

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 650/96

Date of Decision : 27th May 2002

R.B.Patil Applicant

Smt.N.V.Masurkar Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents

Shri R.R.Shetty for Advocate for the
Shri R.K.Shetty Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Shri S.K.Agarwal, Member (A)

- (i) To be referred to the reporter or not ? *yes*
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? *No*
- (iii) Library *yes*

S.L.Jain
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.650/96

Dated this the 27th day of May 2002.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Shri S.K.Agarwal, Member (A)

R.B.Patil
Lower Division Clerk,
Office of Director of
Supplies and Disposal,
New CGS Building,
5th Floor, Mumbai.

...Applicant

By Advocate Smt.N.V.Masurkar

vs.

1. Union of India
through the Secretary,
Director General of
Supplies and Disposal,
Parliament Street,
Jeevan Tara Building,
New Delhi.
2. Director General of
(Supplies and Disposal)
D.S.Tax, New CGO Building,
5th Floor, Mumbai.

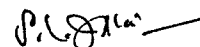
...Respondents

By Advocate Shri R.R.Shetty
for Shri R.K.Shetty

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 for direction to the respondents to count applicant's seniority from the date of his initial appointment, i.e. w.e.f. 22.1.1981 in the grade of LDC,



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accordingly, modify the seniority list as on 1.4.1994 and 1.2.1996 circulated vide letter dated ^{14.7.93}~~1.4.1979~~ and 12.2.1996 respectively, promote the applicant to the post of Upper Division Clerk w.e.f. 12.2.1996 when his juniors, superseding him were promoted with all consequential benefits.

2. The applicant claims that he was appointed as Labourer in temporary capacity with the office of Director of Civil Supplies and Disposal w.e.f. 20.4.1977, was confirmed vide order dated 27.11.1979. On acquiring qualification of S.S.C. in the year 1978, being eligible to be promoted as Lower Division Clerk, the respondents conducted a departmental competitive examination in the year 1980, the applicant appeared in the said examination, competed with the nominees of Employment Exchange/open market candidates and declared successful, was called for viva voce by D.P.C., selected and appointed as L.D.C. by an order bearing No.Part II No.12 dated 22.1.1981 (Ex.A-1). The Recruitment Rules provide for 10% quota for Departmental promotees which has to be filled by holding competitive examination departmentally. Ex.A-1 is reproduced below for proper appreciation of the matter in issue :-

"The Director of Supplies and Disposal is pleased to appoint Shri R.B.Patil, Permanent Labourer in this office to officiate as Lower Division Clerk in the scale of Rs.260-6-290-EB-6-3268-366-EB-8-390-10-400 with effect from 22.1.1981 (FN) in purely temporary capacity until further orders.

The seniority of Shri R.B.Patil, in the post of Lower Division Clerk will count from the date of his appointment as LDC, i.e. w.e.f. 22.1.1981.

He is also informed that the appointment does not entitle him to any claim for regular appointment etc. in the grade in future."

Page 3/-

The applicant claims that his appointment was to a regular post in permanent capacity, hence his seniority is to be counted w.e.f. 22.1.1981 in the cadre of L.D.C.

3. The grievance of the applicant is that vide order dated 7.10.1983 the respondents termed the said appointment dated 22.1.1981 as adhoc and not competent to appear in Special Examination being conducted during 1983 by Staff Selection Commission Ex.A-II dated 7.10.1983. The respondents made applicant wrongly to appear in that Staff Selection Examination which was also cleared by the applicant. The respondents vide their Circular No.Bom/Est/28 dated 9.3.1984 circulated the seniority list of non-Gazetted Class III & IV staff of the office on 1.1.1984 (Ex.A-III), the applicant was shown at Serial No.67 Adhoc, Shri R.R.Kawale, Shri A.A.Khopkar, Shri S.S.Salvi, K.P.Vichare, celina Fernandise, M.V.Kirtikar and A.V.Gaonkar all shown junior to the applicant. Against the name of the applicant - Adhoc was mentioned which the applicant claims to be wrongly mentioned. But his seniority as per ^{Column 2 ✓} ~~clause-2~~ counted w.e.f. 22.1.1981. The respondents vide order Part-II No.500 dated 10.10.1984 issued a combined appointment order to the post of LDC/Typist in the temporary capacity again for six persons including the applicant and in the said order the applicant was shown below his erstwhile juniors Smt.A.A.Khopkar, Smt.S.S.Salvi, Shri K.P.Vichare, Smt.M.V.Kirtikar referred above (Ex-IV). The applicant preferred representation dated 7.2.1985 which was replied vide letter dated 12.3.1986 (Ex.A-V).

