

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 495/95
T.A. No.

198

DATE OF DECISION 13/8/99

Rajender Singh Rathor Petitioner

Mr. S.K. Malik Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. S. Mukherjee & Advocate for the Respondent(s)
Mr. Kamal Dave, Adv. for Respdts. Nos. 1 to 3.

None present for respondent No. 4.

CORAM :

The Hon'ble Mr. A.K. Misra, Judl. Member

The Hon'ble Mr. Gopal Singh, Adm. Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? +
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? +
4. Whether it needs to be circulated to other Benches of the Tribunal ? +

Gopal Singh
(GOPAL SINGH)
Adm. Member

A.K. Misra
(A.K. MISRA)
Judl. Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : August 13, 1999.

O.A. No. 495/95

Rajender Singh Rathore son of Shri Goverdhan Singh Rathore by caste Rajput aged 31 years resident of K-170, Gandhi Colony, Baldev Nagar, Masuriya, Jodhpur, at present working as Office Superintendent in the office of Sports Authority of India at Jodhpur.

... Applicant.

v e r s u s

1. The Sports Authority of India through its Director General, Jawahar Lal Nehru Stadium, Lodhi Road Complex, New Delhi.
2. The Union of India through the Secretary, Department of Youth Affairs and Sports, Government of India, New Delhi.
3. The Director (Personnel), Sports Authority of India, Jawahar Lal Nehru Stadium, Lodhi Road Complex, new Delhi.
4. Shri S.K. Mehta, at present working as Assistant Director in the office of the Sport Authority of India, Jawaharlal Nehru Stadium, Lodhi Road Complex; New Delhi.

... Respondents.

Mr. S.K. Malik, Counsel for the applicant.

Mr. S. Mukerjee & Mr. Kamal Dave, Counsel for the respondents Nos. 1 to 3.

None is present on behalf of the respondent No. 4.

CORAM:

Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. Gopal Singh, Administrative Member.

ORDER

(Per Hon'ble Mr. Gopal Singh)

Applicant, Rajender Singh Rathore, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for setting aside the impugned order dated 6.6.95 (Annexure A/1) as also for a direction to the respondents to finalise

(Gopal Singh)

the seniority list of Office Superintendent after considering the objections of the applicant and that the applicant may be declared as senior in the cadre of Office Superintendent than the respondent No. 4 and Shri S.C. Sahgal. The applicant has also prayed for a direction to the respondents to reconvene the meeting of D.P.C. after finalising the seniority of Office Superintendent and consider his candidature for promotion to the post of Assistantⁿ Director.

2. Applicant's case is that he was initially appointed as Assistant by the respondents on 15.4.87. In the seniority list of Assistant as on 1.1.90, published on 13.3.91, the applicant's name figured at serial No. 4 while that of respondent No. 4, Shri S.K. Mehta, figured at serial No. 8 and the date of confirmation of the services of the respondent No. 4 was shown as 1.4.1988. The name of Shri S.C. Sahgal was not shown in the seniority list. Thus, the applicant is senior to the respondent No. 4 and Shri S.C. Sahgal. The applicant alongwith respondent No. 4 and Shri S.C. Sahgal were promoted as Office Superintendent vide respondents' letter dated 30.9.92 (Annexure A/6). In the seniority list of Office Superintendent as on 1.3.93, published on 1.9.93, the applicant was shown junior to the respondent No. 4 and Shri S.C. Sahgal. The applicant had filed his objections to this seniority list which remain unsettled and no final seniority in the cadre of Office Superintendent was issued. Without finalising the seniority list of Office Superintendent, the respondents promoted the respondent No. 4 as Assistant Director vide their letter dated 6.6.95 (Annexure A/1). The applicant filed a representation against the promotion of the respondent No. 4, but the same has not so far been decided. The applicant also sent a notice for demand of justice on 4.9.95, but the same has not been responded to so far. Feeling aggrieved, the applicant has filed the present O.A.

