

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400 614.

O.A.No. 382/86

Shri C.M.Temkar,
C/o. K.D.Naik,
Advocate, High Court,
57F, Bhupen Chamber,
Dalal Street,
Bombay 400 023.

Applicant

v/s.

Union of India
Ministry of Information
and Broadcasting,
Shastry Bhawan,
New Delhi.

2. Administrative Officer,
Films Division,
24, Dr.G.Deshmukh Marg,
Bombay 400 026.

3. R.H.Bhagat,
Ad-hoc Projection Room
Operator, Films Division,
24 Dr.G.Deshmukh Marg,
Bombay 400 026.

Respondents

CORAM : Hon'ble Vice Chairman Shri B C Gadgil
Hon'ble Member (A) Shri J G Rajadhyaksha

Appearances:

Shri K.D.Naik
Advocate
for the Applicant

Shri M.I.Sethna
and Shri J.D.Desai
for the Respondents 1 & 2

Shri M.Sanklecha
Advocate
for Respondent No. 3.

JUDGMENT

²¹ Pronounced Dated - 28.4.1988

(PER : J.G.Rajadhyaksha, Member(A))

The applicant in this matter submitted this original application on 22.10.1986 and amended it in certain parts for bringing out his grievance more clearly. On 11.12.1987, Respondent No. 3 then in person, moved the Tribunal for orders

to the effect that since his promotion to the post of Projection Room Operator had not been regularised by the Respondents on account of the pendency of this application, and since there was no stay granted by the Tribunal against such action by the respondents, the Tribunal may pass suitable orders. The Tribunal thereupon, permitted Respondents No. 1 and 2 to take a decision about regularisation of Respondent No. 3 with the specific understanding that such decision will be subject to the final outcome of the application. The matter was fixed for final hearing on 19.2.1988.

2. Though the application contains a number of averments, the main grievance of the applicant is that his place in the seniority list as on 1.1.1975 was not correctly fixed and it had been disturbed to his dis-advantage by placing Respondent No. 3 above him. His second grievance was that, consequently, he had been denied promotion to the post of Projection Room Operator only because the Respondents 1 & 2 wrongly fixed the seniority of Respondent No. 3 above the applicant, though Respondent No. 3 had resigned his post and had re-joined the organisation after a lapse of about 3 months. What the applicant had primarily challenged in effect, therefore, was the seniority lists of 1975 and later on 1983, requesting that these should be quashed and that the applicant be promoted to the post of Projection Room Operator in the post which remained vacant from the 1st December, 1983. The respondents resisted the application by their written statement dated 7th January, 1987 and a further affidavit dated March, 1987 in view of the supplementary application filed by the applicant.

3. Just before final hearing could be commenced the applicant's advocate submitted another application to amend the principal application pointing out that the respondents had appointed one Mr. Kamble to the post of Projection Room Operator on a regular basis by their orders dated 7th March, 1988. He desired to make Mr. Kamble a party and impugne this order promoting him. We found that the order of promotion of Mr. Kamble itself made it specific that his promotion would be subject to the decision of the Central Administrative Tribunal on the application filed by one of the Asstt. Projection Room Operators (presumably, the applicant before us). We also found on the statement made by Mr. J. D. Desai, advocate of the Respondents that Kamble had been appointed to a post reserved for a S.C. Personnel. In the circumstances, we rejected the application for amendment holding that it was not necessary to add Mr. Kamble as a party nor to permit applicant to amend the application to cover an event which had taken place in January, 1988. The Respondent No. 3 authorised Mr. Sanklecha his learned advocate to appear on his behalf practically after the entire hearing was over, but before the judgement was recorded. This was permitted and the learned advocates for applicant, Respondent No. 3 and the Counsel for Respondents Nos. 1 & 2 were heard. It is not necessary to discuss all their contentions raised before us as the application can be decided on a shorter point.

4. The facts briefly are that the applicant had joined service as Assistant Projection Room Operator on 18.9.1967. He had studied upto the XIth standard (i.e. he had not passed the S.S.C. examination). There were seniority lists of 8.8.1975 and 4.2.1983 which applicant seeks to impugn.

Applicant had been regularised on 31.5.1972 and confirmed on 4.9.1975 as an Assistant Projection Room Operator. As against that, the Respondent No. 3 joined service on 3.7.1962, was regularised on 12.11.1964 and confirmed on 4.9.1970. The Respondent No. 3 had tendered resignation of his job as Assistant Projection Room Operator in February, 1970 to join the Indian Motion Picture Export Corporation and had returned to the organisation, rejoining his original job on 2.6.1970. In the seniority list as on 1.1.1975 dt. 31.3.1975 applicant stood at Sl.No. 13, but subsequently another seniority list as on 19.1.1975 was published on 8.8.1975 in which Respondent No. 3 was shown at Sl.No. 6 and applicant at Sl.No. 8. It was this change and the consequences thereof that applicant was challenging. The applicant's claim is that, Respondent No. 3 could get seniority only from 1970 i.e. when he rejoined service and not from any date earlier than that. Therefore, if the 1967 position is considered, applicant would be senior and, therefore, the promotion of Respondent No. 3 in supersession of applicant would be illegal and bad.

