

(14)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO:

199

T.A. NO: 260/87

DATE OF DECISION 9.9.1993

Shri Paras Nath Rai

Petitioner

Shri M.M.Sudame

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Shri Ramesh Darda

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice M.S.Deshpande, Vice Chairman

The Hon'ble Mrs. Usha Savara, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes.*
2. To be referred to the Reporter or not ? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

U. Savara
(MS. USHA SAVARA)
M (A)

M.S. Deshpande
(M.S. DESHPANDE)
V.C.

mbm*

(15)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY
CAMP : NAGPUR

Tr.A.No. 260/87

Shri Paras Nath Rai

... Applicant

V/S.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Ms. Usha Savara

Appearance

Shri M.M.Sudame
Advocate
for the Applicant

Shri Ramesh Darda
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 9.9.1993

(PER: M.S.Deshpande, Vice Chairman)

The applicant by filing a Writ Petition before the High Court asked for quashing the promotion of Respondent No. 4, 5 and 6 to the post of Junior Accountant/Head Clerk/Office Superintendent made in the year 1971, 1972, 1978 and 1979 and the promotions of Respondents No. 7 to 11 made in the year 1971, 1972, 1974, 1975 and 1977 and for being given all the benefits of arrears of salary and a deemed date of promotion on the post of Junior Accountant from 15.10.1971, Head Clerk from 2.5.1972 and Office Superintendent from 8.8.1979 and in the alternative for a direction to the respondents to consider him with retrospective effect from the date of 15.10.1971/ 2.5.1972 and 8.8.1979 and to give him a deemed date of promotion with all benefits of consequential promotion, arrears of salary etc. and for quashing the promotion of Respondent No. 6 to the post of Head Clerk vide Annexure No. 23 and for quashing the seniority list at Annexure No. 17 and 23.

2. Though both the sides have given the sequence of ^{events} ~~the decision~~, the correctness of the events as stated in the Chart which has been given to us today on behalf of the respondents ^{is} ~~are~~ not being disputed by the applicant. It is not necessary for us to refer to the other details given in the charge ^{is} ~~are~~ except those at Sr.No. 1. In the D.P.C. meeting held on 8.10.1971 where Unit-wise seniority was to be considered for the post of Junior Accountant (Central Zone) three persons were considered. They were P.K.Raj Naidu (Respondent No.4), the applicant P.N.Rai and D.D.Sao (Respondent No. 6). The D.P.C. recommended the posting of Raj Naidu on adhoc basis. On the same day Unit-wise selection was held on the basis of Unit-wise seniority for which Mangat Ram (Respondent No. 5), S.K.Goel (Respondent No.9) and B.Maithani (Respondent No.11) were considered and D.P.C. recommended the promotion of Mangat Ram on adhoc basis. There were several other D.P.Cs in which the applicant came to be considered for the post of Head Clerk, Junior Accountant and ultimately on 1.9.1978 the D.P.C. recommended the name of the applicant for promotion to the post of Junior Accountant on the basis of combined seniority. The applicant's grievance is that on the basis of rules then prevailing the applicant was alone entitled to be selected by the D.P.C. on 8.10.1971 and P.K.Raj Naidu should not have been considered for the Central Zone. Shri Sudame, learned counsel for the applicant very fairly conceded that he cannot make now a grievance ^{regarding} ~~for~~ a Unit-wise seniority which was ^{the basis} ~~for~~ filling up the post ^{for} ~~of~~ North Zone because he was entitled to be considered only for Central Zone. We, therefore, do not have to consider the averments made in the petition as against Mangat Ram. The Notification dated 15/23.7.1970 (Annexure - 5 to the petition) shows that the sole post

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of Junior Accountant was to be filled by Selection. The method of selection as given in Col.No. 11 was 100% by promotion, failing which by transfer/deputation. Though it was urged on behalf of the respondents that the applicant at the time of initial recruitment was over-aged and his appointment was irregular, that argument would not help the respondents because the applicant was considered by the D.P.C. and the D.P.C. did not say that the applicant was ineligible. On the other hand, Annexure No. R-3 to the reply shows that the D.P.C. ^{which} considered the cases of D.D.Sao, P.N.Rai and P.K.Raj Naidu from Central Zone observed that Naidu was a deputationist and his record of service was throughout "very good" whereas ^{the record} of D.D.Sao and the applicant P.N.Rai were "good". The D.P.C. recommended that Naidu being the senior most U.D.C. and having "very good" record of service should be promoted as Junior Accountant on Adhoc basis for a period of six months because he was a deputationist. It is obvious that the D.P.C. was aware of the fact that Raj Naidu was not ^{eligible to be} promoted on account of his being deputationist. The submission of Shri Sudame, learned counsel for the applicant is that on the basis of method of recruitment to which we have adverted, the applicant should not have been ignored on the basis of competitive merit of persons who were not entitled to compete in the first instance and deny him his dues. Even D.P.C. assessed him "good" and therefore the question of appointing a deputationist did not arise. There is considerable force in this submission. The question of competition ^{be} merit will ^{arise} arrive only if the post is to be filled up by the persons belonging to the same class but ^{when the} only one applicant alone is to be considered, and ^{only when} if no one belonging to that class was

found suitable, then ^{alone} the persons belonging to other class ^{could have been} should be considered. Shri Sudame urges that the D.P.C. should have preferred the applicant as he ~~was~~ belonged to first mentioned class and was found to be good.

