants are shown at 166 and 167 while the respondent No.5 Shri D.Ramalingam has been shown at Sl.No.33. They have further stated that an OA was filed by one Shri M.Jena being OA 46/90 which was decided in his favour on 21.9.93 (Annexure A/1) as a result of which Shri Jena's seniority was corrected and he was brought above Shri D.Ramalingam. Thus he gave a representation to extend the same benefit to him also (Annexure A/2) on which the respondents vide memorandum dated 29.9.94 and informed him that matter is under consideration, however, in compliance with the above judgment revised seniority list dated 28.11.95 was issued wherein the applicants were still shown junior to Shri D.Ramalingam. So they again gave detailed representations (Annexure A/5).

3. The respondents vide their memorandum dated 23.1.96 rejected the applicants' representation on the ground that seniority list has been revised on the advice of DOPT and applicants have moved up as a result of change of seniority of Shri Jena. However, it was made clear that ad-hoc service does not count for seniority and he has rightly been given the seniority from the date of regularisation i.e. 27.1.84. They further stated that the judgment of Shri Jena is applicable to the parties involved therein alone and so they cannot be given benefit of Shri Jena's judgment.

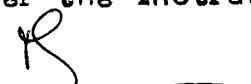
4. It is this order dated 23.1.96 (Annexure A/6) which is sought to be challenged by the applicants on the ground that similarly situated persons cannot be denied the benefit of a judgment simply on the ground they were not parties therein. In support of his argument the counsel for the applicant has relied on the following judgments : 1998(1) AISLJ SC 54 (K.C.Sharma & Ors. -vs- Union of India & Ors.), AIR 1988 SC 686 (K.I.Shepherd & Ors. -vs- Union of India & Ors.), AIR 1975 SC 588 (Amrit Lal -vs- Collector of Revenue). He has also drawn our attention to the order dated 26.2.82 wherein Shri Jena and applicants were both

promoted as UDC on ad-hoc basis by a common order as Shri Jena was at Sl.No. 92 in the said order while applicants were at Sl.No.93 & 94 respectively. Thus the counsel for the applicants has stated that he is entitled to the same benefit as has been given to Shri Jena by the Tribunal because that judgment has become final and has already been implemented.

5. The respondents have opposed the OA. They have stated that it is I.D.Clerical (Re-organisation) Scheme dated 11.2.60 (Annexure R-I) which governs the recruitment, promotion, etc. of LDC and UDC in I.B. and as per this scheme the vacancies of UDC are to be filled as under :

- a) 75% of vacancies by promotion of permanent Lower Division Clerks -- selection for promotion being made on seniority-cum-fitness basis;
- b) the remaining 25% vacancies will be filled on the basis of a Limited Competitive Examination to be conducted by the UPSC, New Delhi, which will be open to LDCs in the Bureau.

They have explained that applicants were promoted on 30.12.82 and 29.11.82 due to exigency of Administration without following any acceptable process of selection from amongst the eligible candidates however, they were regularised w.e.f. 27.1.84 on availability of promotion quota in the grade of UDC. It is further stated that relative seniority of applicants who are promotees and examinees of LDCE, 1984 was determined by rotating the vacancies among them in the ratio of 3:1 based on quota of promotees 75% and LDCE 25%. Since applicants were given their regular promotion w.e.f. 27.1.84 while respondent No.5 had qualified the LDCE in the result dated 30.11.83 and given regular promotion w.e.f. 5.3.84 thus the seniority assigned was according to the instructions and ad-hoc service not being in accordance with rules was not to be counted. They have stated the seniority list was issued in 1988 and applicants herein raised no objection till the judgment of Shri Jena came. Thus they had accepted the seniority assigned to them and cannot claim the benefit of Shri Jena's case as they were not party to it. Their representation came after 5 years. Still they had referred the matter to MHA & DOPT who opined that seniority should be assigned as per the instructions.



