

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1030/92

Date of Decision: 26-11-1997

Mr. S. Joshi Applicant.

Mr. B. Dattamurthy Advocate for
Applicant.

Versus

UOI & Anor / D.G. Postal Dept. Respondent(s)

Mr. S. S. Karkera for Mr. P. M. Pradhan Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G. Vaidyanatha, V.C.

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

(1) To be referred to the Reporter or not? *yes*

(2) Whether it needs to be circulated to *no*
other Benches of the Tribunal?

R. Vaidyanatha

V.C.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING No.6
PREScot ROAD, MUMBAI 400001

O.A.No. 1030/92

DATED : 26.11.1997

CORAM : Hon. Shri R G Vaidyanatha, J., Vice Chairman
Hon. Shri P.P. Srivastava, Member(A)

Madhukar Vishnu Joshi
Plot No.28 Jaihind Colony
Opp. Jaihind High School
Deopur
Dhule 424002
(By Adv. Mr. B.Dattamurthy)

..Applicant

v/s.

1. The Director General
Postal Department
New Delhi

2. The Chief Post Master General
Maharashtra Circle
Bombay
(By Adv. Mr. S S Karkera
for Mr. P M Pradhan, Central
Government Standing Counsel)

..Respondents

OPEN COURT ORDER

[Per: R G Vaidyanatha, Vice Chairman]

1. This is an application filed under section 19 of the
Administrative Tribunals Act, 1985. Respondents have
filed their reply. Applicant has filed rejoinder. We
have heard both the sides.

2. The applicant approached this Tribunal through this
application praying for his seniority to be correctly
placed in the seniority list of 1977 and then he should
be granted all consequential benefits. His case is that
he entered the postal department as a postal clerk in
1953. Subsequently he was promoted on temporary and ad
hoc basis on 17.12.1967 as upper Division Clerk. He has



passed the qualifying examination for the purpose of promotion which was held on 29.7.1972. The department has not passed any order of confirmation of the applicant. In the seniority list of 1978 the applicant is shown at S1.No.86, but many officials above him had joined the service later than him but they have been wrongly shown above the applicant in that seniority list. He gave number of representations for correction of seniority list but to no avail. Hence he approached this Tribunal seeking the reliefs mentioned above.

3. The respondents have asserted in their reply that seniority list has been correctly prepared. According to the respondents the seniority has to be fixed on the basis of the ~~order~~ ^{Year} of passing the examination and the resultant merit in the examination. It is respondents' stand that those promotees who have been placed above the applicant had passed the examination earlier than the applicant and further their merit is above the applicant in the merit list. It is therefore stated that there is no mistake in the seniority list to call for any correction. Then it is pleaded that the application is highly belated and barred by limitation.

4. The learned counsel for the applicant has questioned the correctness and legality of the seniority list published in 1978. While supporting the correctness of



the seniority list, the learned counsel for the respondents also contended that the applicant is not only barred by limitation but is also bad on the ground of delay and latches.

5. According to the applicant the seniority list was published in 1978. He retired from service on 31.11.1990. Two years later he has filed this O.A. challenging his position in the seniority. On the face of it the application is barred by limitation. Even otherwise matters like seniority cannot be kept hanging for all times to come as there should be some certainty and as far as the seniority list is concerned and if there is any defect in the seniority list the same should be challenged immediately. In the present case the applicant is challenging the seniority list of 1978 after 14 years and that too two years after his retirement. It is not as if the applicant was not aware of the position. He has made representations to the department in 1983. Even if the department rejected the claim of the applicant or does not take any action, the applicant cannot sit ~~idle~~ ^{and thus} till his retirement and two years thereafter file the application. Therefore, leaving apart the question of limitation, the application is bad on the ground of latches and delay.

6. Coming to the merits of the case, in the seniority list, which is at page 14 of the paper book, the applicant

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is shown at Sl.No.86. The main grievance is that the officials who are at Sr.Nos. 51 to 85 had joined service later and are junior to the applicant but they have been placed above the applicant. The reply is that though some of the officials had joined the service later than the applicant, they passed the qualifying examination for the purpose of regular promotion prior to the applicant and further they were above the applicant in merit list. Even the rules relied on by both the sides clearly points out that inter-se seniority has to be fixed on the basis of the merit list (vide page 164 of HAND BOOK OF PROCEDURE FOR S.B., CONTROL, I.C.O. AND PAIRING ORGANISATION, Rules, Notes and General Information, First Ed., by A N Dureja). The applicant has never stated that he was above the other officials in the merit list.

7. His last contention is that his date of entry into the cadre should be taken into consideration for the purpose of fixing the seniority. He has no where alleged that he has passed the examination earlier or that he was above the officials in the merit list. As far as his appointment to the cadre on 17.12.1967 is concerned, the appointment order itself at page 13 clearly mentions that it is purely an ad hoc and temporary ^{appointment} promotion. It is further mentioned that this temporary appointment will not confer upon him any right for absorption to the post. It is not disputed that passing a written test is a must

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for getting regular promotion. If the applicant has not passed the examination earlier for what ever reasons it may be, and as his name is below in the merit list, he cannot now complain about the seniority list. Even on merits we do not find that the applicant has any case.

8. In the result the application fails and is dismissed.
No costs.



(P.P. Srivastava)

Member (A)



(R.G. Vaidyanatha)

Vice Chairman

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