

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

O. A. No.  
KAXXNOK

399

1990

DATE OF DECISION 8.4.1991

S.Bhasi & 5 others Applicant (s)

Mr.M.R.Rajendran Nair Advocate for the Applicant (s)

Versus

Union of India rep. by Secy., Respondent (s)  
Ministry of Finance, New Delhi & 8 others

Mr.NN Sugunapalan, SCGSC (R1&2) Advocate for the Respondent (s)  
Mr.C.P.Ravikumar ( for R.3 to 9)

CORAM:

The Hon'ble Mr. S.P.Mukerji - Vice Chairman

and

The Hon'ble Mr. A.V.Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Ys*
2. To be referred to the Reporter or not? *Ys*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Ys*
4. To be circulated to all Benches of the Tribunal? *Ys*

JUDGEMENT

(Mr.A.V.Haridasan, Judicial Member)

The applicants six in number who were originally working in the Rehabilitation Department having been declared surplus were transferred to the Central Surplus Cell of Department of Personnel & Administrative Reforms, Ministry of Home Affairs, New Delhi and were absorbed in the Income Tax Department in Kerala charge. The applicants 1 to 5 joined in the Income Tax Department on 12.4.1983 and the applicant No.6 joined on 10.6.1983 as Lower Division Clerks in the scale of Rs.260-400. It was mentioned in the order transferring them to the Income Tax Department that their inter-se seniority in Kerala Charge would be reckoned from the dates they joined duty in the Kerala

charge, that they would be placed below the existing Lower Division Clerks (whether permanent or temporary) in the Income Tax Department in Kerala, and that the services rendered by them in other offices earlier would not count towards minimum service if any prescribed for promotion/appointment to any higher posts/grade, and that they were posted against direct recruitment quota. The respondents 4 to 9 who were directly recruited as Lower Division Clerks in the Income Tax Department and respondent No.2 who was appointed on compassionate ground were placed in the seniority list of the Lower Division Clerks of the Income Tax Department as on 1.9.1983 below the applicants 1 to 6. In the seniority list as on 1.9.1984, also the same order of seniority was followed. But this seniority position was altered and the applicants were placed below respondents 3 to 9 in the seniority list as on 1.9.1985, Annexure-I. As the respondents 3 to 9 joined the department only after the applicants had joined, the applicants felt aggrieved by the alteration in their seniority position and therefore on 14.7.1987 they made representations to the Commissioner of Income Tax, Cochin, requesting for a review and refixation of their seniority position. The Chief Commissioner of Income Tax, Bangalore, by his memo dated 8.8.1988 turned down the claims of the applicants on the ground that the applicants joined the department ~~much~~ after the list of Lower Division Clerks selected by the Staff Selection Commission was received, and that as such their seniority could be reckoned only after the dates of their joining

of the candidates selected by the Staff Selection Commission.

In the meanwhile the disposition list of Lower Division Clerks as on 1.9.1987 was also published following the same order of seniority as in Annexure-I. Their further representation against the list as on 1.9.1987 was also rejected by the Chief Commissioner by order dated 7.10.1988 and 23.3.1989. Thereafter the disposition list of Lower Division Clerks as on 1.9.1988 was also published in the same line as in Annexure-I. The applicants submitted further representation to the second respondent, the Chief Commissioner of Income Tax, Cochin. The second respondent by Annexure-VII order dated 19.3.1990 rejected the representation submitted by the second petitioner stating that the case was referred to the Central Board of Direct Taxes for clarification and that the Board in its letter dated 1.3.1990 had clarified that the seniority of redeployed persons are to be reckoned from the date of their joining the department, that it was stated that the surplus cells hands could not claim seniority over a batch or any one of those directly recruited through Staff Selection Commission as their seniority goes by rank in the merit list and their seniority is fixed on the basis of the date of selection by Staff Selection Commission; that the date of joining is not the criterion for determining the seniority of direct recruits, and that therefore, his claim for seniority based on the date of his joining cannot be accepted.

The applicants have in this application impugned Annexure-I and Annexure-VII orders on the ground that the assigning of seniority to the persons who joined the department later than the dates on which the applicants joined above the applicants on the ground that the list containing their names were received from the Staff Selection Commission before the applicants joined is against the well established principle that seniority should be reckoned on the basis of length of continuous service in the cadre, that as the applicants were told that they would be placed below the existing Lower Division Clerks in the department, and that they were posted against Direct Recruits quota, it is illegal and violative of principles of natural justice to place Lower Division Clerks who joined in the department on later date above them in the seniority list, and that it is inequitable to push down the applicants who were rendered surplus in a Government department <sup>where</sup> they had worked for a considerable time in the matter of seniority further down than those who joined the department after they were absorbed in the department, and that for these reasons the impugned orders at Annexure-I and VII are liable to be quashed. The applicants pray that the respondents 1 and 2 may be directed to refix the seniority of the applicants in accordance with law.