6. The respondents have raised the objection that applicants are raking up a stale claim as in the meantime further promotions have also taken place which would be unsettled in case the OA is entertained. They have submitted it is settled law that matters of seniority should not be re-opened after they are settled. They have explained that if benefit of ad-hoc service is given to these two applicants there are about 53 other ad-hoc promotees who will all seek similar benefits and 26 LDCE who are senior and have gained further promotions will become junior to the applicants thus unsettling a settled position.

7. We have heard both the counsel and perused the three pleadings. We find there are questions which need to be answered in this case.

1. Whether applicants would be entitled to count their ad-hoc promotion for the purposes of reckoning seniority in the Grade of UDC.
2. Whether the applicants could be denied the benefit of M.Jena's judgment on the ground that they were not party to it.
3. Whether the applicants can be granted the relief when they did not even raise any objection to the seniority list issued in 1988 without impleading those whose rights would be affected in case they get the benefit.

8. We will advert to all the questions one by one. As far as counting of ad-hoc service is concerned the Hon'ble Supreme Court has already decided the issue that if the ad-hoc promotion was in accordance with rules and persons continue on the post without any interruption and are ultimately regularised the said period would count for seniority however, if the ad-hoc promotion is without following the rules, then the said period will not be counted. Now all that we have to see is whether the ad-hoc promotion given to applicants in 1982 was in accordance with rules or not. A perusal of I.S.Clerical(Reorganisation) Scheme 1960 show 75% of posts could be filled by way of promotion after selections on the basis of seniority-cum-fitness and 25% of same could be filled by way of LDCE but a perusal of order dated 26.2.82 clearly shows that applicants

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were given promotion in 1982 purely due to fortuitous circumstances as their cases were yet to be considered by DPC from Sl.No.65 onwards which is specifically written in the last column and respondents had stated also specifically in the reply on page 4 para (c) that applicants were given promotion purely on ad-hoc basis due to exigency of Administration without following any acceptable process of selection from amongst the eligible candidates. It is seen from fits that applicants had not controverted this averment at all as no rejoinder was filed. Thus as per the settled law by Hon'ble Supreme Court since ad-hoc promotion given to applicants in 1982 was without even holding a SPC the applicants cannot be held to be entitled to the benefit of ad-hoc promotion for the purposes of reckoning their seniority in the grade of UDC.

9. On the next question counsel for the applicants relied on number of judgments of Hon'ble Supreme Court to urge that once a judgment is decided by the Court, similarly situated persons should be given the same benefit without dragging them to Court. We have read the judgments relied on by the applicants and would only like to say that the above principle was laid in all those cases where Supreme Court had already declared a law to be bad in law or where some case was decided on principle, so those judgments would in fact be a judgment in rem. Thus it was in those circumstances that Hon'ble Supreme Court had decided that once the law is declared similarly situated persons should not be dragged to the Court and benefit of such declaration should be given by the Dept. to other similarly situated persons as well. For example in K.C.Sharma's case the validity of retrospective amendment of Rule 2511 by O.M. dated 5.12.88 was already examined and quashed by the Tribunal. So it was in those circumstances that Hon'ble Supreme Court had held that persons who were seeking similar relief their cases should not have been rejected merely on the ground of limitation but ought to have considered on merit. However, coming to the facts of instant case we find that in OA 46/90 Shri M.Jena had sought for quashing of

