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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 34/91

Transfer Application No:

DATE OF DECISION 23-3-1993

Shri R.M.Nachan & 16 others. Petitioner

Mr.B.Ranganathan

Advocate for the Petitioners

Versus

Union of India and 5 ors.

Respondent

Mr.R.K.Shetty for R.Nos.1,2,4 & 5

Mr.V.M.Bendre for R.No.3

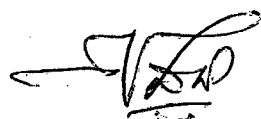
Advocate for the Respondent(s)

CORAM:

The Hon'ble ~~Shri~~ Ms.Usha Savara, Member(A)

The Hon'ble Shri V.D.Deshmukh, Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
 2. To be referred to the Reporter or not ?
 3. Whether their Lordships wish to see the fair copy of the Judgement ?
 4. Whether it needs to be circulated to other Benches of the Tribunal ?
- } no.


(V.D.DESHMUKH)
Member(J)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

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O.A.34/91

Shri R.M.Nachan
and 16 others.

C/o.S.R.Atre,
Advocate High Court,
Block No.15, 1st Floor,
Pehlajrai Building,
Shivaji Path ^o Cross Lane,
Chendani,
Thane - 400 601.

.. Applicants

-versus-

1. Union of India
through
Secretary
Ministry of Finance,
Department of Economic
Affairs,
South Block,
New Delhi.
2. The Secretary,
Department of
Personnel & Training,
North Block,
New Delhi - 110 001.
3. The Regional Director
(Western Region)
Staff Selection Commission,
Army Navy Bldg.,
M.G.Road, Kalagoda,
Bombay - 400 023.
4. The General Manager,
India Security Press,
Nashik Road - 422 101.
5. The Chief Accounts and
Administrative Officer
India Security Press,
Nashik Road 422 101.
6. Shri M.A.Chimankar,
Lower Division Clerk,
Office of the General
Manager,
India Security Press,
Nashik Road 422 101.

.. Respondents.

Coram: Hon'ble Ms.Usha Savara, Member(A)

Hon'ble Shri V.D.Deshmukh, Member(J)

Appearances:

1. Mr.B.Ranganathan
Advocate for the
Applicants.
2. Mr.R.K.Shetty
Advocate for
Respondents No.1,2,4 & 5
3. Mr.V.M.Bendre, Advocate
for Respondent No.3

(a)

ORAL JUDGMENT:
(Per V.D.Deshmukh, Member(J))

Date:23-3-1993

The applicants who were appointed as Lower Division Clerks in the Office of the General Manager, India Security Press, Nashik Road have filed this application challenging the order dt. 3-1-1991 bearing No.18358/Establishment whereby the respondent No.6 is granted seniority over all the applicants.

2. The brief facts which are not in dispute are as below:

The applicants were duly selected by the Staff Selection Commission after having held an appropriate examination. This selection was done by the Regional Director(WR), Staff Selection Commission, Respondent No.3. In the year 1984 the office of the General Manager, India Security Press, Nashik Road sent a requisition to the respondent No.3 and the names of the applicants were recommended for appointment by respondent No.3 in the same year. The applicants were thereafter appointed to the post of LDCs. Their dates of appointments are as mentioned in Annexure A-3. It is necessary only to point out that these dates range between 24-4-84 and 10-6-86. They were initially appointed on probation for a period of two years and all the applicants have completed their probationary period.

3. The respondent No.6 whose seniority has been challenged by the applicants has not filed any reply and has not appeared before the Tribunal. We heard the learned counsels for the applicants, respondents No.1, 2, 4 & 5 and respondent No.3. According to the official respondents the

5/12/93

the respondent No.6 was selected by the Staff Selection Commission i.e. the 3rd respondent in the year 1982 and was empanelled in the reserved category as Scheduled Caste candidate. The respondent No.3 has further stated that after the selection in 1982 the respondent No.6 was recommended to the Bombay Telephone Department in 1982 as against their requisition for about 700 LDCs but many of the recommendations were returned as there was a ban in filling up of the vacancies. The name of the respondent No.6 was recommended by respondent No.3 for being appointed as LDC in the office of the General Manager, India Security Press, Nashik Road in 1987 and thus he was appointed on 20-3-87 i.e. much after the applicant No.17 who was appointed on 10-6-86 and who was the last person to be appointed amongst the applicants. According to respondents No.1,2,4 & 5^{and} respondent No.3 although respondent No.6 was appointed in 1987 he was entitled to be given seniority over the applicants for the reason that he was selected in 1982. They rely upon para 4 of General Principles for determining seniority in the central services as incorporated in O.M.No.9/11/55-RPS dt. 22-12-59. This para is very relevant. We reproduce the same:

"4.Direct recruits:

Notwithstanding the provisions of para 3 above, the relative seniority of all direct recruits shall be determined by the order of merit in which they are selected for such appointment,

on the recommendations of the U.P.S.C. or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection: "

4. The above said para, no doubt, provides that the seniority of all the direct recruits shall be determined by the order of merit in which they are selected on the recommendations of the U.P.S.C or other selecting authority. It further clarifies that the persons appointed as a result of an earlier selection shall be senior to those appointed as a result of subsequent selection. The question, however, does not rest there. It is further necessary to find out what exactly ^{would be} the date of selection which is relevant for the purpose of fixing the seniority amongst the direct recruits. This very para in the said OM was the subject matter for decision of the Principal Bench C.A.T. in the case of Ashok Kumar v. U.O.I. O.A.No.567/86 decided on 11-9-1987((1988)6ATC 256) In this case the applicants had claimed seniority over the respondent No.3. The selection of the applicants as well as the respondent No.3 ^{was} concluded by the Members/Chairman UPSC on the same date but the fair letter was approved by the UPSC in cases of two applicants on 25-2-1981 and in case of respondent No.3 ^{on 13-2-} 1981. The fair letter was issued by the UPSC in case of two applicants on 26-2-81 and in case of respondent No.3 on 23-2-81. The fair letters were received by the two applicants and respondent No.3 on the same date i.e. 28-2-81. After taking into consideration para 4 of the above said OM the Members of the Principal Bench ^{has} observed as below:

"The determining factor in the present case is the points of time at which the applicants and respondent 3 can be deemed to have been selected. The aforesaid provision clearly states that the seniority is based on the order "in which they are selected for such appointment, on the recommendations of the UPSC or other selecting authority....."

These words make it clear that selection for an appointment is complete only on the recommendations of the UPSC. This means that the selection can be coterminus or subsequent to the recommendations of the UPSC but in no case can it be anterior to the UPSC's recommendations. In other words, even if the interview board or selection committee had given their decisions, unless the imprimatur of the UPSC is available the selection would be incomplete....."

Thus the Principal Bench has held that the selection for appointment could be held to be complete only on the recommendations of the UPSC. There cannot be any doubt that the same principle shall apply when the selection is made by the selection commission as in the present case and not by the UPSC. Having thus held as to what was the relevant date on which the selection ^{could be held} held to be complete the Principal Bench held that since the formal letter in the case of general candidates was approved on 25-2-81 and issued on 26-2-81, while formal letter in case of respondent No.3 was approved on 19-2-1981 and issued on 23-2-81, there was no doubt that the recommendations of the UPSC were formalised and despatched earlier in case of respondent No.3 than in the case of applicants. In this view of the matter it was held that the seniority given to respondent No.3 was correct and the application was rejected.

5. We are in fully agreement with the interpretation put by the Hon'ble Members of the Principal Bench and we find that this judgment covers the present case.

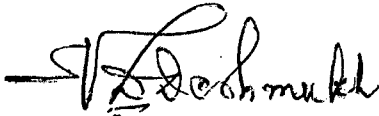
Although the respondent No.6 was selected in 1982 as his name was recommended for ^{appointment} ~~payment~~ in November, 1986 and the applicants were recruited in between 24-4-84 and 10-6-86 in view of the decision of the Principal Bench it is obvious that the respondent No.6 could not be shown as senior to the applicants.

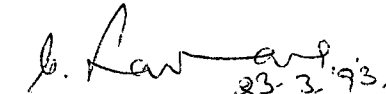
6. Mr.R.K.Shetty for the respondents No.1,2,4 & 5 relies upon the decision of the Bangalore Bench of the C.A.T. in T.S.Mahadevaiah v. U.O.I. and Ors. O.A.317/90 and 131/92 decided on 16-4-92(AISLJ 1992(2)CAT 437). It was held in that case that as between two employees one joining late due to technical reasons cannot lose his earlier seniority. In our opinion however this judgment is not applicable in the present case. The present case shall rest completely on para 4 of the OM dt. 22-12-59 as it has been interpreted by the judgment of the Principal Bench in the case of Ashok Kumar & Ors. (supra). Although it is not relevant in view of the above judgment, it may be pointed out that respondent No.6 who is very much a party in the application has not chosen to file his reply and to place before the Tribunal as to why he could not be recommended at the time when the applicants were recommended although he was selected before the applicants.

7. In view of the above we find that the applicants are entitled to the declaration that they are senior to respondent No.6 and we give such declaration. The respondents No.1,2 and 4 are directed to give effect to this declaration and

fix the seniority accordingly. No further reliefs are necessary at this stage. The seniority shall be refixed as per the above order within three months from the date of receipt of a copy of this order.

8. No order as to costs.


(V.D.DESHMUKH)
Member(J)


(USHA SAVARA)
Member(A)

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