2. The contentions raised in the reply statement can be briefly stated as follows. The Staff Selection Commission as per their letter No.6/9/82 dated 16.8.82 had nominated 39 candidates as Lower Division Clerks.

This included the respondents 4 to 9. As per instructions, Character and Antecedents of the candidates had to be verified before their appointment. It took some time for verification of the character and antecedents of these persons. In the meanwhile the Central Surplus Cell nominated the applicants 1 to 5 for absorption as Lower Division Clerks in the Income Tax Department by its letter dated 14.3.1988. As the formalities such as verification of character and antecedents were not required in the case of the applicants, they could join the Income Tax Department on 12.4.1983. But the respondents 3 to 9, though were advised by the Staff Selection Commission earlier could join only subsequently, because of the time taken for completion of the formalities. As some doubt was felt to how the seniority of the surplus cell sponsored candidates had to be fixed, and the clarification was not received in the provisional seniority list as on 1.9.1983, the applicants were placed above the respondents 3 to 9. ~~in the provisional seniority list.~~  
But the matter was taken up with the Central Board of Direct Taxes for which a reply dated 1.3.1990 at Annexure-R.3 was received. The clarification contained in this letter is as follows:

"The seniority of the redeployed persons is to be reckoned from the date of their joining the Department. These persons cannot claim seniority over a batch of or any one of the directly recruited candidates sponsored by S.S.C. as their seniority goes by rank in the merit list. But, in the case of direct recruits, date of joining is no criterion for determination

of their seniority. In their case, the date of selection by the Staff Selection Commission, as indicated before, determines their seniority, and the inter-se-seniority of direct recruits is determined according to their rank in the merit list."

It was in the light of the above instructions that the seniority position of the applicants viz-a-viz respondents 3 to 9 were changed in the impugned seniority list.

As the applicants had to forego the benefit of their past service on being rendered surplus and as they were accommodated against the Direct Recruits quota, they are entitled only to claim seniority after the <sup>date of</sup> joining of the Direct Recruits sponsored by the Staff Selection Commission long ~~before~~ the applicants joined the Income Tax Department. Though the Staff Selection Commission hands joined only later as the seniority of the persons selected by the Staff Selection Commission depends on the order of the seniority in the merit list. The seniority of the compassionate appointee viz-a-viz the service employees who are appointed against the Direct Recruits quota could be determined on the basis of their date of joining in the department. Therefore, the respondents contend that the applicants are not entitled to claim seniority over the respondents 3 to 9.

3. We have heard the arguments of the learned counsel on either side and have also perused carefully the documents produced.

4. From the pleadings it is evident that the applicants 1 to 5 joined the Income Tax Department at Cochin on 12.4.83, that the applicant No.6 joined on 10.6.83. The respondents 4 and 5 joined on 12.4.83, the 6th respondent joined on 10.5.83, the 8th respondent joined on 27.5.83, the 3rd respondent joined on 11.8.83, the 7th respondent joined on 4.2.84 and 9th respondent joined on 25.4.84. It is also not in dispute that in two earlier seniority lists, i.e. as on 1.9.1983 and 1.9.1984 all the applicants were placed above the respondents 3 to 9. It is also evident that the seniority positions reflected prior to the impugned seniority list were provisional. This seniority position has been altered for the first time in the Annexure-I impugned seniority list. To the representations made by the applicants against this alteration in their seniority position, the applicants were finally told by the Annexure-VII order dated 19.3.1990, that the Central Board of Direct Taxes had in letter dated 1.3.1990, at Annexure-R13 clarified that the seniority of the redeployed persons are reckoned from the date of their joining in the department, that these persons cannot claim seniority over the batch or any one of the directly recruited candidates sponsored by the Staff Selection Commission, ~~xxxxxxxxxxxxxx~~, ~~xxxxxxxxxxxxxx~~, and that the inter-se seniority of the Direct Recruits are not to be reckoned on the basis of their joining the department but on the basis of their respective position in the select list. The learned counsel for the applicant

argued that the applicants were told in their letter of appointment, Annexure-II, that their seniority would be reckoned from the date of their joining in the Kerala charge of the Income Tax Department, and that they would be placed below the existing Lower Division Clerks in the department, and that therefore, it is not open for the respondents to say that just because respondents 4 to 9 were selected by the Staff Selection Commission before the applicants joined, the Income Tax department at Cochin the applicants would be placed below the respondents 4 to 10 who actually joined the department after the date of joining of the applicants, since this offence the well established principle in service jurisprudence, that the seniority should be reckoned on the basis of the entry into the cadre or length of continuous service. The learned counsel referred to the decision of the Hon'ble Supreme Court in Desoola Rama Rao and another Vs. State of Andhra Pradesh and others, AIR 1988-SC-857 wherein it was observed as follows:

"The law relating to inter se seniority in a cadre is well settled. If there be a rule indicating the manner in which such seniority has to be fixed, that is binding. In the absence of such a rule, length of service is the basis for fixing inter se seniority."

