

FINAL ORDER
28-10-1987

CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH

Wednesday, the twentyeighth day of October, one thousand ~~one~~ hundred and eighty seven.
Nine

PRESENT

Hon'ble Shri C. Venkataraman,
Administrative Member

&

Hon'ble Shri G. Sreedharan Nair,
Judicial Member.

ORIGINAL APPLICATION NO. 41 OF 1987

V.V.Varghese

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Applicant

vs

1. Union of India, represented
by Secretary, Ministry of
Personnel, Public Grievances
and Pensions, Department of
Personnel and Training, North
Block, New Delhi.

2. Chief of Naval Staff,
Naval HQ, New Delhi.

3. M.P.Sethy, N.S.O.
Materials Organisation,
Naval Stores Depot,
Ghatkopar, Bombay-84.

4. N. Ramachandra, N.S.O.,
Materials Organisation,
Naval Stores Depot,
Visakhapatnam-9.

Respondents

M/s. M. Rajasekharan Nair and
John K. Joseph

Advocates for
the applicant.

Mr. K. Karthikeya Panicker

Advocate for
Respondents.

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O R D E R

(Pronounced by Hon'ble Shri C. Venkataraman,
Administrative Member)

This application has been filed by Shri V.V. Varghese,
Naval Store Officer, challenging the rejection by
the 2nd respondent, ^{of} his request to place him in the
seniority list of Naval Store Officers above the
3rd and 4th respondents. This rejection was
intimated to him in a letter dated the 12th
November, 1986. The reason given therein is that
the revised principles for determining inter se
seniority between promotees and direct recruits as
brought out in the Office Memorandum No.35014/2/
80/Estt (d) dated 7-2-1986 issued by the Ministry
of Personnel, Public Grievances and Pensions,
Department of Personnel and Training has effect
only from 1-3-1986 and therefore the question of
revision of seniority circulated by the Naval
Headquarters on 15th February, 1985 would not
arise.

The applicant was promoted from the grade
of Assistant Naval Store Officer to the post of

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Naval Store Officer on 1-9-1979 in an officiating capacity. He has been continuously functioning in that post since then. Respondents 3 and 4 were directly recruited on 2-4-1981 and 13-9-1982 respectively. There are two modes of filling up the post of Naval Store Officer viz., 75 per cent by departmental promotion of Assistant Naval Store Officers and 25 per cent by direct recruitment. The applicant's grievance is that even though he had been continuously holding the post of Naval Store Officer from 1-9-1979, he has been placed at Sl.No.25 in the seniority list circulated on 1-2-1983 whereas the 3rd respondent who was appointed as a direct recruit on 2-4-1981 is shown at Sl.No.19 and the 4th respondent, a direct recruit (13-9-1982) is shown at Sl.No.21, thereby conferring seniority to them over him.

The learned counsel for the applicant argued before us that in the light of various decisions of the Supreme Court, the position in regard to fixation of seniority of promotees vis-a-vis direct recruits, when there is a system of quota for each category, is now well-known. He pointed out that ^{when} the quota system has not been strictly followed, ^{it} is wrong to follow the rotation of vacancies alone between direct recruits and promotees because it leads to a situation where persons directly recruited even a few years later than the promotion of departmental candidates to the higher posts, becoming senior to such promotees. The Supreme Court had held in 1983 (I) LLJ 175 - A.Janardhan ^{alpha} v. Union of India and others - (AIR 1983 (SC) 769) that length of services continuously even in an officiating capacity cannot be ignored and such officiating periods have to count for seniority. Otherwise, it would be arbitrary and violative of Articles 14 and 16(1) of the Constitution. The

learned counsel further stated that based on this decision, there have been a number of other decisions of the Supreme Court e.g. 1987 (II) LLJ 140 - A.N. Pathak and others v. Secretary to the Government of India, Ministry of Defence and another. Therein it has been held that continuous officiating service cannot be treated as temporary and delay in making appointment by direct recruitment should not visit the promotees with adverse consequences. He also invited our attention to 1987 (2) A.T.C. 104 - K.N. Mishra and others v. Union of India and others, decided by the Principal Bench of the Central Administrative Tribunal. The learned counsel further added that based on the decisions by High Courts and the Supreme Court in several cases, Government themselves have come up with a modified procedure in their O.M. dated 1-1986 7-2-1986 issued by the Department of Personnel for regulating inter se seniority of promotees and direct recruits when there is a quota rule. But the

revised procedure has been made effective only from 1st March, 1986. Since the said O.M. deals with the implementation of the decision of the Supreme Court, it cannot be made restrictive by giving merely prospective effect. In any case, since the applicant has challenged his position in the seniority list vis-a-vis respondents 3 and 4, this should not be treated as a closed case and the benefit of the procedure contained in the O.M. of 7-2-1986 should be given to him.

