

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 40 of 2000.

Dated this Friday the 19th day of December, 2003.

CORAM : Hon'ble Shri A. K. Agarwal, Vice-Chairman.

Hon'ble Shri S. G. Deshmukh, Member (J).

R. N. Baviskar,
Plot No. 35 (Kalika Mandir),
Shivaji Nagar,
Gangapur Shivar,
Stapur P.O.,
Nashik - 422 007
Employed in the Office of
The Commissioner of Income Tax,
Nashik, Kendriya Rajaswa Bhavan,
Gadkari Chowk,
Nashik - 422 001.

... Applicant.

(By Advocate Shri P. A. Prabhakaran)

VERSUS

1. Union of India through the
Chief Commissioner of Income
Tax, Pune, Ayakar Bhavan,
Sadhu Vaswani Marg,
Pune - 411 001.
2. The Commissioner of Income Tax,
Kendriya Rajaswa Bhavan,
Gadkari Chowk,
Nashik - 422 001.
3. Staff Selection Commission,
Through the Regional Director,
Army & Navy Bldg., 2nd floor,
148, Mahatma Gandhi Road,
Mumbai - 400 001.
4. Shri V. R. Sawale,
Assistant,
O/o. the Commissioner of
Income Tax, Sadhu Vaswani Marg,
Pune - 411 001. ... Respondents.

(By Advocate Shri V. G. Rege)

O R D E R

PER : Shri S. G. Deshmukh, Member (J)

The present O.A. is filed for granting the applicant due

W/ place in Seniority List of U.D.C. in accordance with the relative

rank secured by the appointees out of 1982 SSC Examination either in the general category or in the reserved category and to grant all consequential benefits including pay fixation notionally till the date of actual appointment and payment of actual arrears.

2. The applicant's case is that he had passed the examination conducted by the Staff Selection Commission held in 1982, he was directly appointed as U.D.C. in the year 1985, in C.I.T. Office, Nashik. Thereafter, he qualified in the departmental examination for Inspectors in 1994 and for Income-Tax Officers in 1997. Meanwhile, the applicant was promoted and appointed as Tax Assistant in the year 1992. When the seniority list of U.D.Cs. was published some time in 1994-95 he noticed that his seniority has been fixed below the direct recruits who had been qualified in the Staff Selection Commission Examination held in the year 1983 and 1984. One Shri V. R. Savale who had been selected out of the 1982 S.S.C. examination and ranked below the applicant was placed as senior to the applicant. The selectees of 1983 and 1984 were placed above the applicant in the seniority list. The applicant represented to Respondent No. 1 through proper channel to correct the error in his seniority. Thereafter the applicant submitted a reminder dated 22.11.1996. The applicant did not receive any reply. The applicant approached Respondent No. 3, Staff Selection Commission, Western Region, with an appeal dated 25.02.1997. The applicant received a letter dated 07.02.1997 issued by Respondent No. 1 to Respondent No. 2 on 04.03.1997. The claim of the applicant was rejected stating that he is nominated against the vacancy of recruitment year 1985 even though the examination was held in 1982, therefore, the seniority fixed by this office in 1993 is correct. Respondent No. 3 replied the applicant on 17.03.1997 and requisitioned the applicant's details of
W S.S.C. appearance, nomination to I.T. department, joining the

Department, etc. The applicant furnished the full particulars to Respondent No. 3 on 27.03.1997 and pursued the matter by letter dated 12.05.1997 appealing for early action. He submitted one more representation to Respondent No. 1 on 04.07.1997. He submitted his third representation to Respondent No. 1 on 31.07.1998. He again appealed to Respondent No. 3 on 04.08.1998, 2.12.1998 and 07.12.1998. Respondent No. 3 informed him by letter dated 10.05.1999 that his seniority in the Income Tax Department may be fixed on the basis of rank obtained by him in the Staff Selection Commission's UDC Grade Examination. However, thereafter he received a letter dated 27.08.1999 from Respondent No. 3 stating that Staff Selection Commission being a recruiting organisation is not concerned with the matters relating to fixing of seniority of the candidates nominated by the Commission to various intending departments, which is the job of the respective user departments and he was advised to take up the matter of seniority with his office and earlier letter dated 10.05.1999 be treated as cancelled. Thus the present O.A.

3. On 25.02.2000 the applicant filed the application for condonation of delay stating that the application is in time. In case the applicant's pleadings are not acceptable, the delay if any, be condoned.

4. Counter affidavit is filed by Respondent No. 3 stating that the Commission being only a recruiting agency it has no role to play in fixing the seniority of the employees which is an internal affair of the Department. It is the Department of Personnel & Training of Government of India which decides the general policy and principles in that behalf and the concerned Administrative Ministries. The respondent no. 3 has been unnecessarily impleaded as a party. It is further contended that

the Applicant was nominated by Respondent No. 3 to Respondent No. 2 for appointment as a U.D.C. on 14.08.1985 and for the first time in February, 1997, the applicant took up the matter with Respondent No. 3. The applicant was not vigilant and diligent. The records relating to 1982 are not available. In the absence of the record it is not possible to say as to why the applicant was nominated in 1985. The applicant was nominated to the department against their letter of requisition dated 21.02.1984.

