

11 BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, BOMBAY

OA.NO. 828/89

Shri B.S.Pal

... Applicant

v/s.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice U.C.Srivastava  
Hon'ble Member (A) Shri M.Y.Priolkar

Appearance

Mr.G.S.Walia  
Advocate  
for the Applicant

Mr.P.M.Pradhan  
Advocate  
for Respondent No.1&2

Mr.L.M.Nerlekar  
Advocate  
for Respondent No.3

JUDGEMENT

Dated: 1/4/92

(PER: U.C.Srivastava, Vice Chairman)

By means of this application, the applicant has challenged the assignment of improper and incorrect seniority vis-a-vis Respondent No.3 as Director (production & Development). The other claim of the applicant is that he should have been confirmed as such with effect from 2.6.1983 instead of 5.11.1983 on successful completion of the probation period. Facts as has been emerged from the pleadings of the parties are that the applicant who was already working in the department wherein it appears he was appointed or promoted as Member of Scheduled Tribe Community applied for the post of Director and was also selected by the Union Public Service Commission. He joined the post on 3.6.1981 as a direct recruit on probation for a period of two years. It appears that two posts fell vacant in the year 1979. The first one on 7.3.1979 and other on 28.9.1979. One post, the post against which

the applicant was selected was a reserved post as per roster maintained for reservation in public service. Now in the selection which was made by the Union Public Service Commission, the applicant ranked junior to Respondent No. 3 and thereafter the seniority list was finalised and recommended. As the applicant belonged to the department, he joined on 3.6.1981 while the Respondent No. 3 joined on 5.11.1981 as the police verification took time and it was after police verification he was allowed to join the said post. The Respondent No. 3 was confirmed on 5.11.1983. The applicant was confirmed on 5.11.1983 that is some 5 months after the completion of the probationary period. In the order dated 14.11.1983 it was declared that the probation period of the applicant was successfully completed and he was thereafter allowed to continue in the post on a long term basis. As per allegations of the applicant, the seniority list of Directors as on 31.3.1982, his name was shown above the name of Respondent No. 3. On 15.3.1983 he received a memorandum stating that while considering a representation made by Respondent No. 3, he was placed senior to the applicant in the seniority list and he was given seniority on the order of merit at the interview in the selection made by the UPSC. The applicant represented on 23.3.1983 claiming that he was senior to Respondent No. 3. On 24.10.1983 the applicant was informed that his representation dated 23.3.1983 was forwarded to the Ministry for their decision. The Ministry in-consultation with the Department of Personnel and Administrative Reforms have communicated their decision that Respondent No. 3 who ranks at number 1 in the order of merit of selection of Director (P&D) will be senior to the applicant and the seniority list was being revised and circulated separately. Thereafter, the seniority list was circulated on 25.10.1983 showing the name of Respondent No. 3 above the name of the applicant. By the order dated 6.7.1987 the respondents

circulated the seniority list of Gazetted Staff as on 1.1.1987 in which the name of Respondent No. 3 was shown at number 1 and the name of applicant was shown at number 2. The applicant represented against the same and failing to get any reply yet made another representation on 18.8.1987 then on 16.6.1989 to the Prime Minister of India. The applicant received a reply from the Prime Minister's office that his representation was forwarded to the Ministry of Textiles. After giving a legal notice the applicant has approached the court and according to the applicant as his appointment was on the probation period of two years, he should have been deemed to have confirmed automatically or in any case the confirmation order should have been passed immediately and even if there was no order but as he was allowed to continue on a long term regular basis, the same <sup>amounted</sup> to the confirmation of the applicant. It was next contended that the applicant was appointed against the first vacancy which was reserved post. Notwithstanding the fact that interview for both <sup>posting</sup> place together, the applicant having been appointed against the first vacancy, he was otherwise senior to the Respondent No. 3. And first of all, in view of the fact that under roster point the post of scheduled caste became vacant earlier even then that conferred seniority to him against the Respondent No. 3. In support of his earlier contention of long term regular basis, the applicant made a reference to a short observation in the case of Radhey Sham Verma v. Union of India, 1990 SCC (L.S.) 670. In this case it was said that <sup>once</sup> <sub>the</sub> probationary period was closed, the same will be deemed to be a confirmation order.

The Union of India and Respondent No. 3 have disputed the claim of the applicant and have pleaded that the applicant's case has got no merit and even otherwise the applicant's case was barred by delay and laches and the Tribunal has no

(T.M)

jurisdiction in respect of a matter which became a closed chapter in the year 1983 much before coming into force of the Administrative Tribunal. The Respondent No. 3 has taken yet additional plea that the applicant as a matter of fact is not a member of scheduled tribe and in fact he belongs to Dhangar shepherd community which is not a scheduled tribe community under scheduled Tribe Constitutional (Scheduled Tribe) (U.P.) Order 1967 and the State from which he hails. On the basis of this averment which has not been controverted by the applicant who has asserted that he was a member of scheduled tribe community and he was taken in the employment on the basis of certificate issued, it has been asserted that the applicant has played fraud and is not entitled to any post reserved for member of scheduled tribe community and his appointment itself was not legal.