The learned counsel for the respondents admitted that the applicant was a promotee to the post of Naval Store Officer from 1-9-1979 and respondents 3 and 4 were direct recruits to that post in April¹⁹⁸¹ and September, 1982 respectively. Their seniority was fixed in terms of the Ministry of Home Affairs dated 22-12-1959 which was modified only with effect from 1-3-1986 after the issue of the O.M. dated 7-2-1986 from the Department of Personnel and Training. The principle followed in determining

the seniority as per the O.M. of 22-12-1959 was that the relative seniority of direct recruits and the promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules. To the extent direct recruits did not become immediately available, slots meant for direct recruits as per rotation of vacancies were left vacant and when direct recruits like the respondents 3 and 4 became available, they were fitted in such vacant slots thereby they became senior to persons like the applicant. Since this method of determination of seniority was strictly in accordance with the provisions of O.M. dated 22-12-1959 which held the field till 28-2-1986, the applicant had no case. Besides, he pointed out that the applicant himself

was a direct recruit in the Navy as an Assistant Naval Store Officer in 1971. On his recruitment he was given higher seniority as compared to departmental promotees who were already holding the post of Assistant Naval Store Officer prior to filed by him according to which the applicant was shown was him. He drew our attention to Ex.R-3(c) at Sl.No.4 in the seniority list of Assistant Naval Store Officers. Even though he was appointed only on 17-6-1971, whereas promotees to that post on 12-1-1970 and 8-2-1971, were shown at Serial Nos. 5 and 7 respectively in the same seniority list. Thus, the applicant reaped the benefit of higher seniority only on the basis of his having been directly recruited as an Assistant Naval Store Officer by getting his name fixed in a slot reserved for direct recruits. That was done under the same 22-12-1959 order. When that order did not suit him, he has chosen to challenge it. He contended that this clearly established the lack of bona fides on the part of the applicant. He therefore prayed for a dismissal of the application.

The Office Memorandum dated 7-2-1986 from the Department of Personnel and Training clearly recognises the anomalous situation arising in the fixation of seniority when there is a break-down of quota-rota rule. The revised procedure has been brought out in that O.M. in the light of the decisions given by the Supreme Court in a number of cases bringing out the inappropriateness of direct recruits of later years becoming senior to promotees with longer years of service. However, the revised procedure has been made effective only from 1st March, 1986 and seniority already determined in accordance with the existing principles are not to be reopened. We fail to understand how this non-reopening of seniority already determined can be justified if such seniority has been challenged. Such a challenge is based on the pronouncements of the Supreme Court laying down

of law

the general ~~legal~~ principles to be followed in such cases. These principles have to be given effect to at least from the date of pronouncement of the decision by the Supreme Court and not arbitrarily from some prospective date depending upon when the O.M. gets issued by Government.

The challenge of seniority in this case by the applicant who admittedly was promoted as Naval Store Officer on 1st September, 1979, became necessary as the 3rd and the 4th respondents who were directly recruited to that post only on 2-4-1981 and 13-9-1982 were placed above the applicant respectively. In effect, the applicant's continuous officiating service from a much earlier period has been ignored. It has been held in A.N. Pathak and others v. Secretary to the Government of India, Ministry of Defence and another (1987 (II) LLJ 140) that -

"Following A. Janardhana v. Union of India and others (1983-II LLJ 175) O.P. Singla and another v. Union of India and another (1985 II LLJ 309) and G.S. Lamba and others v. Union of India (1985 II LLJ 282) the length of service must be given due importance in the matter of promotions and seniority.

To treat the continuous officiating service as temporary would be arbitrary and violative of Articles 14 and 16 of the Constitution of India. Promotees come into service not by any fortuitous circumstances, but they form an integral part of the cadre entitled for benefits by length of service. Clauses 10 and 11 of the rule relating to method of recruitment is violative of Articles 14 and 16. The rules which enabled the authorities to fill in vacancies of direct recruits as and when recruitment is made, destroys the chances of promotion of those already in service. The authorities should be prompt in making direct recruitment. Delay in making appointment by direct recruitment should not adversely affect the promotees and their service."

Therein it has also been brought out that the learned counsel for the respondents found it difficult to justify the validity of the seniority list in the light of various decisions of the Supreme Court in favour of promotees based on their length of service where there was inordinate delay in making direct recruitment. The counsel did try to justify the inequity saying that the new rules have tried to rectify it. But this explanation was hardly acceptable to the Supreme Court which ordered the authorities to redraw the seniority

lists earlier published in 1979.

Shri K. Karthikeya Panicker, the learned counsel for the respondents had attempted to point out that the applicant himself had gained in the earlier post in getting his seniority fixed at a higher place as a result of the application of the principles contained in the O.M. of 22-12-1959 and when it did not suit him in the higher post, he is challenging the same principles. We would like to point out that the applicant's selection as Naval Store Officer in September, 1979 on the basis of his seniority in the lower post of Assistant Naval Store Officer has not been challenged by anybody. Therefore, we are not here concerned about the position in the seniority list of the applicant in the cadre of Assistant Naval Store Officer. In the light of the pronouncements made by the Supreme Court and therefore we are concerned only with the present application from him. In the light of what we have observed earlier herein, the applicant is entitled to succeed. Accordingly,

we direct the respondents to draw up the seniority list of Naval Store Officers applying the principles contained in the Office Memorandum dated 7-2-1986 of the Department of Personnel and Training.

In this connection we would also invite attention to the decision of the Central Administrative Tribunal, Madras Bench in O.A.Nos. 140, 141 and 142 of 1985 - T.R. Sekar and others vs. Union of India, Ministry of Finance and others, wherein we had similarly directed revision of the seniority list published earlier on 1-1-1985 as per the provisions contained in the O.M. of 7-2-1986. After the redetermination of seniority of the applicant in this case as directed by us, he would be entitled to be considered for promotion to the next

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higher post of Senior Naval Store Officer if he comes within the zone of consideration. The revision of seniority in the cadre of Naval Store Officer is to be done within a period of four months from the date of receipt of this order.

The application is allowed as above.

C Venkataraman
28/10/87

(C. VENKATARAMAN)
ADMV. MEMBER.

Dr 407
28-10-87

(G. SREEDHARAN NAIR)
JUDL. MEMBER.

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Index: Yes/~~Yes~~