The learned counsel for the respondents submitted that, as the respondents 4 to 9 had been selected by the Staff Selection Commission, long before the surplus cell nominated the applicants for absorption in the Income Tax

deemed  
Department, it has to be held that the respondents 4 to 9  
were also ~~existing~~ existing Lower Division  
Clerks in the department and therefore, the applicants  
cannot claim any seniority over them. Strong reliance  
is placed by the learned counsel for the respondents, on  
Annexure-R3 letter issued from the Central Board of  
Direct Taxes in which it was stated that the redeployed  
persons cannot claim seniority over a batch or any one  
of the directly recruited candidates sponsored by the  
Staff Selection Commission, as their seniority goes by  
rank in the merit list. Annexure-R3 is only a letter  
and not a rule relating to fixation of seniority. Though  
the applicants were accommodated in the Direct Recruits  
quota, it is clear from Annexure-R3 letter itself, that  
their seniority is to be reckoned from the date of their  
joining in the department. The fact that the inter-se  
seniority of the Direct Recruits selected by the Staff  
Selection Commission would not depend on the date of  
their joining duty but on the respective position in the  
selection list, does not mean that they could claim  
seniority from the date on which the Staff Selection  
Commission has selected them. By a mere selection by  
the Staff Selection Commission, the candidates so selected  
did not acquire a right to post in the department and it  
cannot be said that they had become existing Lower Division  
Clerks in the Income Tax Department before they joined  
department. To say that the redeployed Lower Division

Clerks would rank junior to those who were directly recruited through Staff Selection Commission, though they joined the service long after the date on which the redeployed persons joined the service is opposed to the well accepted principle in service jurisprudence that in the absence of any rule to the contrary, the rule of continuous officiation or length of service or the date of entry should be the criterion for fixing the seniority. In A. Janardhan Vs. Union of India-AIR 1983 SC 769, it has been observed as follows;

"It is an equally well recognised canon of service jurisprudence that in the absence of any other valid rule for determining inter-  
se seniority of members belonging <sup>to the</sup> same services the rule of continuous officiation or the length of service or the date of entering <sup>service</sup> in service and continuous uninterrupted <sup>thereafter</sup> would be valid and would satisfy the tests of Article 16."

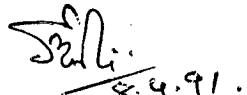
No rule of seniority prescribing that the persons redeployed from the surplus cell should be ranked below the direct recruits is brought to our notice. The instruction contained in Annexure-R3 letter also does not clearly lay down that the redeployed persons should be ranked below the direct recruits selected by the Staff Selection Commission just because the Commission has made a selection before the redeployed persons join the department. Though the persons selected by the Staff Selection Commission joined the department on a later date, the method of pushing down the persons redeployed on account of being rendered surplus to a position lower than the persons selected by the Staff Selection Commission but joined the department only later

to our mind appears to be highly unscientific and against the well established principles of seniority that in the absence of any specific rule, seniority should abide by the date of entry into the cadre and uninterrupted continuous officiation. The placement of the 3rd respondent who joined the department as a compassionate appointee long after the dates on which the applicants joined the service is also illegal and unjustified. In the provisional seniority list as on 1.9.1983 the applicant No.6 who joined the Income Tax department on 10.6.1983 is seen placed above some of the respondents who joined on dates earlier than that. This also is unscientific as it is an admitted case that the redeployed persons would forego their service in the former department for the purpose of seniority, and that their seniority would be reckoned only from the date of their joining the department concerned.

5. In view of what is stated in ~~the~~ foregoing paragraph we find that the fixation of inter-se seniority between the applicants and respondents 3 to 9 in Annexure-I and in the subsequent disposition lists is not correct. The order dated 19.3.90, Annexure-VII, holding that the applicants are not entitled to claim seniority over the persons selected by the Staff Selection Commission also has been found to be ~~incorrect~~ incorrect. Therefore we quash the impugned orders Annexure-I and VII and direct the respondents 1 and 2 to refix the *Respondent* seniority of the applicants viz-a-viz 3 to 9 placing the *Appropriate places* *at* applicant 1 to 5 who joined the department on 12.4.1983.

above respondents 3 to 9 and the 6th applicant whose date of entry is 10.6.1983 at an appropriate place below the respondent No.8, whose date of entry is 27.5.1983. Action in the above lines should be completed within a period of 2 months from the date of communication of this order. There is no order as to costs.

  
(A.V.HARIDASAN)  
JUDICIAL MEMBER

  
(S.P.MUKERJI)  
VICE CHAIRMAN

8.4.1991