

1/1

CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH : JODHPUR.

1. O.A. No. 161/99

Date of order : 03.08.2001

Narayan Ram Gundi son of Shri Bhola Ram, aged about 35 years, resident of Vill. Nandri PO. Nandra Kalla Distt. Jodhpur, at present employed on the post of Junior Clerk in the office of Central Arid Zone Research Institute, Near ITI Light Industrial Area, Shastrinagar, Jodhpur.

... Applicant.

v e r s u s

1. The Indian Council of Agriculture Research through the Director General, Krishi Bhawan, Pusha, New Delhi.
2. The Director, Central Arid Zone Research Institute, Near ITI Light Industrial Area, Shastri Nagar, Jodhpur.
3. Shri M.M. Solanki, Senior Clerk, Central Arid Zone Research Institute, Near ITI Light Industrial Area, Shastri Nagar, Jodhpur.

... Respondents.

2. O.A. No. 185/99

Om Prakash son of Shri Ram Chanderji, aged about 33 years, resident of 1007 Gandhipura Rasala Road, Jodhpur, at present employed on the post of Junior Clerk in the office of Central Arid Zone Research Institute, Near ITI Light Industrial Area, Shastrinagar, Jodhpur.

... Applicant.

v e r s u s

1. The Indian Council of Agriculture Research, through Director General, Krishi Bhawan, New Delhi.
2. The Director, Central Arid Zone Research Institute, Near ITI Light Industrial Area, Shastrinagar, Jodhpur.
3. Shri M M Solanki, Senior Clerk, Central Arid Zone Research Institute, Near ITI Light Industrial Area, Shastrinagar, Jodhpur.
4. Shri Guru Dayal, Junior Clerk, Central Arid Zone Research

Institute, Near ITI Light Industrial Area, Shastrinagar, Jodhpur.

5. Shri Shashi Shankar Dave, Junior Clerk, Central ARid Zone Research Institute, Near ITI Light Industrial Area, Shastrinagar, Jodhpur.

... Respondents.

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

Mr. V. S. Gurjar, counsel for the respondents.

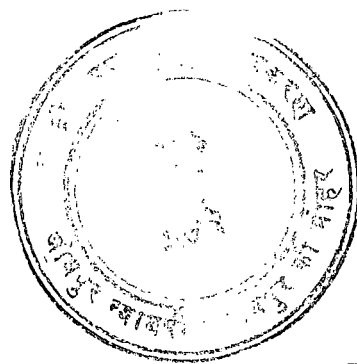
CORAM

Hon'ble Mr. Justice B. S. Raikote, Vice Chairman.

Hon'ble Mr. Gopal Singh, Administrative Member.

ORDER

(per Hon'ble Mr. Justice B.S. Raikote)



Applicant Shri Narayan Ram Gundi in OA No. 161/1999 has challenged the endorsement of the department dated 17.05.1999 (Annexure A-3), by which his representation to modify the seniority list has been rejected. The applicant further prays that necessary direction may be issued to the respondents to accord him seniority over and above the respondent no. 3 Shri M. M. Solanki.

2. Likewise, applicant Shri Om Prakash in OA No. 185/1999 had challenged the endorsement dated 17.05.1999 (Annexure A/3) by which his representation was also rejected raising the same ground similar to the grounds raised in OA No. 161/1999. In these circumstances, we are disposing of both these applications by this common judgment and order. However, we refer to the pleadings as well as the documents as mentioned in OA no. 161/1999, for the sake of convenience.

