

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, "GULESTAN" BUILDING NO.6
PRESOT ROAD, BOMBAY-1

O.A. No. 451/91
O.A. No. 455/91
O.A. No. 459/91

Smt. Anuradha Dattatraya Joshi
Govindnivas
R.No.7 Chandansar Road
Virar(E); Dist. Thane

..Applicant in
O.A.No.451/91

Shri Dharmaraj B. Mahajan
C-1 Vaibhav
Sahar Pipe Line Road
Andheri(E)
Bombay 99

..Applicant in
O.A.No.455/91

Shri Ashok Ramchandra Pawar
15 Shree Ram Kasar Baug
Mulund(E)
Bombay 400081

..Applicant in
O.A.No. 459/91

v/s.

1. Union of India
through Secretary
Ministry of External Affairs
New Delhi
2. The Passport Officer
Passport & Emigration Office
Worli; Bombay 400025

..Respondents

CORAM: Hon. Shri Justice U C Srivastava, V.C.
Hon. Ms. Usha Savara, Member (A)

APPEARANCE

Mr. M I Sethna, Senior
Advocate with Mr. A I
Bhatkar, Advocate for applicants

Mr. J G Sawant
Counsel for the respondents

ORAL JUDGMENT:

DATED: 9-4-1992

(PER: U C Srivastava, Vice Chairman)

As a common question of law is involved
in all these three cases, the same are disposed of
together by a common judgment.

All these applicants were appointed as

Lower Division Clerks on consolidated daily allowance of Rs.10 per day from the year 1974. All these persons were regularised on one and the same date i.e., in the year 1976. In their appointment orders, it was stated that as and when vacancies occur in regular cadre, they will be considered for appointment to such vacancies. The applicants accepted the said condition and accepted the posts, and joined their services. Thereafter the seniority list of LDC as on 3.10.1979 was circulated by Ministry of External Affairs's circular dated 30.11.1979. In the said seniority list the applicants' date of appointment has been shown as 1.4.1976 and the seniority has been granted to them with effect from 1.4.1976 and the period during which they worked as daily rated was excluded. The applicants made a representation against the same and their representation was rejected on 23.8.1980. Thereafter the applicants were promoted to the post of Upper Division Clerk (UDC) in the year 1983 in the scale of Rs.330-560, on the basis of seniority circulated in November 1979.

The applicants' grievance is that they came to know about the promotions to the post of Assistants given to their juniors though they happened to be placed on higher positions on the seniority list of UDCs. They have joined their service in the year 1974 after the applicants. The applicants learnt that pursuant to letter dated 29.9.1989 written by the Passport Officer, Bangalore to Passport Officer, Bombay, the authorities accepted that the employees were entitled to count the period during which they had worked as daily rated clerks, so

far as the determination of terminal benefits such as Gratuity, Voluntary retirement etc., are concerned. The applicants made representations in this regard and the representations were rejected and thereafter they have approached this Tribunal.

The respondents have opposed the application by filing their written reply. They have stated that the representation of the applicants was rejected in the year 1980 and there is no justification in interfering as the matter is fully barred by limitation and any interference would amount to unsettling the settled state of affairs. The interference would disturb the seniority of those persons who are confirmed and settled in their position and have earned promotions and none of them who are likely to be affected are party to these applications. Subsequently higher promotions have been made and the applicants had not raised their voice and as such the matter can not be agitated now.

Later on as the case was adjourned as certain clarifications were required the learned counsel for the Respondents has placed before us a telex message and has contended that the same may be read as part of written statement, in which it has been stated that prior to 1985 the DRCS were regularised as LDCS on their date of regular appointment to the grade and whereunder the date of regularisation was the same for more than one LDC seniority were fixed according to the date of birth. During 1985 a different criteria was adopted in that the date of initial appointment as DRC was also taken into account. The matter was examined in the Ministry and it was felt that in case the principle of seniority followed in 1985 was to be adopted in respect of Pre-1985 cases there would

be around 340 LDCS whose seniority needed to be refixed. In addition there were a large number of UDCs and Assistants whose seniority needed to be reassigned having been recruited as DRC initially. It was therefore proposed that status quo prevailing might be preserved. The matter was also consulted with the department of Personnel and Training who opined that in 1985 also the regularisation of DRCs was from the date of issue of orders of regularisation. In other words their regular service would count from that date only (and not from the date they were initially taken on daily rated basis). The date of their appointment on daily rated basis had however played a limited role in arranging the regularised officers in some order. It would be administratively undesirable to change the seniority (or principles on which the seniority was decided) at a later stage. It would be very difficult to reassign seniority on the basis of identical principles at this stage as it would involve considerable time and man power to recast seniority of a very large number of officials for which Ministry is not fully geared. Moreover the revision would not effect material changes in the seniority in case it is fixed on the principle followed in 1985.

The applicants have tried to explain the delay that ofcourse the representation was undoubtedly rejected in the year 1980, but so far as **lower** position in seniority and the promotion which has been given to other person, they came to know about it only in the year 1989 and that they learnt that a different criteria has been adopted and those who were regularised in the year 1979 for them the period during which they

worked on casual basis has earned, but they were put on guard and agitated the matter as such it cannot be said that the matter is barred by time. The applicant was never sleeping over his rights and it was only when they learnt that the department is adopting a different measuring rod they have approached this Tribunal.

From the telex message which is made part of the written statement of respondents, it appears that in the year 1985 also some benefit was not given to the applicants. But the position is still in the state of flux and is not clear. In the year 1979, it appears for certain benefit was given for pensionary and various other benefits the period of daily rated service were counted. There appears to be no reason, when the difference is of 3 years, why this need not be considered and that the benefit which was given to those who were regularised in 1979 could not be considered in the case of the applicants, so that the discrimination question will not arise. However, we made it clear that although the respondents are directed to consider the claim of the applicants to the benefits but which were given to certain persons in 1979, in view of the fact that the seniority list has been finalised and various persons have got promotions in case the benefit which is directed to be given to the applicants will not affect the seniority of any person and notwithstanding the fact that although the said period even the applicants can be said to be up in the seniority the seniority list should not be disturbed and they will be given only the limited benefits. However, in case seniority is not disturbed the seniority of applicant can be refixed.

With the above observations the applications

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are disposed of with no order as to costs.