5. The other respondents have also filed their counter affidavit contending that applicant is guilty of delay and laches. The applicant was appointed to the post of U.D.C. on 10.12.1985 pursuant to his nomination on account of passing the requisite examination conducted by Respondent No. 3 vide letter dated 14.08.1985. Though the applicant passed the examination conducted in 1982 he was recommended and appointed in 1985 against the vacancies occurring during the period 01.03.1984 to 28.02.1985. Since the appointment is made on 10.04.1985 for the vacancies occurred during the period March 1984 to February, 1985, he is not entitled to gain seniority over Respondent No. 4

● who was recommended for appointment in September, 1983 and caused to be appointed in 1983 against the vacancies occurred prior to March, 1984. It is earlier to the date of appointment of the applicant. It is also contended that after 10.12.1985 the seniority list as on 01.09.1986, 01.09.1988, 01.09.1991 and 01.09.1993 of the persons working in the cadre of Upper Division Clerk were published from time to time and in those lists the Respondent No. 4 is invariably shown as senior to the applicant. The applicant did not make representation in the matter. It is for the first time in 1998 he submitted the representation. It is also contended that as per the settled law laid down by the Apex Court an attempt to unsettle the seniority already settled and in vogue for a reasonable long period is not liable to be

interfered with and, therefore, the O.A. is not tenable in law. It is also contended that there are other persons shown senior to the applicant in the list and those persons have not been made party respondents though proper and necessary. The O.A. is liable to be dismissed for non joinder of parties. The applicant did not raise any objection after circulation of seniority list in the year 1986, 1988, 1991 and 1993. It is also contended that the representation regarding placement in the seniority list was required to be made within three months from the date of publication of the list. The applicant did not bother about his seniority till 10 years from his joining the department. It

● is also contended that in response to the representation of the application dated 27.03.1995 and 22.11.1996 the applicant was informed by letter dated 07.02.1997 that he was nominated against the vacancy of recruitment year 1985 even though the examination was held in 1982 and hence the seniority fixed by the respondents is correct. Seniority of all the officials is fixed as per prevailing rules including the applicant. In view of O.M. No. 20011/5/90-Est(D) dated 04.11.1992 seniority already determined according to existing principles on the date of issue of these orders will not be reopened even if in some cases seniority has already been challenged or is in dispute and it will continue to be determined on the basis of the principles already existing prior to the date of issue of these orders.

6. Applicant has filed the rejoinder.

7. Heard Shri P.A. Prabhakaran, Learned Counsel for the applicant and Shri V. G. Rege, Learned Counsel for the Respondents and perused the pleadings.

8. Learned Counsel for the applicant, Shri P.A. Prabhakaran, submitted that the O.A. is not barred for want of necessary parties. In that respect, he relied on the following judgements:

- (i) Brij Nath Pandey V/s. State of U.P. & Others [2002 SCC (L&S) 93]
- (ii) Shri Samsom Stanley & Others V/s. Union of India & Others [1992 (2) (CAT) 359].

9. In view of the pleadings of the parties, the first question that arise is whether the application is within time and if it is beyond time, whether the delay in appearing the Tribunal deserves to be condoned ?

10. Section 21 of the Administrative Tribunals Act, 1985, provides that an application under Section 19 has to be made within one year from the date on which the cause of action arose or in case where a representation or appeal has been made and period of six months has expired thereafter without such final order having been made within one year from the date of expiry of the said period of six months.

11. In the instant case, the applicant sought the relief of placing him in the Seniority List of U.D.C. in accordance with the relative rank secured by him out of 1982 Staff Selection Commission Examination. It is not disputed that the applicant was appointed to the post of U.D.C. on 19.12.1985. As per respondents' counter affidavit seniority list as on 01.09.1986, 01.09.1988 and 01.09.1993 of the persons working in the cadre of U.D.C. were published. It is also their contention that the Respondent No. 4 is shown as senior to the applicant. The limitation regarding seniority has to be reckoned with reference to the date of preparation of the seniority list. In the instant case, the first seniority list is prepared on 01.09.1986. It is also not disputed that the applicant did not make any representation till 21.03.1995 i.e. the first representation. The applicant did not raise any objection regarding the seniority list. The representation regarding refixing of seniority was

required to be made within three months from the date of publication of list. The applicant did not bother about his seniority till 21.03.1995 i.e. for nearly eight and a half years.