3. It is the case of the applicants that after passing the

requisite typing test, they were confirmed in the post of Junior Clerk w.e.f. 01.10.1991 (in respect of the applicant in OA No. 161/1999) and 01.08.1992 (in respect of the applicant in OA No. 185/1999), vide letter dated 07.04.1994 (Annexure A-4), and their names are placed at Sr. Nos. 20 and 25 respectively, whereas, the name of the respondent No.3, Shri M M Solanki, whose services were confirmed w.e.f. 01.09.1992 is placed at Sr. No. 19. The applicants submitted that the seniority of the officers are determined on the basis of the date of confirmation. Since the applicants were confirmed earlier than the respondent no.3, the applicants should be shown senior to the respondent no.3 whereas, in the seniority list as on 31.12.1992 vide Annexure A-2 dated 05.03.1994, their names were shown at Sr. Nos. 20 and 25 respectively and the respondent no. 3 was shown over and above them at Sr. No. 19 and the same is wrong and erroneous. By taking the seniority list vide Annexure A-1, Official respondents have now promoted the respondent no.3 to the post of Senior Clerk vide order dated 23.12.1993(Annexure A-2), but not promoting the applicants to the post of Senior Clerk is discriminatory and violative of Articles 14 and 16 of the Constitution of India. The Private respondent no.3, being confirmed later than the applicants, should be treated as junior to the applicants, and accordingly, the applicants were entitled to promotion from the date the respondent no.3 was promoted. Therefore, there should be a direction to the respondents to modify the seniority list as on 13.12.1994 issued vide Annexure A-1, dated 05.03.1994 with a consequential direction to promote the applicants to the post of Senior Clerk by placing them over and above respondent no.3.

4. The official respondents by filing reply statement,

✓

have denied the case of the applicants . They contended that this application is barred by time. The applicants' seniority is determined on the basis of seniority list as on 31.12.1992 vide Annexure A-1, by placing them at Sr. No.20 and 25 respectively whereas, the private respondent no.3 is at Sr. No. 19 and accordingly, he is senior to the applicants. This seniority list, the applicants have not challenged in all these years till the year 1999, when they filed the present applications. Thus, there is a delay of 7 years. Therefore, both the applications are liable to be rejected on the ground of delay only. Since the private respondent no. 3 is senior to the applicants, he was rightly promoted vide order dated 23.12.1998 (Annexure A-2) and the applicant cannot make any grievance for the same. They further contended that the seniority would be governed on the basis of the rank assigned in the seniority list, but not on the date of confirmation. In fact, earlier the seniority was determined on the basis of the date of confirmation. But vide Government of India, Department of Personnel and Training, OM No. 20011/5/90-Estt. (D), dated 04.11.1992 (Annexure A-5), the earlier principles for determining the seniority was done away with as per the law declared by Hon'ble the Supreme Court in the case of Class-II Direct Recruits Engineering Officers Association Vs. State of Maharashtra. Therefore, by the said memorandum dated 04.11.1992 vide Annexure A-5, it was made clear that after 04.11.1992, the seniority would be determined on the basis of the date of recruitment but not on the basis of the date of confirmation. The private respondent No.3 was senior to the applicants as per the date of recruitment. The date of confirmation is not relevant to determine the seniority, therefore, the applicants' confirmation earlier to the



✓

1/5

respondent no.3 absolutely has no legal effect, and on the basis of such earlier confirmation the applicants cannot claim seniority over and over and above the private respondent no.3, who is senior to the applicant according to the date of recruitment. Therefore, these applications are liable to be dismissed even on merits.

5. Heard and perused the records.

6. In the instant case, the applicants are seeking modification of the seniority list dated 05.03.1994(Annexure A-1) prepared as on 31.12.1992. The covering letter of the seniority list itself stated as under :-



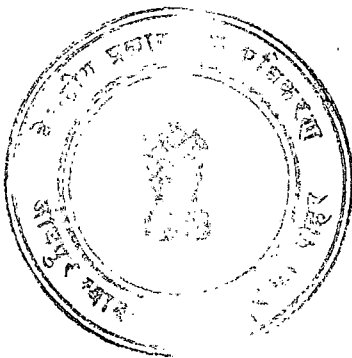
"Sub : Seniority list of Jr. Clerks as on 31.12.1992.

The final seniority list of Jr. Clerks in the Central Arid Zone Research Institute, Jodhpur as on 31.12.1992 is enclosed. The Seniority has been determined in the seniority list as per Government of India's orders/instructions. All concerned may please note their particulars about date of birth, qualification etc. accordingly."