P. S. G. S.

4. Smt.Khopkar, Smt.Salvi, Shri K.P.Vichare, M.V.Kirtikar and Smt.A.V.Gavankar approached the Tribunal claiming benefit of their adhoc service for the purpose of seniority which was dismissed with the following observation :-

"May it be so in the view of the decision of the Government of India regarding their regularisation, it will not be open for the applicants to accept some conditions and reject the other of the same order."

After the dismissal of said application on 29.4.1991, the respondents reconsidered the request of the said applicants and gave them the benefit of their adhoc appointment also.

5. The applicant represented for fixation and rectification of seniority on 19.11.1986 (Ex.A-VII). The respondents sought calrification from Staff Selection Commission vide Ex.A-VIII dated 20.5.1985 who in turn vide letter dated 30.5.1985 directed the respondents to approach D.O.P&T (Ex.A-IX) which was replied by D.O.P&T vide letter dated 11.8.1988 (Ex.A-X). The respondents replied vide letter dated 30.3.1989 Ex.A-XI rejecting his representation. The applicant further represented vide his representation dated 1.2.1989 (Ex.A-XII) which was replied vide letter dated 6.11.1989 (Ex.A-XIII).

6. The respondents issued seniority list as on 1.4.1993 on 14.7.1993. The applicant represented against the same vide his representation dated 6.10.1993 (Ex.A-XVI). The Headquarter sought queries vide Ex.A-XVII dated 8.8.1994, which was replied

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by the respondents vide letter dated 2.9.1994 (Ex.A-XVIII). The applicant further represented vide letter dated 15.11.1994, 11.9.1995, 20.9.1995, 8.1.1996, 23.2.1996 (Ex.A-XIX) which were not replied. On the other hand, the respondents circulated seniority list dated 12.2.1996. The applicant represented against the same vide his representation dated 12.3.1996 (Ex.A-XXI) which is not replied. Hence, the applicant filed this OA. on 24.6.1996 for the above said reliefs.

7. The claim of the applicant is being resisted by the respondents on the ground that the applicant was not granted seniority w.e.f. 22.1.1981 as he was appointed as LDC purely on temporary capacity which is in the nature of an ad hoc appointment as he was nominated through Local Employment Exchange and not by way of promotion from the category of Labourer to the post of LDC as claimed by the applicant. The cause of action in the present matter arose on 10.10.1984 when the Office Order Part II No.500 dated 10.10.1984 was issued, fixing the date of his regular appointment as on 8.12.1983, whereas the present application is filed on or about 25.6.1996 which is after a lapse of 13 years, the effect of which would be to unsettle the settled seniority position during the last 13 years. If this unsettling of the long established seniority position is permitted, it would lead to innumerable, unforeseen unrest among the members of the staff of the respondents. The application also suffers from laches. Although 10% of the post in the category of LDCs is reserved for Class IV staff such as Labourers, the applicant

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never appeared for the test and in examination prescribed for Class IV staff to become member of the LDC category which is a Class III category. Although the applicant was a labourer belonging to the Class IV staff, he sought the membership of the LDC category through the Employment Exchange without passing the prescribed test and examination for Class IV staff to enter the LDC category of Class III. OA. is barred by time. The Departmental Examination to promote Class IV employees to the post of LDC is as per rule held by the Headquarters, viz. D.G.S. & D., New Delhi. Such examination was never faced by the applicant as such his contentions in this regard are therefore not valid. Letter dated 7.6.1988 from Headquarters viz. D.G.S. & D (Exhibit-'R-1') fully establishes the facts. Annexure-'A-III' contains some typographical/factual errors, against applicant's name at S.No.47, the date of initial appointment was indicated as 20.4.1977. This was actually the date of his appointment as Labourer and not as L.D.C. Because of this mistake, his seniority had been indicated wrongly. Ex.'A-IV' clearly and correctly decides the seniority in terms of Staff Selection Commission, New Delhi letter dated 8.5.1984 (Ex.'R-X'). Appointment letter dated 22.1.1981 has no weight in favour of the applicant. The applicant's case is different in so far as he was not directly recruited as L.D.C. He was first appointed as Labourer on 20.4.1977 and subsequently promoted in a purely temporary capacity as L.D.C. on 22.1.1981. Smt.Khopkar & Ors.