3. As has been noted, the question of seniority was finally determined in the year 1983 in which year it was also communicated to the applicant. The Union of India has communicated the applicant and a memo on this behalf was issued on 15.3.1983 to the applicant who was informed that a decision has been arrived at after the consultation with the relevant ministry. Now, it has been further stated that the communication bearing date 6.7.1987 relied on by the applicant is not an order conveying any decision but is only communication and circular furnishing a copy of seniority list indicating the basis on which the seniority of an individual was finalised. It has been further stated that by this circular the respondents have not communicated a fresh decision in the matter but only it was a routine circular enclosing a copy of seniority list for information of the concerned officers. The applicant's representation

dated 18.8.1987 was only a request to refer the case to the Ministry for clarification and final decision and appropriate order. And his representation was accordingly considered and examined. His another representation was referred to the Govt. of India for further examination and the matter involves consultation by various government departments. The other representation which was duly considered in consultation with the Department of Personnel and that his representation was rejected and the communication of the same was given to him on 14.12.1989. Thus, this fact itself made clear that the question of seniority was determined in the year 1983 and for four years the applicant did not ~~make~~ up the matter at all and kept quiet and on the basis of the memo of the year 1987 in which nothing new was said and the factual position was stated, he raised ~~up~~ the matter but the same will not ~~be~~ within limitation and this application is obviously barred by time and deserves to be dismissed on the ground that it is barred by time and further he tries to ~~make~~ up the matter which became a rather closed chapter before the Tribunal came into existence. Even otherwise, on merits the applicant's case does not stand anywhere. Confirmation is an inglorious certainty of the service and the seniority is not dependant on the confirmation except when there is a specific rule in this behalf as was held in the case of N.K.Chauhan v. State of Gujarat, AIR 1977 (1) SC 308. In the order it was mentioned that the probation period was successfully completed and he will be allowed to continue on long term regular basis and the same will not tantamount to confirmation, in the absence of any rule regarding automatic confirmation or prescribing a maximum period of confirmation. In the absence of any order of confirmation, a person cannot be deemed to have been confirmed. In the case of K.A.Baroch v. State

of Gujarat, 1991 SSC (L.S.) 1419 (ATC 15, 887),

It was held that the probation does not transform itself into confirmation unless there is a specific order. But it is open to the appointing authority to confer a status other than that of confirmed status on the termination of probation and practically the same thing has happened in this case in as much as after completion of probation period the applicant was intimated that he was being put ~~work on~~ to a long term regular basis but that will not make it a confirmation order. Now it was within the domain of the respondents to pass a confirmation order and in passing the confirmation order they adhered to the order of seniority given by the Union Public Service Commission. On behalf of the applicant, it was contended that the Ministry of Personnel, Administrative Reforms Memorandum dated 15.4.1959 clearly states that a person should be confirmed in the grade with effect from the date on which he successfully completed the period of probation. <sup>But this</sup> will not apply here. Merely because a person joins later on because of no fault on his part but because of the police verification, even though on the basis of selection he ranks higher than the other person, he cannot be made his junior on the basis of date of joining as seniority which has come because of the merit cannot be defeated except in accordance with law. As has been observed earlier the seniority will not be governed by confirmation and even if the applicant would have been confirmed on an earlier date, there cannot be any challenge. The seniority is to be governed from the date of merit whenever the selection is held. The respondent No. 3 was deemed to be senior. On behalf of the applicant it was then next contended that in view of O.M. dated 30.4.1961 which laid down the general principle for determining seniority ~~means~~ <sup>among</sup> categories of persons appointed by way of direct recruit, <sup>merit</sup> the applicant will be deemed to be senior. The seniority of scheduled caste and scheduled tribe employees directly <sup>is</sup> linked with the date of confirmation and who was confirmed earlier on the basis

of reserved vacancy is treated senior irrespective of the original order of merit at the time of appointment. The said O.M. clearly indicates that the order of confirmation is normally determined by the position occupied by a candidate in the merit list unless a departure is made in a particular case when the person ~~is~~ recruited initially on temporary basis is confirmed in an order different from the order of merit list indicated at the time of appointment. Both the candidates were appointed in the same year and the seniority list was determined in the year 1983. We are not entering into the question as to whether the applicant is entitled to get a post as member of scheduled caste community. It is a matter which requires investigation by the Government and not by us if not having been discussed. It is not being a matter of <sup>we are to</sup> decision before us not a specific question which <sup>clarify to</sup> or determine. In the O.M. dated 20.4.1961 which was issued by Ministry of Home Affairs, it has been specifically pointed out that it often happens that a SC or a ST candidate occupying a lower position in the merit list ~~are~~ appointed permanently to a reserved vacancy, while candidates above him in the merit list are not appointed at that time. If such candidates are appointed in the following year, they are not entitled to higher seniority on the ground that in the previous year they had obtained a higher position in the merit list. The position is not basically different when the initial appointments are made from the same list and at the same time on a temporary basis, and the SC or the ST employee is, inspite of his lower position in the merit list, made permanent earlier in accordance with the special representation orders. In view of this clear position the applicant who was not confirmed earlier and who was also appointed in the same list cannot claim seniority over the Respondent No. 3. As such on merit the applicant's case also has no locus standi and the application deserves to be dismissed. It is accordingly dismissed. There will be no order as to costs.