2. Shri Darda, learned counsel for the respondents pointed out that in a suit which had been filed in the Court of Sub Judge 1st Class (3), the challenge to the appointment of P.K.Raj Naidu failed and in the appeal to the Chandigarh Bench of this Tribunal in T-943 HP of 1986, Union of India & Ors. vs. Shri P.K.Raj Naidu decided on 3.9.1987, it was held that P.K.Raj Naidu having resigned his post under the Madhya Pradesh Government on 4.2.1972 was entitled to be recruited from the cadre of U.D.C. However, it is clear from the decision of the Chandigarh Bench that P.K.Raj Naidu should not have been considered as a departmental candidate when the D.P.C. was held in the year 1975 because he would have ^{become} regular departmental candidate only from 16.2.1972. The reference, therefore, to this decision is of no assistance to the respondents and the applicant who was the only candidate available from Central Zone and was found suitable on account of his assessment being 'good' should have been given the promotion of Junior Accountant.

3. The judgement of the Chandigarh Bench shows that the appointment of P.K.Raj Naidu as Junior Accountant made on 4.11.1975 on regular basis was upheld.

4. Shri Darda urged that the applicant should not be granted the benefit which he is seeking after such a long lapse of time on account of laches.

W. J. D.

5. The applicant made his first representation on 4.2.1972 (Annexure-7) in which he stated that he ought to have been preferred by virtue of his seniority and given preference in the matter of promotion to the grade of Junior Accountant because P.K.Raj Naidu was a deputationist to the project as U.D.C. and came to be appointed on ad-hoc basis as Junior Accountant. The Respondent No. 11 sent a reply dated 28.11.1975 (Annexure-11) stating that the applicant's case was duly considered for promotion in accordance with the procedure and orders prescribed for promotion to selection posts and also referred to the position that the applicant's case needed regularisation by condonation of overage and unless that was done, his appointment could not be deemed to be regular for service matters and that was under consideration of the Government of India. It is difficult to see why no action was taken by Respondents No. 1 to 3 after the representation was submitted for three years, and the very fact that the applicant was considered by the D.P.C. from time to time will show that Respondents No. 1 to 3 were not serious in raising the question about the applicant's being overage and his appointment being irregular. In the representation dated 12.5.1982 (Annexure-13) the applicant referred to the several representations which he made, namely, dated 7.10.1972, 7.2.1977, 17.8.1981, 23.10.1981 and 2.4.1982 by giving facts in detail. Reply to it was sent on 14.7.1982 (Annexure-14) by which he was told that his representations dated 17.8.1981 and 23.10.1981 had since been referred to the Ministry for their decision in the matter and as soon as the decision of the Ministry on these representations were received, it would be conveyed to the applicant. Since the decision was not conveyed to him, the applicant was driven to file a Writ Petition on 6.11.1982 and a Rule was issued on 20.6.1983,



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6. In the circumstances mentioned above, though we find that the applicant should not have waited all these years for approaching the High Court, the relief he has claimed regarding his seniority cannot be denied merely on account of laches. Even Shri Sudame, learned counsel for the applicant stated that what he was asking was a deemed date seniority w.e.f. 15.10.1971 when P.K.Raj Naidu came to be promoted and at the most the financial benefits accruing from the promotion may not be given to him on account of laches. We find that the prayer which is being made for deemed date seniority ought to be granted in the circumstances of the present case.

7. We are aware of the fact that the applicant was not normally be entitled to ask for unsettling the position which came to be settled from the year 1971 by his belated approach to the High Court by filing a writ petition, however, there is no difficulty in the present case regarding even granting seniority over the others who have been made parties to this application, though they were not represented by an Advocate.

8. In the result, we direct the Respondents No. 1 to 3 to give the deemed date promotion as Junior Accountant to the applicant from 15.10.1971 and by virtue of his placement in that cadre by holding a review D.P.C. for all selection posts thereafter. The review D.P.C. will be held within three months from today. On the basis of the promotions granted by the review D.P.C. if any, the applicant will be entitled to the pecuniary benefits flowing after the filing of the writ petition from January 1983. These emoluments should be paid within six months.

(USHA SAVARA)
MEMBER(A)

(M.S.DESHPANDE)
VICE CHAIRMAN