

File

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH JODHPUR.

OA No.126/98

Date of Order: 7/9/2001

Prem Kumar son of Shri S. Narainan, aged about 39 years, resident of Qtr. No.153/1 MES Colony, Sikargarh, Jodhpur, at present employed on the post of LDC in the office of CWE (AF), Jodhpur.

....APPLICANT

VERSUS

1. Union of India through Secretary to the Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Chief Engineer, Southern Command, Pune-411001.
3. Chief Engineer, Jaipur Zone, Bani Park, Power House Road, Jaipur.
4. Shri K Soman Pillai, LDC, Office of G.E. Trivendram.(AF)
5. Shri Jayachandram (MES-186312), LDC, Office of Chief Engineer, Kochin, Kerela.
6. Shri S.L. Rupera (MES-192698). LDC. Office of CNE, Bani Park, Power House Road, Jaipur.
7. Shri Ashok Kumar Tank (117283), LDC, Office of the Chief Engineer Jaipur Zone, Bani Park, Power House Road, Jaipur.

....RESPONDENTS.

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Mr. J.K. Kaushik, counsel for the applicant.

Mr. S.K. Nanda, counsel for the respondents 1 to 3.

None present for respondents No.4 to 7.

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CORAM

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

Hon'ble Mr. A.P. Nagrath, Administrative Member.

ORDER

(per Hon'ble Mr. A.P. Nagrath)

This application has been filed under Section 19 of of Administrative Tribunals Act, 1985 with a prayer for



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following reliefs:-

- (i) That the respondents may be directed to assign due seniority to the applicant above the respondents No.4 to 7, as per his merit position in the LDC panel of the year 1983, in accordance with the order dated 23.12.78 Annexure A/8, and allow all consequential benefits including consideration of promotion to the post of UDC.
- (ii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (iii) That the cost of this application may be awarded.

2. Facts of the case, as per the applicant, are that he was recruited alongwith others in 1983 and his name was sponsored through Employment Exchange. The selection was held on 23.5.83 and he was placed in a higher position in the order of merit as compared to private respondents No.4 to 7. He has stated that the respondents are treating him as junior to the private respondents because of the date of his joining duty. In his case the delay was caused by the respondents in seeking age relaxation in favour of the applicant which according to the applicant was not necessary. He was offered appointment only in 1987 and he joined on 4.2.1987 while the private respondents joined in 1984 and 1985. The applicant submits that he had no occasion to know about the seniority as no seniority list was ever published. However, he has come to know that a DPC is going to be held for considering the further promotion to the post of UDC. while respondents No.4 to 7 who are junior to the applicant are being considered as per seniority reckoned on the basis of joining the department. He is not being considered as the merit list prepared at the time of recruitment is being ignored.

3. The short controversy involved in this case is whether the seniority is to be reckoned from the date of joining service after being selected or order of merit at the time of recruitment shall govern the seniority.

4. The respondents in their reply have raised a preliminary objection on the ground that this OA has been filed on 19.9.1998 while the cause of action arose only in June, 1983 when the select panel was formed. The applicant has accepted his appointment offered ^{to} him vide letter dated 31.1.1987 and he joined his duty on 4.2.1987. So, the respondents contend that this OA is barred by limitation.

5. On merits, the respondents have stated that a select list of 87 candidates was framed and the applicant's name was at Serial No.11 of the merit list. However, the applicant could not be offered appointment in '83 ~~as~~ ^{for} the reason that when the selection result was approved in June, 1983, the applicant had become overaged and his case was liable to be rejected. Since his name appeared in the merit list, the case was processed for obtaining age relaxation from the competent authority. The respondents assert that the applicant has been assigned correct seniority in terms of letter dated 9.8.1983 (Annexure R/1) which states. That wherever specific provisions have not been made in the recruitment rules, the crucial date for determining age limit will be the actual date of assumption of duties. Since, the applicant joined on 4.2.87, the seniority assigned to him has been stated to be correct.

