

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 1184 of 1993.

Dated this Friday, the 6th day of August, 1999.

P. K. Krishnanunni, Applicant.

Shri S. P. Saxena, Advocate for the  
applicant.

VERSUS

Union of India & Others, Respondents.

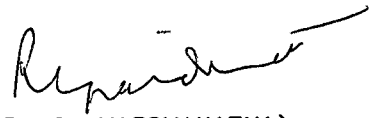
Shri R. K. Shetty, Advocate for the  
Respondents.s.

CORAM: Hon'ble Shri Justice R. G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri B. N. Bahadur, Member (A).

(i) To be referred to the Reporter or not ? w

(ii) Whether it needs to be circulated to other Benches  
of the Tribunal ? w

  
(R. G. VAIDYANATHA)  
VICE-CHAIRMAN.

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P. K. Krishnanunni,  
Clerk Upper Division,  
C/o. Central Govt. Health Scheme,  
2nd floor, Swasthya Sadan,  
Mukundnagar,  
Pune - 411 037.

... Applicant.

(By Advocate Shri S. P. Saxena)

VERSUS

1. The Union of India  
through the Secretary,  
Ministry of Health & Family Welfare,  
Government of India,  
New Delhi - 110 011.
2. The Director General of Health  
Services,  
Dte. General of Health Services,  
Nirman Bhavan, New Delhi - 110 011.
3. The Director,  
Central Govt. Health Scheme,  
Nirman Bhavan, New Delhi - 110 011.
4. The Deputy Director,  
Central Govt. Health Scheme,  
2nd floor, Swasthya Sadan,  
Mukundnagar, Pune - 411 037.
5. Shri R. Kailas,  
Administrative Officer,  
O/o. the Dy. Director,  
CGHS, 2nd floor, Swasthya Sadan,  
Mukundnagar, Pune - 37.
6. Mr. S. S. Kaduskar,  
Accountant,  
O/o. the Deputy Director,  
C.G.H.S., 2nd floor,  
Swasthya Sadan, Mukundnagar,  
Pune - 411 037.

... Respondents.

(By Advocate Shri R. K. Shetty).



OPEN COURT ORDER

PER.: Shri Justice R. G. Vaidyanatha, Vice-Chairman.

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply. We have heard the Learned Counsels appearing on both sides.

2. Though the pleadings are bulky and there are number of documents, we find that the point involved in this case is very short. Therefore, we will mention only the relevant facts for deciding the point of controversy in this case.

The applicant and Respondent No. 5 & 6 were appointed as L.D.C. in the Central Government Health Scheme. The applicant's grievance is, that though he is senior to Respondent No. 5 and 6, he has not been considered for promotion. On the other hand, Respondent No. 5 and 6 have been promoted as Upper Division Clerks. He has therefore filed this application challenging the promotion of Respondent No. 5 and 6 and wants consequential reliefs.

Respondents in their reply have asserted that Respondent no. 5 and 6 are senior to applicant and they have rightly promoted them and no case is made out for interfering with that direction.

3. Applicant's case claiming seniority as against respondent no. 5, R. Kailas is that both of them were selected in the 1977 selection and both of them were appointed as per order dated 01.07.1978 and therefore he should be treated as senior to respondent no. 5 in the L.D.C. Cadre.

In our view, the seniority of the applicant in the L.D.C. cadre is not very relevant at this stage in view of the promotion of R. Kailas as U.D.C. in 1982. Even though the applicant might have been senior to R. Kailas as L.D.C., we have to find out the seniority position after the promotion of Kailas as U.D.C. in 1982.

As per the recruitment <sup>rules</sup> made available, it is seen that for the post of U.D.C., there are three modes. One is 75% promotion by seniority cum fitness. 20% on the basis of limited Departmental Competitive Examination and 5% by transfer from Stenographers and others.

The vacancy arose sometime in 1981.. As per the recruitment rules, one must have five years regular service in the L.D.C. grade to be promoted for the post of U.D.C. The Learned Counsel for the respondents pointed out that in 1981 there was no candidate in the L.D.C. cadre who had five years regular service including the applicant and respondent no. 5 and

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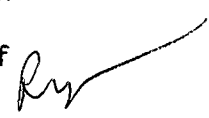
hence the promotional mode could not be adopted. That is how the department adopted the mode of 20% Limited Departmental Competitive Examination to promote L.D.C. officials to U.D.C. cadre. A competitive examination was held. Unfortunately, the applicant admittedly did not participate in the said competitive examination. Respondent No. 5, R. Kailas, participated in the examination and he was successful and came to be appointed as U.D.C. w.e.f. 11.01.1982. Therefore, irrespective of the seniority in the L.D.C. cadre, in view of promotion of R. Kailas as U.D.C. on the basis of L.D.C. on 01.11.1982, he would not become senior to the applicant for further promotion. Therefore, we hold that seniority in the cadre of L.D.C. is wholly irrelevant in view of promotion of R. Kailas as U.D.C. on 11.01.1982 by adopting the mode of Limited Departmental Competitive Examination. The applicant must thank himself for not participating in the competitive examination.