3. Notices were issued to the respondents and they have filed the reply. In their reply, the respondents have contended that the respondent No. 4, Shri S.K. Mehta, was serving as U.D.C. in the Ministry of Defence, Government of India, and came on deputation on 1.4.84 under the respondent No. 1 on the usual deputation terms. That in October, 1984, two posts of Care Taker were created under the respondent No. 1 and it was proposed to fill up the post on the basis of direct recruitment from amongst the persons serving under the Sports Authority of India, i.e., respondent No.1. The selection committee prepared a panel in order of merit placing Shri S.K. Mehta

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at No. 1 and Shri R.R. Bharati at No. 2 and both were appointed as Care Takers in the scale of Rs. 425-700. Shri S.K. Mehta, respondent No. 4 was, however, appointed as a Care Taker subject to the normal deputation terms after obtaining the concurrence of his parent department with effect from 15.11.84. That Shri S.K. Mehta was finally absorbed under the respondent No. 1 from 1.4.87 and was assigned seniority in the cadre of Assistant with effect from 1.4.87. However, Shri R.R. Bharati, who was placed at serial No. 2 in the merit list was treated as a direct recruit and assigned seniority from the date of his appointment, i.e., 16.10.84. That Shri S.K. Mehta represented for placement in the seniority list above Shri R.R. Bharati, who was No. 2 in the merit list. It was stated by Shri R.K. Mehta, respondent No.4, that the appointment to the post of Care Taker was in the capacity of a direct recruit and, therefore, he should be treated as having been appointed directly instead of on deputation terms. That Shri S.K. Mehta had filed a writ petition before the Hon'ble High Court, Delhi, bearing CWP No. 3720/92. The Hon'ble High Court of Delhi passed an interim order dated 20.2.95 directing the respondents to consider his case for promotion as Assistant Director if he was within the zone of consideration and was otherwise qualified. That the competent authority, namely the Director General of Sports Authority of India, respondent No. 1, considered the entire case 'de novo' and came to the conclusion that the appointment to the post of Care Taker was through a process of direct recruitment where he ranked senior to Shri R.R. Bharati. Therefore, having been appointed as a direct recruit, Shri S.K. Mehta, respondent No.4, should have been asked to resign from the post he held in his parent department and offered direct recruitment instead of deputation. That this was an administrative lapse for which obviously Shri Mehta, respondent No.4, could not be penalised. This lapse seems to have occurred perhaps unintentionally and should be rectified now. Accordingly, the seniority in the cadre of Assistant was revised giving seniority to the respondent No. 4 with effect from 16.10.84. That as a consequence to the revision of seniority in the cadre of Assistant, respondent No. 4 has to be considered for the benefits which had already accrued to his juniors in the grade of Assistant. Therefore, a review DPC was held to consider the case of respondent No.4, Shri S.K. Mehta, for promotion to the next grade, i.e., of Office Superintendent, and he was notionally promoted to the post of Office Superintendent with effect from 20.2.92. Since some of his juniors were subsequently promoted to the post of Assistant Director also, a review DPC was held to consider the fitness of the respondent No.4, Shri S.K. Mehta, for the post of Assistant Director also. Since the juniors to respondent No.

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4 were promoted with a relaxation in qualifying service, the same relaxation had to be extended to him also to ensure equality vis-a-vis his juniors and accordingly, the respondent No. 4 was promoted as Assistant Director vide respondents' letter dated 6.6.95 (Annexure A/1). On the basis of the above facts, it has been contended by the respondents that the respondent No. 4 was senior in the grade of the Assistant to the applicant and it was due to an administrative error that he was shown junior to the applicant and the error was rectified under the orders of the competent authority.

4. We have heard the learned counsel for the parties and have perused the records of the case.

5. By our order dated 12.10.88 in MA No. 164/97, the respondents were directed to produce a copy of the reply to the writ petition, which they had filed in Civil Writ Petition No. 3720 of 1992 filed by Shri S.K. Mehta, respondent No. 4, in the High Court of Delhi. But the respondents failed to submit the same before us. However, a copy of the reply filed by the respondents in the above mentioned case (CWP 3720/92) was produced before us by the learned counsel for the applicant. In this reply, it is stated by the respondents that the petitioner (S.K. Mehta) was on deputation with the respondent No. 2 till 31.3.1988 and was absorbed on a regular basis with effect from 1.4.1988 as an Assistant with the seniority assigned to him in the Assistant's grade from the date of his absorption. In October, 1984, two posts of Carertaker were sought to be filled up and a panel of three person was prepared. In that panel, Shri S.K. Mehta appeared at serial No.1 and Shri R.R. Bharati, who was an outsider, appeared at serial No. 2, ~~in that panel~~. ~~Bharati~~ Shri R.R. Bharati was appointed as direct recruit whereas the petitioner was appointed on the post of Caretaker on deputation basis. It has also been mentioned in this reply that Shri R.R. Bharati, who was a direct recruit, was confirmed with effect from 16.10.84 whereas the petitioner (S.K. Mehta) was absorbed in the respondent-department with effect from 1.4.88 and, therefore, he acquired the seniority in the cadre of Assistant with effect from 1.4.88 only.