6. We do not find any force or rationale in the plea taken by the respondents both on limitation and also on merits. There is no document to prove that after recruitment and appointment of the applicant, any seniority list

has been issued by the department. When the case was heard, the learned counsel for the respondents was given opportunity to submit seniority list, if at all published relating to the cadre in question between 1985 to 1989/relating to the appointment of the applicant and his contemporaries. A period of 3 weeks was given for the purpose but no such seniority list has been filed by the learned counsel on behalf of the respondents. Since, no seniority list has been published so far, the applicant had no occasion to agitate against the same. We, therefore, reject the contention of the respondents that the case is barred by limitation.

7. On merits, we find no rationale in the arguments advanced by the respondents that the crucial date for determining the age limit will be the actual date of assumption of duties. The date for the purpose of reckoning the age limit is specified in the notification when the applications are invited for recruitment. The age is also indicated in the notice sent to the Employment Exchange by which date the applications are required to be sent to the department. The date of joining is an event which, very often, can be beyond the control of the person and any substantive right cannot be based on such a date and any action denying any right on the plea that on the date of joining, the applicant is overaged, in our considered view is totally arbitrary and not sustainable in law. It is not the case of the respondents that on the date ~~of~~ by which the application was to be received from the Employment Exchange, he was overaged. In fact, the matter stood clarified ~~as~~ vide department's letter dated 14.9.78 in reply to Chief Engineer's letter dated 28.8.78(Annexure A/8). In this letter the proposition made by the Chief Engineer that seniority of the individuals should be fixed on the

basis of merit list irrespective of the date of joining was confirmed by the Chief Engineer. While doing so, reference was made to Ministry of Defence, OM No.10(1)60/D(Appts) dated 11.3.65.

8. The learned counsel for the applicant had placed reliance on the judgment of this Tribunal in OA No.418/94 decided on 19.3.98. By which the respondents were directed to prepare the entire seniority list as per the merit list drawn by the recruitment board. While coming to this conclusion, the Tribunal had also referred to the earlier decision dated 12.8.93 in OA No.529/90. The relevant portion of the order dated 12.8.93 as quoted in the decision in OA No.418/94 is extracted below:-

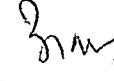
"The learned counsel for the applicant has also invited our attention to Annex. A/6 order dated 23.12.78 said to have been issued by the respondents. In para 3 of the said order it has been mentioned that the present practice of reckoning of seniority, is from the date the individual joins initial appointment. The merit list drawn by the recruitment board is not taken into account while fixing his seniority. This practice may adversely affect certain individuals who join the initial appointment late, due to circumstances which are beyond their control. Directions were given that the seniority of the individuals should be notionally fixed on the date of publication of the merit list in the order of seniority irrespective of the date by which the individuals join initial appointment. Respondents cannot challenge the order Annex. A/6 issued by them. The respondents have come with a case that the practice is continuing and the persons those who are shown to be junior in the merit list and joins at an earlier date is treated as senior. The appointment may be effective from the date a person joins. However, it may not take away the seniority of the person who is senior in the merit list and joins later due to circumstances which are beyond their control.

In the result, we accept this application and direct the respondents to revise the seniority list in accordance with directions given in order dated 23.12.78 (Annex.A/6) within three months from the date of order. There will be no order as to costs."

9. We find ourselves in total arguments with a view taken by the Tribunal in these two cases. The same legal position has been upheld by Hon'ble the Supreme Court in the case of G. Deendayalan Ambedkar Vs. U.O.I. & Ors. 1997 SCC (L&S) 749.

10. In view of this settled legal position, we allow this OA and direct the respondents to frame the seniority list of the LDCs recruited in 1983 as per the merit position obtained by them at the time of recruitment. We would like to make it clear that this direction should be treated as a direction in ~~extrem~~ and the seniority list in respect of all the 87 candidates recruited alongwith the applicant should be cast on the basis of the merit list only. The applicant shall be entitled to all consequential benefits. The respondents are directed to comply with this order within a period of 3 months from the date of the order. Parties are left to bear their own costs.


(A.P. Nagrath) (9/2001)
Admn. Member


7/9/2001
(A.K. Misra)
Judl. Member

P/d.

Received
Decomposed
12/9/2011

Received
Part II
Summons
12/9/2011

Part II and III destroyed
in my presence on 12/9/2011
under the supervision of
Section Officer as per
order dated 12/9/2011

HGD
Section Officer (Record)