4. As far as the applicant's claim against Respondent no. 6, Mrs. S. S. Kaduskar, is concerned, it is seen that Mrs. S. S. Kaduskar was a departmental candidate appointed as L.D.C. on 03.12.1975 at Bombay. The applicant was appointed as L.D.C. at Pune by order dated 01.07.1978 and he joined service on 19.07.1978. Though Respondent No. 6 was appointed as L.D.C. in 1975, she came to Pune by request transfer on 01.05.1978. There is no dispute that a person who came on request transfer to a

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different unit will lose the earlier seniority. Therefore, the applicant's counsel is right in his submission that services of Respondent no. 6 at Bombay cannot be counted for the purpose of seniority. Even if that is so, Mrs. S. S. Kaduskar came to Bombay on 01.05.1978 whereas the applicant was appointed by order dated 01.07.1978 and he joined service on 19.07.1978. Whether we take the appointment order or the date of joining, the applicant is still junior to Respondent no. 6, Mrs. S. S. Kaduskar.

The only contention urged on behalf of the applicant is that the applicant was selected by Staff Selection Commission and results were published in February, 1978 and therefore, his seniority must be counted from that date. The Learned Counsel for the applicant places reliance on Article 206 of C.S.R. and Note 2 at page 77 of that book, which is at page 49 of the paper book. This note 2 refers to the question about the starting point in the roster and what is the date to be taken into consideration. For the purpose of considering point of roster, the date of completion of selection process should be taken as an appropriate date. The rule nowhere refers to the question of seniority at all. It does not say that a candidate appointed in such a recruitment will get seniority from the date of publication of result, irrespective of the date of appointment. Therefore, in our view, this note 2 at page 49 of the paper book is not relevant for the purpose of deciding the question of seniority.

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No other rule bearing on this point is brought to our notice. Since no rule is available, then normally the date of appointment should count for seniority. The applicant was appointed as per order dated 01.07.1978 and joined on 19.07.1978, whereas Respondent no. 6 joined at Pune on 01.05.1978 and therefore, she must rank senior to the applicant.

5. Another argument addressed on behalf of the applicant is, that he was confirmed earlier than respondent no. 5 and 6 and reliance was placed on the letter of confirmation dated 12.03.1982 which is at page 38 of the paper book. No doubt, this letter shows the date of confirmation and may be on that basis the applicant can claim that he was senior to respondent no. 5 and 6. Any how, as far as respondent no. 5 is concerned, seniority in the L.D.C. is not relevant since he has got promotion as U.D.C. on the basis of Limited Departmental Competitive Examination, in which admittedly the applicant did not participate.

As far as seniority of the date of confirmation is concerned, it cannot be applied in view of the law declared by the Supreme Court that date of confirmation cannot give seniority, it is only the date of continuous officiation which gives seniority. This has been clearly laid down by the Supreme Court that the theory of confirmation is an ~~un~~glorious

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uncertainty and cannot be accepted and normal rule is the date of continuous officiation. In view of this, we cannot grant the relief on the basis of date of confirmation theory addressed by the Learned Counsel for the applicant.

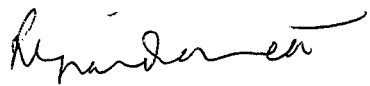
6. In addition to the above facts, we find that the applicant has approached this Tribunal in 1993 and claiming seniority from 1982. He wants to upset the promotion of Respondent no. 5 of 1982 and promotion of respondent no. 6 of 1984 in the present O.A. filed in 1993. It is true that applicant had filed a M. P. for condonation of delay <sup>and it has been allowed</sup>. Therefore, we cannot say that the application is barred by limitation. Even if the application is within time, the question is, whether the question of seniority can be re-opened and unsettled after a long lapse of time. In such a situation, the principles of delay and laches is attracted. There are many decisions by the Supreme Court which particularly say that as far as question of seniority is concerned, it should not be allowed to be agitated after a long lapse of time on the principles of delay and laches [vide 1998 SCC (L&S) 1656 (B. V. Sivaiah & Others V/s. K. Addanki Babu & Others) and AIR 1990 SC 1607 (Direct Recruits Class-II Officers' Association V/s. State of Maharashtra)]. Therefore, we hold that the applicant's claim is a stale <sup>claim</sup> ~~type~~ and he wants to unsettle the seniority position of 1982 and 1984. Further, it is also brought to our notice that respondent no. 5 has been further

