

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

(15)

OA.NO. 606/91 & OA.NO. 551/91

1. Shri J.M.Lalwani & Ors.

... Applicants

2. Shri Krishna Mahadeo Sawant

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

Appearance

Shri G.R.Manghani
Counsel for the Applicants

Shri Suresh Kumar for Shri M.I.Sethna
Counsel for the Official Respondents

Shri P.Shankaranarayanan
Counsel for Private Respondents in OA.NO.606/91,

Shri B.Ranganathan
Counsel for Govt. Respondents in OA.NO.551/91

JUDGEMENT

Dated: 30/8/95

(PER: P.P.SRIVASTAVA, MEMBER (A))

The applicants in these OAs. were appointed as Lower Division Clerks in the year 1959 and afterwards they got promoted to the post of Upper Division Clerk. The respondents 4 to 26 in OA.606/91 and respondents 4 to 14 in OA. 551/91 in this case were appointed as Stenographers and UDC. The Grade of Stenographers and Upper Division Clerks were the same and for the purpose of next promotion to the post of Licensing Assistant a combined seniority list is drawn on the basis of length of service in the Grade of U.D.C. or Stenographers. The case of the applicants is that they have crossed the minimum of the pay scale of the post of Upper Division Clerk before the appointment of respondents to the post of UDC or Stenographer. In short, the applicants claim that for the purpose of seniority the length of service rendered by them in the cadre of LDC after their pay has become equal to the minimum of the UDC grade should also be reckoned.

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2. The applicants had brought out that the respondents have published a draft seniority list after the decision of the Ahmedabad Bench of this Tribunal in Tr.A.No. 263/86. The applicants have brought out that while drawing the draft seniority list certain instructions were issued which are placed at Annexure-'E' in Circular No. 66/89(D) dated 17.10.1989. In Para 4 of this Circular at sub-para (iii) it has been laid down that the promotion to L.A. Grade from U.D.C. and Stenographers grade would be by promotion of U.D.C. and Stenographers having at least 3 years regular service in their respective grades on the basis of joint seniority to be drawn in accordance with the length of service in the grade as well as service ⁱⁿ equivalent grade, irrespective of the date of confirmation(s) in the respective grades of Upper Division Clerks and Stenographers. In sub-para (iv) of the same Circular, it has been laid down that :-

"However, in the case of promotion to L.A. grade from U.D.C./Steno, persons who have been appointed before 22.12.1959 have been given en-block seniority in terms of O.M.No. 9/3/72-Estt(D) dated 22.7.72 of Department of Personnel, New Delhi and their seniority in U.D.C. cadre has been considered from the date they had drawing minimum pay scale of U.D.C. cadre."

The applicants have further brought out that after the circulation of this draft seniority list the applicants were shown senior to the respondents. However, afterwards the respondents' administration had issued seniority list dated 27.3.1991 wherein the applicants have been shown junior to the respondents No. 4 to 26.

3. The main ground for challenging the seniority list dated 27.3.1991 is that the applicants have submitted that even though they were actually promoted to the post of Upper Division Clerk from a later date yet they are entitled to count their seniority for the promotion of Licensing Assistant with effect from the date they were getting pay equal to minimum of U.D.C. grade while they were working as L.D.C. in terms of Notification dated 18.9.1976 (Ex. 'C').

4. Counsel for the respondents has argued that the question of counting service rendered in the L.D.C. Grade from the stage of minimum of the pay of Upper Division Clerk cannot arise as this is not covered by any rules. According to the respondents, the phrase "Service in the equivalent grade" would mean the service in the grade of U.D.C., Stenographers or any other equivalent grade and cannot be taken to mean any service which has been rendered in the grade of L.D.C. on the basis of pay drawn. The respondents have also brought out that after preparation of draft seniority list, the DOP was approached for clarification regarding service in equivalent grade rule. DOP however did not agree with the definition adopted while preparing the draft seniority list. Therefore the position of applicants was changed again in the final seniority list.

5. It has been argued by the counsel for the respondents that the question of counting the service in the lower grade on the basis of rate of pay higher than the minimum of time scale of the U.D.C. grade was considered for the purpose of seniority between 1949 to 1959 as has been explained in DP&AR OM No.9/3/72-Extt(D),

dated 22.7.1972. Para 1 of this letter reads as under :-

" As the Ministry of Finance etc. are aware, under the orders contained in Ministry of Home Affairs O.M.No. 30/44/48-Apptts. dated 22.6.1949, seniority in a grade was to be determined, as a general rule, on the basis of the total length of continuous service in the grade, as well as service in an equivalent grade, the term "service in an equivalent grade" being defined as service on a rate of pay higher than the minimum of the time-scale of the grade concerned, irrespective of whether it was rendered in the General or Provincial Government in India or Pakistan. Seniority of persons appointed on a permanent or quasi-permanent basis prior to the 1st January 1944 was, however, not disturbed by the Office Memorandum of 22.6.1949. The instructions contained in that O.M. were issued in order to safeguard the interests of displaced Government servants appointed to Central Services after partition, but as it was not possible to regulate the seniority of only displaced Government servants by giving them credit for previous service, the instructions of 22.6.1949 referred to above were made applicable to other categories of persons also appointed to Central Services. There were, however, certain services/posts which were exempted from the operation of the O.M. of 22.6.1949. In the course of time, displaced Government servants had, by and large, been absorbed in the various Central Services and their seniority fixed with reference to the length of service rendered by them as provided in the O.M. of 22.6.1949. It was, therefore, felt that it was no longer necessary to apply the instructions of 22.6.1949 in preference to the normal principles for determination of seniority. As a result, revised principles of seniority were issued in December 1959, in consultation with the Union Public Service Commission vide Ministry of Home Affairs O.M. No. 9/11/55-RPS, dated 22.12.1959 (copy enclosed as annexure II), which is still in force."

6* The question of determining the relative seniority after the general principles of seniority were issued in 1959 came up for consideration in Union of India & Ors. vs. M.Ravi Varma & Ors., Civil Appeals (1) No. 1945 of 1968, wherein it was held that the general principles of seniority issued on 22.12.1959 did not have retrospective effect. The seniority, after the Supreme Court decision, was finalised in 1972 in terms of DP&AR OM No. 9/3/72-Estt(D),

dated 22.7.1972. After the issue of general principles of seniority in 1959 vide Home Ministry of O.M.No. 9/11/55-RPS, dated 22.12.1959, the question of treating the service rendered in the lower grade for the purpose of seniority in higher grade when the pay in the lower grade had become equal to the minimum of pay of higher grade does not arise. Therefore, in our view, the provisions in sub-para (iv) of Para 4 of Circular dated 17.10.1989 (Annexure-'E') have no application in the determination of seniority after it was finally settled in 1959.

7. The Gujarat Bench judgement in TA. 263/86 dated 14.8.1987 was not concerned with the question of counting the seniority for the service in the lower grade on the basis of pay equal to the minimum of higher grade, but was concerned only for determination of seniority for those persons who got early promotion, on the basis of option, on adhoc basis. The Gujarat Bench has held that the orders conferring regular promotions to such U.D.C. cannot be upheld. It is this judgement which was required to be complied with through the preparation of draft seniority list placed at Annexure-'E'.

8. We are, therefore, of the opinion that the claim of the applicants for counting the service rendered by them as Lower Division Clerks from the date they cross the minimum of the pay scale of the post of Upper Division Clerk cannot be sustained. We, therefore, do not see any merit in the present OAs. and the same are dismissed. There will be no orders as to cost.

(P.P.SRIVASTAVA)
MEMBER (A)

(M.S.DESHPANDE)
VICE CHAIRMAN