

(07)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 10/91

Transfer Application No:

DATE OF DECISION: 7.2.1995

S.G.Subramaniam & Ors. Petitioner

Shri G.S.Walia. Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Shri N.K.Srinivasan. Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,

The Hon'ble Shri P.P.Srivastava, Member(A).

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?


(M.S.DESHPANDE)
VICE-CHAIRMAN

(094)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, BOMBAY.

Original Application No.10/91.

S.G.Subramaniam & Ors. ... Applicants.

V/s.

Union of India & Ors. ... Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande,
Vice-Chairman,
Hon'ble Shri P.P.Srivastava, Member(A).

Appearances:-

Applicants by Shri G.S.Walia.
Respondents by Shri N.K.Srinivasan.

Oral Judgment:-

(Per Shri M.S.Deshpande, Vice-Chairman) Dt. 7.2.1995.

By this application the applicants challenge the seniority list dt. 21.11.1989 (Ex. 'E') and seek a declaration that the seniority assigned to the applicants vide letter dt. 13.9.1988 (Ex. 'C') in the pay scale of Rs.1200-2040 (RPS) is valid and subsisting and for quashing the impugned order dt.25.6.1990.

2. The nine applicants were working as Commercial Clerks with the Bombay Division of the Western Railway and were posted at Carnac Bunder. The applicant No.4 was appointed on 13.9.1974, while the other applicants were appointed on 21.12.1974 and confirmed on 1.7.1975 by the order dt. 9.7.1981. Since the applicants were found to be surplus at Carnac Bunder they came to be transferred as surplus to the Bombay Division of Western Railway by the order dt. 20.3.1982 (Ex. 'A') for purely temporary utilisation as ACCs in the scale of Rs.260-430(R) against existing vacancies and it was mentioned in the order that these were purely a temporary utilisation with no other benefits or rights or

privileges attached thereto. The applicants started working with the Bombay Division and were never repatriated to Carnac Bunder. A decision was taken on 13.9.1988 that the applicants should be absorbed and a seniority list was drawn up accordingly on the same day. The applicants have no grievance about this seniority list which while fixing the seniority took note of the date of initial appointment. By the order dt. 21.11.1989 a fresh seniority list was drawn up in the list of Commercial Staff Scale Rs.1200-2040 and representations were invited against the said seniority list. The other employees who were appointed in Bombay Division were promoted w.e.f. 1.12.1983, while the applicants came to be promoted in 1985-86 in the cadre at Carnac Bunder, on the basis of the cadre they were working in the Bombay Division. The applicants felt aggrieved by the seniority list which was drawn up on 21.11.1989 and they made representations to the Respondents who by their letter dt. 25.6.1990 (Annexure -' I') informed the applicants that their seniority in the scale of Rs.1200-2040 (RP) was fixed on the basis of regular promotion after passing the requisite written suitability test in the grade and they were promoted in the scale of Rs.1200-2040 on regular basis from the date shown against each and that the employees of BCT Division were promoted on regular basis earlier stood senior and the seniority position shown by the letter dt. 21.11.1989 was correct. Feeling aggrieved by this reply the applicants have come up with this OA for the aforesaid reliefs.

3. The contention of the respondents is that since the applicants were absorbed in the scale of Rs.1200-2040, the seniority list was based on the date of their regular promotion to that scale and their seniority in the grade Rs.260-430/975-1540(RP) after their absorption in the Bombay Central Division had already been notified by the letter dt. 13.9.1988 showing their position between the employees at Sl. Nos. 1 and 2 and 23 and 24 who originally belonged to Bombay Central Division.

4. The main submission on behalf of the applicants was that once the seniority was granted to the applicants on the basis of their absorption in the Bombay Division after their transfer from Carnac Bunder to Bombay Division after they were rendered surplus, the seniority in the promotional grade could not be based on the seniority assigned in the grade to which they were brought in Bombay Division. There is no dispute before us that Bombay Division and Carnac Bunder Division had separate seniority units. Evidently, the order by which the applicants were brought to Bombay Division i.e. the order dt. 20.3.1982 made the applicants position clear by intimating that they had been transferred for purely temporary utilisation as ACCs without conferring any benefits, rights or privileges attached to those posts. The position of their seniority could have been ascertained only after their absorption pursuant to the decision taken on 30.9.1988.

5. The position was that the others who belonged to Bombay Division had been promoted on 1.12.1983, while the present applicants came to be

promoted in 1985-86 on the different dates which have been mentioned in the respondents reply to the applicants representation which was given on 25.6.1990. It was made clear by this reply that the seniority in the scale of Rs.1200-2040 was fixed on the basis of regular promotion after passing requisite written suitability test in this grade. The applicants promotion was not automatic, but was a sequel to their having given a written test in 1985-86. By that time the promotion of the other employees in the Bombay Division had already materialised. Shri G.S.Walia, the learned counsel for the applicants urged that the promotion was to a non-selection post and the seniority in the original cadre would decide the seniority in the promotional cadre also. When we asked the learned counsel to indicate how this could be said when this position was not taken by the applicants in the application, our attention was drawn to para 4.6 of the QA where it was stated that the applicants had represented that they should be assigned seniority in the grade of Rs.260-430 on the basis of their initial recruitment and also they should be given correct seniority and promotion in the scale of Rs.1200-2040 on the basis of their seniority so assigned. It is true that the applicants had not sought transfer on their own and came to be transferred to Bombay Division on administrative grounds. However, based on this position the seniority list came to be prepared taking initial dates of appointment as the dates for determining the seniority in the seniority list prepared on 13.9.1988. It is, however, difficult

to see how on the basis of this seniority list seniority could have been claimed by the applicants also in the promotional post when the others who were in the Bombay Division had already been promoted in 1983 on the basis of their having given the written test. The contention was that the applicants had not given the written test because they were never called to do so and later written test had to be given at Carnac Bunder because the applicants had been working at Carnac Bunder. It is difficult to accept this argument for the purpose of disturbing the seniority in the promotional cadre when the promotion of others had already materialised on the basis of written test which they had given in the year 1983.