7. The applicant admittedly did not file any objection to the seniority list. According to this seniority list, they are shown junior to the ~~official~~ private respondent no.3. The name of private respondent no. 3 is at Sr. No. 19 whereas the name of the applicants are at Sr. No. 20 and 25 respectively. If that is so, the private respondent no. 3 was senior to the

✓

applicants as per the seniority list. The applicants neither challenged this seniority list immediately nor they have filed any objection to the seniority list at any point of time. But the present applications seeking modification of seniority list at Annexure A-1 were filed only in the year 1999, nearly after 7 years, and there is no application for condonation of delay also and in these circumstances, the application is liable to be dismissed. Under Section 21 of the Administrative Tribunals Act, 1985, ~~fixed~~ the period of limitation is one year. This application filed beyond one year from 05.03.1994, is hopelessly barred by time. The private respondent No.3 has specifically contended that he is senior to the applicants. The respondents have stated that the applicants and the private respondent no. 3 were appointed in the year 1986 on the basis of the direct recruitment and the private respondent no. 3 was higher in rank than the applicants, and his seniority has been determined on the basis of his ranking in the Selection Panel, and it is in accordance with law. Only because the applicants were confirmed earlier to the private respondent no. 3, do not confer on them any right to claim seniority over and above the private respondent no.3. There is substance in this argument. The applicant has not denied the allegations made by the respondents that in the selection panel, which was arranged according to the ranking of the candidates on the basis of their performance, the applicants were lower in ranking than the private respondent No.3. As per the established principle of law, the persons higher in rank would be senior to the persons lower in rank in the recruitment panel. Therefore, on the basis of this position, the private respondent no. 3 was placed over and above the



[Handwritten signature]

applicants. The applicants cannot be placed over and above the private respondent No.3 only because the applicants were confirmed earlier than the ~~official~~ private respondent No.3. However, the learned counsel for the applicants relied upon Annexure A-5 contending that the date of confirmation would be the determining factor in order to assign the seniority. We have perused the Annexure A-5 dated 04.11.1992, which reads as under :-

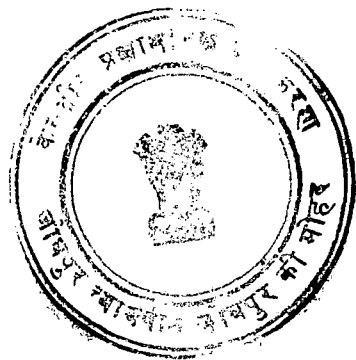
"[Government of India, Department of Personnel and Training, Office Memorandum No. 20011/5/90-Estt.(D), dated the 4th November, 1992].

Seniority to be determined by the order of merit indicated at the time of initial appointment.-The seniority of Government servants is determined in accordance with the general principles of seniority contained in M.H.A. O.M. No. 9/11/55-RPS, dated the 22nd December, 1959(see SectionII). One of the basic principles enunciated in the said OM is that seniority follows confirmation and consequently permanent officers in each grade shall rank senior to those who are officiating in that grade.

2. This principle has been coming under judicial scrutiny in a number of cases in the past; the last important judgment being the one delivered by the Supreme Court on 2.5.1990, in the case of Class II Direct Recruits Engineering Officers' Association v. State of Maharashtra. In para, 47(A) of the said judgment, the Supreme Court has held that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

3. The general principle of seniority mentioned above has been examined in the light of the judicial pronouncement referred to above and it has been decided that seniority may be delinked from confirmation as per the direction of the Supreme Court in Para 47(A) of its judgment dated 2.5.1990. Accordingly, in modification of the General Principle 3, proviso to General Principle 4 and proviso to General Principle 5(1) contained in O.M. No. 9/1/11/55-RPS, dated the 22nd December, 1959 and para 2.3 of OM, dated the 3rd July, 1986, it has been decided that seniority of a person regularly 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.

4. These orders shall take effect from the date of issue of this Office Memorandum. Seniority already



[Handwritten signature]

determined according to the existing principles on the date of issue of these orders will not be reopened even if in some cases seniority has already been challenged or is in dispute and it will continue to be determined on the basis of the principles already existing prior to the date of issue of these orders."

8. From the reading of the above memorandum issued by Government of India dated 04.11.1992, it is clear that the seniority has to be determined from the date of appointment and not according to the date of his confirmation. Earlier, the date of confirmation was being taken as the basis in order to determine the inter se seniority amongst the employees, but by this memorandum dated 04.11.1992, the date of appointment would be the basis for determining the seniority, but not the date of confirmation in view of the judgment of Hon'ble the Supreme Court in the case of Class-II Direct Recruits Engineering Officers Association Vs. State of Maharashtra. The memorandum further clarified that the seniority already finalised before this date, i.e. 04.11.1992, shall not be disturbed. In the instant case, the applicant's confirmation is subsequent to this memorandum. In fact, he has been confirmed vide order dated 07.09.1994 (Annexure A-4) and i.e. subsequent to the memorandum dated 04.11.1992 (Annexure A-5). Therefore, the seniority list vide Annexure A-1 dated 05.03.1994 prepared as on 31.12.1994 has become final, and the same cannot be called on question, in view of memorandum dated 04.11.1992 (Annexure A-5). But the case of the applicants is that they have been confirmed by Annexure A-4 dated 07.09.1994 retrospectively from dated 01.10.1991 and 01.08.1992 respectively, whereas, private respondent No. 3 has been confirmed w.e.f. 01.09.1992 and as such, subsequent thereto. But the fact remains that both the confirmation of the applicants and the private respondent No. 3 was for the first time



