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CENTRAL ADMINISTRATIVE TRIBUNAL, ALI AHABAD

LUCKNOW CIRCUIT BENCH

Registration T.A. No.1085 of 1987(L)
(W.P. No.4900/ 1982)

N.S. Chand

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Applicant

Versus

Union of India & Others

Respondents

Hon. Mr. Justice U.C. Srivastava, V.C.

Hon. Mr. A.B. Gorthi, Member (A)

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

It is a transferred case under Section 29 of the Administrative Tribunals Act, 1985. The applicant initially filed a Writ Petition before the Hon'ble High Court, Lucknow Bench praying various reliefs in the same. By operation of law the Writ Petition has been transferred to this Tribunal. The applicant has prayed for quashing all the following orders :-

(i) Annexure-5 dated 11.8.76 rejecting his representation against adverse remarks for the year 1973-74.

(ii) Annexure-10 dated 28.2.80 confirming and appointing him as A.C.I.O.-II (W.T.) in a substantive capacity from 1.8.76. This confirmation will not give him any right of seniority over those who are otherwise senior to them and are likely to be confirmed from the same or earlier dates as soon as the requisite formalities for their confirmation are satisfactorily completed.

(iii) Annexure-12 dated 17.1.81 passed by the Intelligence Bureau, Min. of Home Affairs rejecting the applicant's representation in the matter of seniority and confirmation.

(iv) Annexure-19 dated 24.4.81 passed by the Intelligence Bureau rejecting the applicant's representation in the matter of confirmation from an earlier date, rejecting the claim for parity with two other persons.

(v) Annexure-22 dated 8.9.81 passed by the Intelligence Bureau rejecting the representation of the applicant on the ground that no representation after lapse of five years is tenable.

(vi) Annexure-24 dated 21.11.81 wrongly typed as 12.11.81 rejecting his fresh representation on the same ground.

(vii) Annexure-28 dated 28.6.82 rejecting the representation in the fresh seniority, confirmation and adverse remarks on the ground that the matter has been re-examined and no reason to change the decision given earlier.

2. The applicant was appointed as Asstt. Central Intelligence Officer Grade II (W/T) on 12.8.68 after completion of necessary training and he was posted at Kalimpong on the West Bengal Bhutan Border. The applicant sought a clarification as to whether his posting at the border would be treated as tough-area posting. The applicant was then posted in Nefra in 1970 attached to the Subsidiary Unit where he fell ill due to strain of work and travelling in difficult terrains. He suffered a severe attack of Jaundice and remained unconscious for two days. He was hospitalised at Tezpur for about a fortnight. He was advised to go to Lucknow for treatment and rest. On his own request he was transferred to Lucknow on medical ground where he remained only for four months from January to May, 1972. The

Deputy Director appreciating the difficulties of the applicant posted him to Almora/Nainital where he worked from May, 1972 to December, 1973. Thereafter he was posted to Ghamsali at a high altitude where after some time he again fell ill and his blood pressure rose high. The Doctor advised that the applicant be removed immediately to a lower altitude. The applicant moved an application for his transfer to a lower altitude but he did not get any reply and his health continued deteriorating. Under the circumstances the applicant was compelled to take leave and reached Lucknow.

At Lucknow, the applicant reported to the Asstt. Director S.I.B. Lucknow who issued a memo dt. 2.8.74 for medical check up by the Civil Surgeon, Lucknow. The applicant appeared before the Civil Surgeon who gave his report. The applicant's B.P. was 150/90. The Doctor recommended that he is not fit for posting at high altitude. The applicant submitted another application on 9.8.74 for his transfer to a lower altitude. Shri S.C.Dixit, Deputy Director, S.I.B. Lucknow got annoyed and suggested three alternatives to the applicant : (1) The applicant should immediately join at his check post at Ghamsali, (2) In the event of non-compliance, he would be placed under suspension, and (3) If the applicant did not keep well at Ghamsali, he should tender his resignation and go away. On 8.10.74 the applicant was relieved of his duties and was directed to report for duty to the Deputy Director, S.I.B.Kohima and immediately he was given an adverse entry for the year 1973-74:

" He is undependable and untrustworthy officer.
Lacks proper sense of discipline and

responsibility. He has been trying to avoid difficult posting on the border under the pretext of illness. His performance in work was, however, satisfactory".