P. J. Khopkar

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who approached the Tribunal in OA.No.629/87 were directly appointed as L.D.C.s through Employment Exchange on various dates in 1979 and 1981. Even inspite of dismissal of OA., the respondents have considered their case and the applicant's case being entirely different one, was not considered. Hence, prayed for dismissal of the OA. along with costs.

8. The facts which are established are that the applicant was appointed vide Office Order Part II No.142 dated 20.4.1977 as Labourer in purely temporary capacity w.e.f. 20.4.1977 (F.N.). Vide Office Order Part II No.142 dated 7.11.1979 the applicant was appointed in a substantive capacity against the permanent post w.e.f. 20.4.1997 in place of M.Anthony. Thereafter, the applicant was appointed vide office order dated 22.1.1981 to officiate as Lower Division Clerk w.e.f. 22.1.1981 (F.N.) in a purely temporary capacity until further orders by Assistant Director (Administration). It is true that in the said order it is mentioned that the seniority of the applicant in the post of LDC will count from the date of his appointment as LDC i.e. w.e.f.22.1.1981. In addition to it, it is also mentioned that the appointment does not entitle him to any claim for regular appointment in the grade in future. Perusal of the same makes it clear that he was appointed purely in a temporary capacity. Vide office order Part II No.500 dated 10.10.1984, the applicant was appointed as regular LDC/Typist consequent on qualifying in Special Qualifying Examination conducted by Staff Selection Commission, New Delhi w.e.f. 8.12.1983.

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9. The grievance of the applicant is that there was no necessity for him to appear in the said Special Qualifying Examination conducted by the Staff Selection Commission as he was appointed under 10% quota from Group 'D'. This matter was agitated and till the position was examined, it was stated by the respondents that in view of the representation of the applicant, he must be told that as a departmental candidate his seniority will count from the date of declaration of departmental examination held for promotees for fixing the seniority of promotees vis-a-vis direct recruits in the grade of LDC. An option was exercised by him. When the position was examined, the respondents vide their letter dated 14.1.1986 clarified that "perhaps this office was not aware of the departmental competitive examination for qualified Group 'D' staff conducted by SSC as such, no instructions were received from Headquarters at that time." It is apparent that the examination was not conducted by the competent authority and as such the claim of the applicant cannot be held that he was examined by the Departmental Promotion Committee. Therefore, he cannot claim seniority on the basis of his appointment vide order dated 22.1.1981. The examination was conducted by incompetent authorities. The said fact has been clarified vide letter dated 3.2.1986 wherein it is clearly mentioned that it is observed that the examination Shri Patil qualified was not a departmental competitive examination conducted by Staff Selection Commission or office for drawing panel for promotion to the post of LDC on adhoc basis. Thereafter, the applicant pursued the matter and the departmental authorities tried to help him but such recommendations cannot assist him which are not in accordance with law.

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10. It is settled position of law that seniority dispute raised after more than a decade after joining service, the question of seniority should not be re-opened because that will disturb the settled position which is not justified (1998 SCC (L&S) 611 - B.S.Bajwa & Ors. vs. State of Punjab & Ors.). In 1998 SCC (L&S) 1656 - B.S.Sivaiah & Ors. vs. K.Addanki Babu & Ors., petition seeking restoration of inter se seniority after 4 years was rejected on the ground of delay and laches.

11. The learned counsel for the applicant relied on 2001 SCC (L&S) 374 - K.Thimmappa & Ors. vs. Chairman, Central Board of Direct Taxes & Anr. vs. State Bank of India & Anr. and argued that a petition can not be rejected solely on the ground when question of fundamental right is involved in it. The right of an employee to a place of a particular seniority position cannot be said to be a fundamental right which infringes Article 14.

