

(9)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
CAMP AT NAGPUR

O.A. NO: 78/89

199

~~xxxxxx~~

DATE OF DECISION 19.11.1991

Vinayak J. Joshi

Petitioner

Mr. Y.B. Phadnis

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Mr. Ramesh Darda

Advocate for the Respondent(s)

CORAM:

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

The Hon'ble Mr. M.Y. Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

mbm*

(U.C. Srivastava)
V/C

(10)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY
CAMP AT NAGPUR
* * * * *

Original Application No.78/89

Vinayak Jagannath Joshi,
Indra Nil Apartment,
Plot No.86, Flat No.18,
Gajanan Nagar,
Post Vivekanand Nagar,
Nagpur 440 015.

... Applicant

V/s

1. Union of India, through Secretary
Ministry of Communication,
Department of Post,
New Delhi.
2. Director General,
Department of Posts,
New Delhi.
3. Post Master General,
Maharashtra Circle, Fort,
Bombay 400 001.

... Respondents

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

Appearances:

Mr. Y.B.Phadnis, Advocate
for the applicant and
Mr. Ramesh Darda, Advocate
for the respondents.

ORAL JUDGMENT:

Dated : 19.11.1991

(Per. U.C.Srivastava, Vice-Chairman)

The applicant entered the department initially in the Class-IV establishment in the month of May 1948 and qualified himself for the Clerical grade after passing the Matriculation Examination and was promoted in the clerical grade in the year 1952. He was confirmed on 1st May 1958. The criteria for fixation of seniority in the department was laid down in the O.M. of 1959 issued by the Ministry of Personnel. The said O.M. was challenged before the Supreme Court in the case of Ravi Varma vs. Union of India reported in the AIR 1972 SC 670. The court held that the O.M. of 1959 cannot be applied with retrospective effect and the officials appointed

(11)

during the period from 22.6.49 to 21.12.59 would be governed by the old criteria, namely date of entry in the department. The earlier criteria was date of entry in the department i.e. length of service. It is true that the applicant entered in the service in Class-III prior to 1959 i.e. in the year 1952. The applicant was promoted in the Supervisory-cum-operative (LSG) grade with effect from 16.8.1979. But when the seniority list was revised and deemed date of seniority was given to certain officials the applicant was lowered down in the seniority taking the criteria of O.M. of 1959 as if the applicant was appointed after 1959. The applicant submitted representations against the same and after failing to get any relief he has approached the Tribunal praying that it may be declared that the applicant is entitled for the revision of his pay and or stepping up of his pay under order (10) FR 22 (C) with effect from 14.8.1976 with the consequential monetary benefits of the arrears in the scale and grade of LSG and also revision to his pensionary benefits. In the year 1979 when the promotion was given in that grade the notional seniority was given with effect from 1976 to the applicant and others and because of the subsequent order the notional seniority which was given to the applicant was taken down which has led him to approach the Tribunal. The respondents have resisted the claim of the applicant and stated that seniority has been correctly fixed and it has been fixed in accordance with the O.M. which was applicable. Although from the written statement it appears that the respondents have applied the O.M. of 1959 but in a cryptic language it has been said that under the O.M. of 1959 the criteria of seniority was the date of entry in that grade. This was not laid down by the Supreme Court in

12

the case of Ravi Varma and as a matter of fact it has been very clearly laid down that of course those who were appointed prior to the coming in force of the said O.M. for them the criteria of seniority will be the length of service. As the applicant was senior to various other persons with whom he has been junior when the notional seniority has been taken obviously his seniority has been lowered down and he has been deprived of the benefit of the earlier seniority by wrongly applying the O.M. of 1959 in the instant case. Accordingly this application deserves to be allowed and the declaration as prayed for by the applicant, i.e. the applicant is entitled for the revision of his pay and or stepping up of his pay under order(10) FR 22 (C) with effect from 14.8.1976 with consequential monetary benefits, is granted and the applicant's notional seniority will be with effect from 1.6.1976 and as a result of this fixation of seniority the applicant will get monetary benefits including his pension as he has retired from service during the pendency of this application.



(M.Y. Priolkar)
Member (A)



(U.C. Srivastava)
Vice-Chairman

v/-