6. Here, it is observed that the respondents have taken contradictory stand before this Tribunal and the Hon'ble High Court of Delhi. In fact, the stand taken by the respondents in the present O.A. is far from truth and they have tried to make out a case so as to deprive the applicant of his rightful dues. It has been an after

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thought on the part of the respondents to contend before this Tribunal that the respondent No. 4, Shri S.K. Mehta, was absorbed from 1.4.87 though the official records prove that the respondent No. 4 was absorbed with effect from 1.4.88. Taking different contradictory stand in two Fora on the same subject is highly deplorable and the respondents need to be reprimanded for the same.

7. It is clear from the facts as seen from the official records that the applicant was appointed on 15.4.87, Shri R.R. Bharati was appointed as Caretaker on 16.10.84 whereas the respondent No. 4 was absorbed in the respondent-authority with effect from 1.4.88. It is immaterial that the respondent No. 4 was selected for the post of Caretaker and was placed above Shri R.R. Bharati in the panel. As a matter of fact, he was appointed as Caretaker on deputation basis with the concurrence of his parent department. Therefore, he cannot claim seniority over Shri R.R. Bharati on the basis of so called select list. It appears that all the actions of the respondents in this case have been taken so as to give undue advantage to Shri S.K. Mehta. The applicant was senior to the respondent No. 4 in the cadre of Assistant and, therefore, he should continue to be senior to Shri S.K. Mehta, respondent No.4, in the cadre of Office Superintendent and the Assistant Director. As a matter of fact, Shri S.K. Mehta, did not deserve ~~for~~ promotion and seniority over Shri R.R. Bharati and, therefore, giving him promotion retrospectively as Office Superintendent from a back date at par with Shri R.R. Bharati is against all norms. We are fortified in our view by the judgement of Hon'ble the Supreme Court in Union of India and Another vs. Onkar Chand and Others, reported in 1998 SCC (L&S) 1183. Further, the Sports Authority of India (Service) Bye-laws and Conditions of Service Regulations - 1992 (Schedule-II) (Recruitment Rules), provides the seniority on absorption of deputationists as under:-

"18. Seniority on absorption of deputationists:

Notwithstanding anything contained in those rules, where the competent authority relaxes the recruitment Rules to provide for absorption of a person on deputation with the Sports Authority of India, with the consent of the lending authority, a deputationist shall be absorbed in the grade in which he, on the date of absorption, is working in the Sports Authority of India. His seniority on the date of absorption shall be fixed below all officers regularly appointed upto the date provided if he has been appointed in an identical pay scale in his parent department on an earlier date the benefit of the service in the scale in his parent department shall be given to him for the purposes of fixing his seniority subject to

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the condition that no benefit of service prior to the initial joining in SAI on deputation is allowed."

8. In the light of the above discussion, we find much merit in the present application and the same deserves to be allowed.

9. The O.A. is accordingly disposed of with the following directions :

(i) The impugned order dated 6.6.95 (Annexure A/1) is hereby quashed.

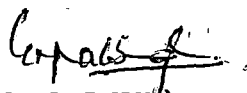
(ii) The respondents should finalise the seniority list of the Assistant and Shri S.K. Mehta, respondent No.4, should be shown as having appointed on the post of Assistant with effect from 1.4.88. This would imply that the applicant who was appointed on the post of Assistant on 15.4.87 would be senior to the respondent No.4, Shri S.K. Mehta.

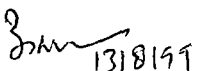


(iii) The respondents should convene review DPC for the post of Office Superintendent and Assistant Director and consider the candidature of all the three persons, namely, the applicant, S/Shri R.R. Bharati and S.K. Mehta (respondent No.4) for promotion to the post of Office Superintendent and the Assistant Director respectively as per their seniority fixed in terms of our present order.

(iv) The applicant is awarded a cost of Rs. 2000/-.

10. The above directions shall be complied with within a period of three months from the date of receipt of a copy of this order.


(GOPAL SINGH)
Adm. Member


(A.K. MISRA)
Judl. Member

CVR.

Reviewed Copy
alongwith cost
Bill.

Rs Rathore
17/8/99

(R.S. Rathore)
Applicant.

Recd Copy
alongwith cost bill
Recd 18/8/99
21/8/99