5. After stating facts Shri Naik, the learned advocate for applicant argued with reference to the Recruitment Rules of 1985 that Respondent No. 3 got all concessions and condonations, so far as qualifications were concerned, while the same were denied to the applicant and applicant, therefore, continued as an Assistant Projection Room Operator. In 1982, the department had circulated that a post of Projection Room Operator existed at Delhi and invited eligible personnel to apply for it. Applicant volunteered to go, was promoted and was posted in Delhi as Projection Room Operator. At that time, Respondent No. 3 had refused the promotion. The applicant was, however, reverted to Bombay, at his own request, because he did not find the Delhi

atmosphere compatible. He further argues that though Respondent No. 3 had refused promotion on 17.3.1983 the department had not allowed one year to elapse, according to rules, in this respect but had promoted him again on 17.12.1983. Shri Desai, the learned advocate for Respondents 1 & 2 argues that these facts are not material to the dispute. Shri Naik further admits that the 1975 seniority list was not challenged by applicant at any time. Again Shri Naik argues that the Respondent No. 3 should have been treated as a fresh candidate in 1970 and the fact that he was only Xth standard passed as against the applicant who had passed XIth standard, and the fact that Respondent No. 3 had crossed 30 years of age in 1970, and, therefore, on both counts he was not qualified should have been taken into account by the Respondents. Shri Naik adds that from 1975 to 1983 applicant did not agitate the question because he felt that both he and Respondent No. 3 being Asstt. Projection Room Operators were on the same footing and it was only when he was denied promotion in 1983 that he felt that there was a grievance which he must agitate. The only point that Shri J.D. Desai appearing for Mr. M.I. Sethna makes is that there was a seniority list of 1975, which had been acknowledged and accepted by the applicant all along and it was not open for him now to challenge that seniority list. Secondly, he points out by referring to copies of notings and the files of Government of India that in respect of Respondent No. 3 a decision had been taken to allow him to withdraw his resignation and rejoin in the post vacated by him in 1970. The interruption in his service had also been condoned. In other words, he argues that there was no break in service so far as Respondent No. 3 was concerned and therefore, whatever was done was correct.

Mr. Sanklecha the learned advocate for the Respondent No. 3 supports these contentions. Both advocates also add that the events which pertained to reappointment of Respondent No. 3 were not relevant to the dispute of the applicant.

6. The mainstay of Mr. Desai's arguments therefore was that the applicant having accepted his seniority position from 1975 to 1983, there was no cause of action which he could agitate at this late stage and therefore, his application deserved to be dismissed on grounds of laches and delay.

7. The Tribunal had asked Shri Desai to clarify whether a resignation once accepted could be allowed to be withdrawn. He referred to Civil Services Regulations Volume-II (S. Lakhisingh Chaudri and Satya Chaudri's compilation). We find from page 222 regulation 26 that it is possible for the appointing authority to allow withdrawal of resignation. Here is a case in which the Government had invoked their powers under regulation 26. The whole rule need not be reproduced. The relevant part reads as follows :-

"26. (1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.

(4) The appointing authority may permit a person to withdraw his resignation in the public interest on the following conditions, namely :-

(iii) that the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than 90 days ;

(iv) that the post, which was vacated by the Government servant on the acceptance of his resignation or any other comparable post, is available.

The notings show that because the applicant there i.e. the present Respondent No. 3 had put in about 7 years of service before resigning to join a public sector undertaking wholly controlled by the Government of India, the Government had taken a decision, as a special case, to allow him to rejoin service in the Films Division, holding that he had withdrawn his resignation and that he should continue in service thereafter. The interruption in service also had been condoned by the Government by their orders, on the Respondent No. 3 representing that the break in service from 1.3.1970 to 1.6.1970 may be condoned. After a good deal of consideration the Government took a decision that Respondent No. 3 should be allowed to withdraw his resignation and to give him benefit of his pre-resignation service. He was also allowed to retain his status of Quasi Permanency in the post. It is this decision of the Government of India that restored Respondent No. 3 to his service and to his status and seniority. We cannot find much fault with Government's decision in this respect which seems to have been taken in public interest nor do we intend to go into the question of legality or propriety of Government's action taken that far back.

8. The applicant cannot, however, succeed mainly because the seniority list published on 31.3.1975 depicting the position as on 1.1.1975 (Ex.2 to the reply) was modified on 8.8.1975 (Ex.4 to the reply) bestowing upon Respondent No. 3 a higher place in the revised seniority list. This is obviously on the basis

of his restoration to service and counting him as being in uninterrupted service of Government according to Government's orders dated 7.7.1975 (Ex. 3 to reply). These seniority lists have been seen and accepted by the applicant and he has signed thereon in token of his having seen and accepted them. He has allowed a period of about 8 years to elapse between the 1975 seniority lists and his raising the dispute about his seniority only in 1983. There is also a further delay in his coming to the Tribunal in 1986. It will be difficult for Shri Naik to argue that this delay deserves to be condoned in the interest of justice. Law will not assist a person who has not been vigilant about his rights. Whatever the justification which compelled the applicant to keep quiet between 1975 and 1983, we feel that it will not be just and proper to reopen the question of seniority vis-a-vis the Respondent No. 3 as it has stood in that position since 1975. On this count alone, therefore, the application deserves to be dismissed. In the circumstances of the case, however, we pass no orders as to costs.

B.C.Gadgil
(B.C.Gadgil)
Vice Chairman

(J.G.Rajadhyaksha)
Member (A)

This judgment is pronounced in open court today
and on 28.4.1988

B.C.Gadgil
28/4/1988