[Handwritten signature]


made vide Annexure A-4 dated 07.09.1994, i.e. very much subsequent to Annexure A-5 dated 04.11.1992. Therefore, this confirmation cannot have any effect of changing the seniority of the applicants vis a vis the private respondent No.3. At any rate, as per the law declared by Hon'ble the Supreme Court referred to above in the case of Class-II Direct Recruit Engineers Association Vs. State of Maharashtra, the date of confirmation cannot be the basis for determining the seniority, and the law declared by Hon'ble the Supreme Court is binding on all the courts and authorities under Article 143 of the Constitution of India. The applicants cannot claim any relief contrary to the law declared by Apex Court, ^{contending} that on the basis of date of confirmation, they would be senior to private respondent No.3. Therefore, the applicants confirmation earlier to private respondent No.3 cannot confer upon them any right to claim seniority over and above the private respondent No.3, who is senior to the applicants on the basis of the date of recruitment and the panel position. Thus, even on merits, we do not find any substance in the contention of the applicant. Thus, this application is liable to be dismissed both on the ground of limitation and also on merits. The Central Administrative Tribunal, Bangalore Bench in its judgment reported in 1999(2) SLJ CAT 432 A.V. Shanmukkaiah Vs. Deputy Commissioner of Income Tax and Others, by interpreting Annexure A-5 memorandum dated 04.11.1992 has clearly ruled that the said memorandum is perspective in its nature and the seniority assigned prior to that date cannot be challenged on the basis of the said memorandum. At any rate as stated above, as per the law declared by Hon'ble the Supreme Court, the date of confirmation cannot be the basis ~~basis~~ for determining the inter se seniority amongst the civil servants.




11

Moreover, as held by Hon'ble the Supreme Court in (1998) 2 Supreme Court Cases 23 (B. S. Bajwa and another Vs. State of Punjab and Others), the question of seniority should not be reopened after a lapse of reasonable period because that results in disturbing the settled position. In the instant case also, it is not possible to disturb the seniority list prepared as on 31.12.1992 vide Annexure A-1 dated 04.11.1992, on the basis of the present applications filed in the year 1999. However, the learned counsel for the applicant relied upon the judgment of Hon'ble the Supreme Court in 1996 (1) SLJ 113 (Kuldeep Chand Vs. U. O. I. & Ors.), to support his contention. We have perused the said judgment, but in our considered opinion, the facts of the said case are entirely different from the facts of the present case. In that case admittedly, the appellant before Hon'ble the Supreme Court was junior to one Shri Ashok Kumar and Hon'ble the Supreme Court has held that the fortuitous promotion cannot permit the appellant therein to march over his senior Shri Ashok Kumar, though the delay in claiming the seniority may not have consequence in the case as long as Shri Ashok Kumar was senior to him. Thus, it is clear that the facts of the said case are entirely different from the facts of the present case. Therefore, this judgment also is not applicable to the instant case. Accordingly, we pass the order as under :-

"Both the applications are dismissed. But in the circumstances, without costs."


(GOPAL SINGH)
Adm. Member


(JUSTICE B.S. RAIKOTE)
Vice Chairman

cvr.



Received
O'Deargh
8/8/2001

Received by me
H.S. [initials]
Hawthorn Sig 10/8/2007
Adm

THE FOLLOWING IS A SUMMARY OF THE INFORMATION RECEIVED FROM THE
OFFICE OF THE ATTORNEY GENERAL ON 10/8/2007

Part II and IH destroyed
in my presence on 17-5-07
under the supervision of
section officer (J) as per
order dated 13/3/07

NGM
Section officer (Record)