12. Sub-section (3) of Section 21 of Administrative Tribunals Act, 1985, provides that the period of limitation may be condoned if the applicant satisfies the Tribunal that he has sufficient cause for not making the application within limitation. The applicant filed the O.A. on 20.12.1999. In column no. 3 of the O.A. the applicant has declared that he is within the time limit prescribed under Section 21 of the Administrative Tribunals Act, 1985. Thereafter the applicant filed a Miscellaneous Petition No. 155/2000 on 25.02.2000 for condoning the delay. In the said M.P. also the applicant makes the prayer that Tribunal be pleased to hold that application is in time and further that in case the applicant's pleadings on the issue are not acceptable, the delay, if any, be kindly condoned by allowing the M.P. The applicant on one hand takes the stand that he is within limitation and at the same time simultaneously states that delay if any, may be condoned. Such a pleading cannot be said to be proper. The applicant must categorically stand on a limitation.

13. The applicant did make the representation on 21.03.1995 and the reminder on 22.11.1996 to Respondent No. 1. We have mentioned that first seniority list was prepared on 01.09.1986 after the appointment of the applicant. It has also come on record that Respondent No. 1 had informed the applicant through Respondent No. 2 vide letter dated 07.02.1997 that the applicant was nominated against the vacancy of recruitment year 1985 even though examination was held in 1982, hence, the seniority fixed by the office of Respondent No. 1 is correct. It could be seen from the representation dated 25.02.1997 at Exhibit A-4 made to

the Regional Director (WR), Staff Selection Commission by the applicant that he had been informed that he was nominated against the vacancies of 1985 and his seniority was fixed accordingly. It appears that the first representation was made by the applicant on 21.03.1995 and thereafter he was giving reminders. Respondent No. 2 had informed him vide letter dated 07.02.1997 even then the applicant went on making representations to the Chief Commissioner, Pune. Repeated representations cannot extend the limitation. Already the applicant was informed vide letter dated 07.02.1997. Not only that, it also appears from the record that the applicant went on making representations to Respondent No. 3, Staff Selection Commission. The Staff Selection Commission is a recruiting agency. It has no role to play in fixing the seniority of the employees. It is an internal affair of the department. We have mentioned that limitation regarding seniority has to be reckoned with reference to the date of preparation of seniority list. The first seniority list is prepared on 01.09.1986. Admittedly, the application in question is not within one year from the preparation of the seniority list. Not only that the representation made by the applicant was replied by the respondents by letter dated 07.02.1997. The O.A. in question is not within one year from the reply of the respondents. Repeated representations certainly cannot extend the limitation. The representation made to the Staff Selection Commission are of no use as the Staff Selection Commission has no role to play in fixing the seniority. The application for condonation of delay does not mention sufficient cause. There is no explanation as to why the applicant could not avail of remedy of redressal of his grievance before the expiry of period prescribed. The applicant should pursue his rights and remedies promptly and not sleep over his rights. There appears no extra ordinary situation to entertain the application. There

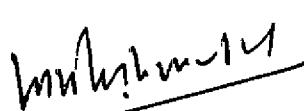
is no sufficient cause for condoning the delay. Inordinate and unexplained delay or laches by itself is a ground to refuse the relief irrespective of the merits of the case.

14. The respondents raised the plea that O.A. is barred for want of necessary and proper parties. The necessary party is one without whom no order can be made effectively, a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The applicant has claimed placement above Respondent No. 4 and other juniors. He has not made any of them as party-respondents. It is the settled law that whenever seniority is being challenged the persons likely to be affected on grant of relief should essentially be made party-respondents and should be heard in the matter. The applicant has failed to make those persons as party-respondents. The applicant has made only one of his junior as party respondent No. 4. The persons placed senior to the applicant are necessary parties.

15. Learned Counsel for the applicant relied on Brij Nath Pandey's case showing that those persons are not required to be made party respondents. In the said case the appellant was not seeking any direction with reference to his seniority. The dispute was purely between the appellant and the respondent State. According to the appellant the adverse entries in his C.Rs. of 1985-86 and 1986-87 could not have been taken into consideration and thus the ratio in Brij Nath Pandey's case is not helpful to the applicant. So also the applicant relies on judgement in Samson Stanley's case decided by the Mumbai Bench of this Tribunal. In the said case also the appellants had not challenged the correctness of the seniority list nor they had questioned the placement given to the persons mentioned therein.

The appellants' case about seniority was based on principle of law i.e. whether their ad hoc service should be regularised or not. In the instant case, the applicant is questioning the placement given to the persons who are not made party respondents. The applicant is challenging the correctness of the seniority list and thus the ratio in Samson Stanley's case is not helpful to the applicant. We have mentioned that the applicant has not made his seniors as party-respondents though he has claimed placement above those persons. Those who are likely to be affected on grant of relief should have been made as party-respondents. Applicant has failed to make the persons, above whom he is claiming placement, as party respondents. The O.A. is barred for want of necessary parties also.

16. In view of the above discussions, the O.A. is required to be dismissed and is accordingly dismissed. No order as to costs.


(S. G. DESHMUKH)

MEMBER (J).


(A.K. AGARWAL)

VICE-CHAIRMAN.

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