promoted as Accountant and subsequently as Administrative Officer. Respondent No. 6 has been further promoted as Accountant. In view of this subsequent promotion and the facts mentioned above, we are not inclined to interfere with the promotions of Respondent nos. 5 and 6. None of the reliefs prayed for in the application can be granted.

7. Another submission was made at the bar that the applicant was belatedly promoted as U.D.C. on adhoc basis in 1992 and he is still kept in the same adhoc position even after seven years. We are not happy about this state of affairs. The Learned Counsel for the respondents pointed out that in view of the pendency of the litigation, the matter has not been processed. Now that we are disposing of the application, we feel that administration should apply their mind and consider the case of the applicant for regular promotion as per rules at the earliest.

8. In the result, the application fails and is dismissed. M.P. No. 1136/94 also stands disposed of. In the circumstances of the case, there will be no order as to costs.

  
(B. N. BAHADUR)  
MEMBER (A)

  
(R. G. VAIDYANATHA)  
VICE-CHAIRMAN.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.  
REVIEW PETITION NO.49/99  
IN  
ORIGINAL APPLICATION NO.1184/1993.

this the 28th day of August 2000.

Coram: Hon'ble Shri D.S.Baweja, Member (A),  
Hon'ble Shri S.L.Jain, Member (J).

P.K.Krishna Unni.  
(By Advocate Shri S.P.Saxena)

... Applicant.

Vs.

Union of India & Ors.  
(By Advocate Shri R.K.Shetty)

... Respondents.

: ORDER ON REVIEW PETITION :

{Per Shri D.S.Baweja, Member (A)}

This Review Application (RA) has been filed by the applicant seeking review of the order dt. 6.8.1999.

2. This RA was listed for hearing and notices were issued to both the parties. However, before the hearing could be taken up, one of the Members of the Bench which had passed the order dt. 6.8.1999 has since retired and therefore the preliminary hearing of the Review Application have been taken up by this Bench.

3. The respondents have filed written statement submitting that there is no case for review of the order.

4. We have heard Shri S.P.Saxena and Shri R.K.Shetty, the learned counsels for the applicant and respondents respectively.

5. On going through the RA, it is noted that the applicant has sought the review of the order in reference to claim of seniority with respect to Respondent No.6 (R-6) in the OA. Relying upon the Judgment of the Supreme Court in the case of Union of India Vs. K.P.Singh (1999 (5) SCC 731), the applicant has submitted

...2.

that this Judgment was within the knowledge of the applicant at the time of passing of the order dt. 6.8.1999. The applicant has made out a case that as held by the Hon'ble Supreme Court in the case of K.P.Singh that the relevant Rule of 1959 which prescribed that seniority will be on the basis of date of confirmation will apply in the case of the applicant vis-a-vis R-6. Applying the law laid down by the Hon'ble Supreme Court, the applicant will be senior to R-6 because he had been confirmed as LDC earlier to R-6. On going through the order dt. 6.8.1999, we are unable to accept the contention of the applicant that the review of the order as per the law laid down by Hon'ble Supreme Court in the above cited Judgment is called for. Though in the order dt. 6.8.1999 the contentions made by either parties have been gone into on merits and the grounds taken up by the applicant have been rejected, but OA has been finally dismissed not on merits, but on the ground that the claim of the applicant is stale and the settled position in respect of seniority cannot be allowed to be unsettled after several years. It was also noted that both R-5 and R-6 have further been promoted. The Bench, therefore, concluded that none of the reliefs prayed for can be granted. Since the reliefs were not granted mainly on the ground of claim being stale, the order on merits keeping in view of the law laid down by the Hon'ble Supreme Court in cited judgment is not called for.

6. In the result of the above, we do not find any ground for review of the order as asked for. The Review Application and therefore the Review Application therefore is devoid of merits and is dismissed accordingly.

*S.L. Jain*  
(S.L.JAIN)  
MEMBER (J)

*D.S. Baweja*  
(D.S.BAWEJA)  
MEMBER (A)

B.