seniority list and rejection of his representation and had sought for a direction to fix his seniority above party 7 to 37 meaning thereby that relief was claimed in personal capacity and he had also impleaded those who were likely to be affected and the Tribunal also while granting the relief had restricted it to petitioners therein alone. Thus it is a judgment in personam and cannot be said to be judgment in rem. Even otherwise in matters of seniority unless a rule is held to be ultra vires or the principles laid down are held to be bad in law seniority has to be decided in each individual case depending on the facts of the case. In the present case we find from the pleadings that the only grievance of applicants was that they were senior to respondent No.5 Shri O.Ramalingam in the grade of LDC, he could not have been placed above applicants in the next grade of UDC and they have only claimed seniority above respondent No.5. But it is seen from respondents' reply that respondent No.5 had been promoted as UDC in a separate category i.e. after passing the LDCE examination in November, 1983 in a regular way while applicants were only ad-hoc in 1982 and were promoted as UDC in accordance with law only w.e.f. 27.1.84 i.e. after respondent No.5 passed the LDCE Examination. Therefore applicants' grievance does not hold any ground as they cannot claim parity with respondent No.5 nor can have any valid grievance against him. Apart from it, it is also seen that applicant has not impleaded any of the persons except respondent No.5 who would be directly affected in case applicants' relief was to be granted and law is well settled by Hon'ble Supreme Court that in case of seniority no orders should be passed unless those who are likely to be affected are impleaded as respondents. The respondents have categorically stated that there are as many as 26 persons who were placed above applicants as they had passed the LDCE prior to their regularisation and some of them had even gained further promotion and at this stage if any order is passed it would definitely affect the rights already accrued in their favour. Therefore in our considered view simply because the Tribunal



Had granted the relief to one Shri Jena, the same could not have been automatically granted to the applicants herein also specially when they had not raised any objection in 1988 when their seniority list was issued. The law on the subject of seniority is again well settled that old stale claims should not be re-opened as it unsettles a settled position. In B.V.Seviah's case reported in 1998(6) SCC 720 the Hon'ble Supreme Court held if a person seeks restoration of inter se seniority after 4 years the position was rightly rejected by the High Court. In fact in Amrit Lal Berry's case also which was relied by the applicants, the Hon'ble Supreme Court had held in para 19 & 23 that the petition is liable to be dismissed on the ground that equitable rights a no. of Govt. servants had come into existence by the laches and acquiscences of the petitioner. Further it was held that merely by filing repeated or delayed representation, a petitioner cannot get over the obstacles which delayed in approaching the Court because equitable rights of others have arisen.

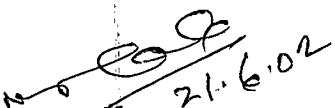
10. Even otherwise we find the Tribunal's decision in Shri M.Jena's case does not hold the field now as it is not in consonance with the law laid down by Hon'ble Supreme Court in subsequent judgments and it seems the respondents had not brought out all these facts as are explained in this case. Otherwise the Tribunal would not have held that officiating promotion was given in accordance with law as this position is contrary to records which were brought on record in present case. For a minute we also felt that the applicant would be entitled to same benefits since Tribunal in its order had written that their officiating promotion was in accordance with rules but on close scrutiny of the matter when we saw the last column in order dated 26.11.82, we were convinced that the officiating promotion of applicants could not be said to be in accordance with law as no DPC was held at all at the time when they were given ad-hoc promotion. However, we have no business to comment upon judgment given by co-ordinate Bench. So we leave it at that. Since the facts have been brought out clearly in this case it has

to be decided on the given facts and since in the given facts we have already held the applicants cannot be given the benefit of ad-hoc, since the applicants cannot claim the benefit of M.Jena's judgment without making out a case on merits.

11. Apart from above discussion we find there is another basic lacuna in the applicants' petition that he has not even impleaded persons from Sl.No.34 to 165 at Annexure A even though they have prayed to be placed above Shri D.B.Galingam who is shown at Sl.No.33. Thus all these persons from 34 to 165 were necessary parties as their rights would be adversely affected in case any order was to be passed in favour of applicants but unfortunately neither any of these persons have been impleaded nor the applicants have challenged the seniority list. Thus the OA is bad for non-joinder of proper and necessary parties. As such no relief can be granted to the applicants even on this ground. In view of the above it is held that there is no illegality in the orders passed by the respondents and applicants cannot be given any relief as claimed by them.

12. Therefore the OA is dismissed with no order as to costs.


MEMBER (J)
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MEMBER (A)