The applicant represented against the same which was rejected without a speaking order. Another entry purporting to be adverse, for the period 1.4.75 to 31.3.76 was communicated to the applicant by the Joint Deputy Director, Kohima which is as follows :

" In ACR for the period 1.4.75 to 31.3.75, while it has been mentioned that you have a good health, good appearance and bearing, your power of expression and your social contacts are good, but it has also been mentioned that you should take more interest in your work particularly in the maihtenance and work and your over all performance during the year has been average."

The confirmation of the applicant was arbitrarily held up and his juniors were confirmed earlier. The applicant received a letter dt. 28.2.80 issued under the signature of the Asstt. Director, S.I.B. Tezpur purporting to be confirmation order. It was pointed out in the said letter that the petitioner had been appointed in substantive capacity with effect from 1.8.76. The applicant surprised to note that the confirmation order was to be effective from 1.8.76 leaving his entire period of service from 1968 to 1976. This date i.e. 1.8.76 was arbitrarily mentioned in the order without any basis. Thereafter the seniority list was circulated under order dated 23.9.80 bearing the name of the applicant at Sl.No.133 and also at Sl.No.186. He was surprised to see that his name has been placed at two places in the seniority list.

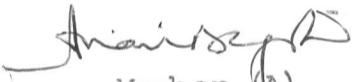
Thereafter he again represented on 5.12.80 praying that his name at Sl.No.186 may be struck out and that at Sl.No.133 may be maintained which was correct. No reply to his representation was given. The applicant received an order dated 17.1.81 under the Signature of Asstt. Director, Intelligence Bureau, New Delhi stating that his name at Sl.No.133 was deleted as it was incorrect and his seniority has been fixed at Sl.No.186. Thereafter the applicant continued to make representations. He made a request that one post may be kept vacant for him. In the meantime, on 20.7.81, Selection Grade was given to 26 officers who were junior to the applicant. The applicant had reached maximum of his scale and had no more increment to earn. It was thereafter the applicant was informed that after five years of representation he could not be considered. According to the applicant, his confirmation was delayed because of adverse entry in the years 1973-74 and for that reason the D.P.C. held for the years 1975, 1976 and 1977 did not consider him fit for confirmation and that is why the same was delayed. The applicant continued to make representations and to meet the officials concerned but with no result whereafter he has now moved to this Tribunal.

3. In their Counter Affidavit, the respondents have said that the seniority of the applicant was rightly fixed in 1979 as issued by the Govt. of India. He was confirmed on the basis of the approval made by the IIIrd D.P.C. held in 1979. Office Memorandum of the Ministry of Home Affairs No.9/11/55-RPS dt. 22.12.59

applicant has been passed over from time to time. So far as the entry of 1975-76 is concerned it is not adverse inasmuch as the average report cannot be said to be adverse. There was no justification for not confirming the applicant from the prior date. No explanation was given. If the D.P.C. met in 1979 his case could have been considered earlier also. No satisfactory explanation has been given. Adverse entry is no ground for non-consideration of a man's confirmation where his work was satisfactory. Obviously, the confirmation of the applicant was from the date his juniors were confirmed and so in the case of promotion it is not necessary to ask for a review D.P.C. inasmuch as the applicant has been considered by the D.P.C. subsequently. But this will date back from the date his juniors were promoted to the higher grade. In view of the fact that the Govt. who was responsible for delaying his confirmation for no reason the O.M. of 1959 cannot be taken. The applicant's seniority has to be given from the back date. He is entitled to count his entire period towards seniority and his seniority may be fixed at Sl.No.133 and Sl.No.186 was to be deleted but instead of 133 it was retained at Sl.No.186.

In the case of Direct Recruit Class II Engineering Officers Assn. Vs. State of Maharashtra and Others (1990) 2 SCC 715 it has been 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. Seniority cannot be determined on the sole test of confirmation, for, confirmation is one of the inglorious uncertainties of government service

depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. The principle for deciding *inter se* seniority has to conform to the principles of equality spelt out by Articles 14 and 16. Accordingly, this application is allowed and the respondents are directed to count the seniority of the applicant from the year 1976 and and to place him in the seniority list at Sl.No.133 and give him notional promotion from the date his juniors have been promoted and the selection grade may also be given from the date his juniors were given. Other consequential benefits will also to follow. There will be no order as to costs.


Member (A)


Vice Chairman

Dated the 2nd July, 1991.

RKM