12. It is true that by an executive order the date of particular seniority promotion cannot be altered {(1996) 9 SCC 178 - Dr.Ram Raj Ram vs. State of Bihar & Ors.}. The said proposition is acceptable provided the earlier date is in accordance with law. When the earlier date itself is an error, the said proposition cannot be accepted. We have perused the order of the appointment of the applicant dated 20.4.1977, it was a date when he was appointed as a Labourer. The said date was mentioned in the seniority list of LDCs. The said date being

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only an error, as such, the applicant cannot claim the benefit on the basis of the said date. Regarding order dated 22.1.1981, it is true that it was mentioned that seniority of the applicant in the post of LDC will count from the date of appointment as LDC, i.e. w.e.f. 22.1.1981 but in the said order itself when the appointment was purely in temporary capacity until further orders, the said mention will not give any right to the applicant when in the said order itself it is mentioned that appointment does not entitle him to claim any regular appointment as LDC in the Grade in future. The purely temporary capacity appointment does not entitle a person to be enlisted from the date when he was appointed and claim seniority on the same post, particularly, when a selection was not held by a competent authority. In view of the said facts, the authority relied by the learned counsel for the applicant does not assist him as it does not apply to the facts of the case.

13. In view of 1998 SCC (L&S) 730 - Dr.Meera Massey (Mrs.) & Ors. vs. Dr.S.R.Mehrotra & Ors., ad hoc appointments made de hors the rules deprecated, such appointments and regularisation is contrary to rules, not entitled to any relief.

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14.. The learned counsel for the respondents relied on in the case of Trimurthulu K. & Ors. and M.V.N.Murthy & Ors. which lays down the proposition that seniority would be reckoned only from date of regular appointment as per circulars issued by Ministry of Defence. It is the general proposition of law that seniority is counted from the date of regular appointment and not from the date of appointment in temporary capacity until and unless such adhoc appointment continues till regular appointment and is not dehors the rules.

15. The learned counsel for the applicant relied on 1992 Supp (2) SCC 172 - A.Sagayanathan & Ors. vs. Divisional Personnel Officer, S.B.C.Division, Southern Railway, Bangalore for the proposition that in case of supersession, if the grievance of the applicant is genuine one, it cannot be disposed of solely on the ground of delay investigation is required. We are not dealing with a case of supersession in case of promotion, as such, the said authority also do not help the applicant.

16. In view of 2001 (1) ATJ 514 - Ramesh K.Sharma & Anr. vs. Rajasthan Civil Services & Ors., if an incumbent is appointed after due process of selection either to a temporary post or a permanent post and such appointment not being either stop-gap or fortuitous, then such an appointment can be said to be on substantive basis. In the present case, the applicant is not appointed after due process of selection because the selection was not by competent authority. As such, the applicant is not entitled to any relief based on the said authority.

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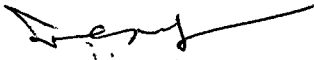
17. It is true that other recruited persons through Employment Exchange have filed OA.No.629/87 before this Tribunal, which was rejected by the Tribunal. But the respondents provided the relief. On the basis of principle of equality, the applicant cannot claim even the said benefit for the reason that the applicant is not similarly situated as he was mere Group 'D' while those applicants were sponsored through Employment Exchange.

18. OA.No.629/87 was filed by some of the employees amongst which Smt.A.A.Khopkar, Smt.M.V.Kirtikar, Smt.Celina Fernandise were party. Thereafter, the respondents granted them seniority. Even inspite of the fact that the OA. was dismissed and only the direction as argued by the learned counsel for the applicant that to consider the case of the applicants' seniority taking into consideration the judicial trend was mentioned. Inspite of the said fact, the respondents granted them the seniority covering the period of their adhoc appointment. Thereafter, the seniority list was amended. Being aggrieved by the said amendment of the seniority list, the applicants - direct recruits filed OA.NO.1129/94 before this Bench which was decided on 28.7.2000. On perusal of the said order, we are of the considered opinion that the seniority granted by the respondents to the applicants of OA.NO.629/87 was set aside. Therefore the applicant who has come to the Tribunal basing his claim on the said plea is now not entitled to raise his grievance in view of the decision in OA.NO.1129/94 dated 28.7.2000.

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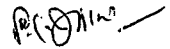
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19. In the result, we do not find any merit in the OA. It is liable to be dismissed and is dismissed with no order as to costs.



(S.K.AGARWAL)

MEMBER (A)



(S.L.JAIN)

MEMBER (J)

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d 127/5/2
Order/Judgement despatched
to Applicant/Respondent (s)
24/6/2

