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CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Original Application No. 131 of 1991(L)

Sri Krishna Prakash Applicant

Versus

Union of India & Others Respondents

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

Hon'ble Mr. K. Obayya, Member (A)

(By Hon'ble Mr. K. Obayya, Member (A)

The applicant who was appointed as a Photographer in Geological Survey of India in the year 1972, was declared quasi-permanent in the year 1976 and later in the year 1988 he became permanent on the said post. According to the applicant he was at serial no. 1 in merit position and the respondent no. 4 was at no. 2, when they were initially appointed and also even reckoning the date of joining, he joined on 11.9.1972, while the respondent no. 4 joined on 15.9.1972, as such he was senior to the respondent no. 4 and the seniority list notified in the year 1973 and 76 indicated this position. But later, in the impugned order dated 7.3.86 (Annexure A-3) the respondent no. 4 has been assigned seniority over him. Aggrieved, he has approached this tribunal for setting aside the order dated 7.3.1986 and prayed for restoration of seniority position at serial no. 1 and his pay also be fixed accordingly.

2. The applicant assails the change of the seniority on the ground that no opportunity was given to him and that his seniority position which continued till 1981 should not have been altered without notice ---- to him . It is also stated that the selection committee placed... to him ~~at~~ serial no. 1

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of the list, while the respondent no. 4 was at serial no. 2. As he was having higher merit in selection ~~position~~, he should not have been brought down in the seniority. He made several representations to the department in this regard. But his matter was not considered properly.

2. The respondents have opposed the case and in the return filed by them, it is pointed out that the seniority was drawn erroneously showing the applicant senior to respondent no. 4, but the mistake was detected as respondent no. 4 was at serial no. 1 in the merit list of selection and the applicant at no. 2 and the list was corrected in the year 1980. According to them, the date of joining is not the criteria in determining the seniority at the time of initial appointment. It is the merit list as recommended by selection committee that will prevail. The applicant was aware of this position in the year 1981, but he made representation only in 1986 and he was given reply promptly informing him of the correct position. As the action taken by the department was only to correct the mistake, there was no need to give a notice and the representations of the applicant were also considered from time to time and he was duly informed of the position. Similarly for promotion to the post of Senior Technical Assistant, the selection is made by D.P.C. and it can not be challenged. The respondent no. 4 was found fit and he was accordingly promoted being senior to the applicant. The seniority list published from the year

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1977 onwards i.e. 1980,1984 indicated the name of the respondent no. 4 above the applicant.

3. Parties counsel were heard. The learned counsel placed reliance on the appointment order in which applicant's name appears at serial no. 1, above respondent no. 4 and also date of joining which was earlier to that of respondent no. 4. The learned counsel also cited instructions of the Government issued from time to time. We have gone through these instructions - copies of which are annexed to the claim petition. These instructions are on the point of confirmation, seniority etc. The instructions lay-down that seniority of a direct recruit is determined in order of merit assigned in selection by U.P.S.C. or other selecting authorities. The learned counsel also referred to the decision in S.L. Khanna Vs. Gujrat State Electricity Board and another (1975 SLR) - 27 and also the case of T.V. Solanapani Warriar Vs. State of Kerala and others (1986 S.L.C, 52 Kerla) wherein it was held that Government has right to correct seniority list, but it cannot upset settled matters, which had remained unchallenged for long time and seniority cannot be changed without affording opportunity of hearing to the affected party." We have considered the propositions set out in the above decisions.

4. The short point that arises in this case is whether the applicant was wrongfully denied of seniority, by placing respondent-4 above him. On facts there is no dispute. The appointment order shows the name of the applicant above respondent-4; Also his date of joining in service is earlier i.e. 11.9.72, while respondent-4 joined on 15.9.72. The

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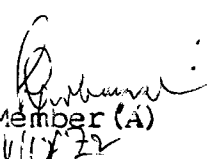
appointment order however, does not speak of any merit on selection. It only says that the appointments are being made in a temporary capacity and the appointees are put on probation for 2 years and their further continuation will be on assessment of their work. The order of declaration of Quasi-Permanency of the applicant and respondent-4 indicates, the date of joining the service. It would appear that the respondent no. 4 made representation in year 1977 claiming seniority over the applicant which was considered and the record relating to selection was verified. The record disclosed that out of 14 candidates only 5 candidates appeared at the interview for the post of Photostat Operator. On 31.5.72 at 10.30 A.M. The selection Committee on the basis of assessment of educational qualification, experience, personality and interview, considered respondent-4 as a better candidate and recommended his name for post of Photostat Operator Grade-II and the applicant was kept in the waiting list.


5. From this it is clearly established that the claim of the applicant for seniority on the basis of merit list is factually not correct. He was only placed in the waiting list. The applicant does not get any seniority right, merely because the appointment order and also confirmation order showed his name above that of the respondent no. 4. Seniority right would not accrue to him automatically. The claim of the applicant for seniority is based on merit at selection, that claim was found to be without any basis. His case falls. It is well settled that where the post is being filled-up by selection, the merit assigned to a particular candidate. The


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His placement in the list of selected candidates determines the seniority at the start on initial appointment. The applicant was only in the waiting list though subsequently appointed to the post and was lower in merit to the respondent-4. Accordingly, the seniority position was corrected placing him below to respondent-4. This was an administrative act, and so far as opportunity to the applicant is concerned, his representations were considered and more than once he was informed, that the seniority assigned to him earlier was not correct as he was not entitled to be placed above respondent-4 in view of his lower position at selection. In these circumstances, we do not see any ground is made out for our interference. The application is devoid of merit and accordingly it is dismissed. No order as to costs.


Member (A)


Vice-Chairman

Lucknow Dated: 10th, 1992 

(RKA)