6. Reliance was placed on (1974 SCC (L&S)290) The General Manager, South Central Railway, Secunderabad & Anr. V/s. A.V.R.Siddhantti and Ors, where the staff of Grain Shop Complex was drawn from 3 different sources. But we see nothing in that decision which will help the applicants, there the proposition being that when persons are coming or recruited to the service from different sources are absorbed ~~and~~ with identical service conditions they cannot be discriminated against with reference to the original sources for the purpose of further promotions in the higher grade.

7. In(1983 SCC (L&S) 271) V.S.Murty and Ors. V/s. Deputy Chief Accounts Officer and Ors. the position was governed by the rules which were called the Andhra Pradesh Ministerial Service Rules and the proposition there was that if the transfer was on administrative ground from one department

or office to another, the seniority of the transferred government servant shall be fixed with reference to the date of his first appointment in the former department or office from where he is transferred. This cannot be regarded as an authority in a case such as the present where the promotions of others had already materialised before the absorption of the present applicants in the cadre.

8. In (1991 SCC (L&S) 647) Subarata Majumdar and Anr. V/s. State of West Bengal and Others, it was held in view of the absence of any uniformity in promotion to intermediate promotional posts in different departments, rules framed laying down uniform principle for determining seniority amongst eligible candidates for the purpose of promotion and for that seniority in the basic category of Upper Division Assistant considered as most reliable test and so the West Bengal Services (Secretariat Common Cadre) Rules, 1984 and West Bengal Services (Secretariat Common Cadre of Deputy Secretaries and Assistant Secretaries) Rules, 1984 were valid and not open to challenge on ground putting together unequals for the purpose of promotion to the post of Assistant Secretary and no challenge shall be raised under Articles 14 and 16 of the Constitution. Here regard should be had to the fact that from different streams, from different headquarters which had no common seniority, the applicants came to be transferred on purely temporary basis and came to be absorbed by the letter dt.13.9.1988. This was long after the others from the Bombay Division had already been promoted. The applicants could not have

secured a promotion without passing the written test which the others had given much earlier than the applicants and so we do not think that the seniority list which has been prepared by the Respondents can be faulted.

9. We need not refer to the details of the seniority list which were prepared in respect of the promotional cadre on 21.1.1989 because we are satisfied that there was no arbitrariness in rejecting the applicants representation by the order dt. 25.6.1990.

10. The application is dismissed. There will be no order as to costs.


(P.P. SRIVASTAVA)
MEMBER(A)


(M.S. DESHPANDE)
VICE-CHAIRMAN

B.

W6

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

R.P.NO.95/95

in

OA.NO. 10/91

Shri S.G.Subramaniam & Ors. ... Applicants
V/S.

Union of India & Ors. ... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri P.P.Srivastava

Tribunal's Order By Circulation

Dated: 28.9.95

(PER: P.P.Srivastava, Member (A))

The review petition brings out that the Tribunal has erred in not referring to the seniority list in the operative part of the judgement as according to the petitioner this was the main point to be considered and the applicant has made representation to the respondents about the seniority list and the respondents have arbitrarily rejected the same. The petitioner has further brought out that the respondents have violated the Article 14 & 16 of Constitution of India and this point was also not considered by the Tribunal while delivering the judgement. According to the petitioner the Tribunal has not considered the principle of equal opportunity relating to employment or appointment and resulting discrimination. The petitioner has also brought out that the Tribunal has also not considered the case of General Manager S.C.Rly. vs. A.V.R.Sidhanthi & Ors. concerning grain shop staff which was brought to the notice of the Tribunal. The review petitioner has also brought out in Para 8 that the Tribunal ought to have considered some justifiable solution instead of outright rejecting the case as was decided by the Supreme Court in Katyani Dayal's case



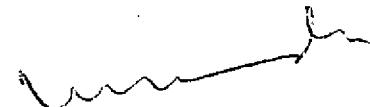
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(15X)

when there has been complete absorption of the personnel of one service into other.

2. We have considered all the above points which have been brought out by the review petitioner in the review petition and are of the opinion that these arguments have already been advanced at the time of hearing the OA. The review petitioner has tried to show how our judgement is wrong on certain points and how some other points have not been considered in our judgement. We are of the opinion that [REDACTED] review is not available for reconsideration of the merit of the case which has already been argued unless any new material is brought to the notice of the Tribunal which could not be brought at the time of original hearing with due diligence. In this case, we are afraid that no new material has been brought out which was not available at the time of hearing of the original OA. The petitioner has also not brought out any error apparent on the face of the record of the judgement which will warrant review of the judgement. The review petition is dismissed.


(P.P. SRIVASTAVA)
MEMBER (A)


(M.S. DESHPANDE)
VICE CHAIRMAN

mrj.