

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 314/93

Date of Decision: 17-3-99

P.K. Pednekar

.. Applicant

Shri G.K. Masand

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri R.K. Shetty.

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble Shri Justice R.G. Vaidyanatha, Vice-Chairman,
The Hon'ble Shri D.S. Baweja, Member(A).

(1) To be referred to the Reporter or not ? NO

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

R.G. Vaidyanatha
(R.G. VAIDYANATHA)
VICE-CHAIRMAN.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL.
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.314/93.

Pronounced THIS THE 17th DAY OF MARCH, 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman.
Hon'ble Shri D.S.Baweja, Member(A).

P.K.Pednekar,
Licensing Assistant,
O/o.Jt. Chief Controller
of Imports & Exports,
PWT's Commercial Complex,
Shankar Sheth Road,
Swar Gate,
Pune.
(By Advocate Sh.G.K.Masand)

... Applicant.

V/s.

1. Union of India, through
the Secretary,
Ministry of Commerce,
Udyog Bhavan, Moulana Azad Road,
New Delhi 110 011.
2. The Joint Chief Controller of
Import & Exports, New CGO Building,
New Marine Lines,
Churchgate,
Bombay - 400 020.
(By Advocate Shri R.K.Shetty)

... Respondents.

: O R D E R :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. The respondents have filed reply. We have heard the learned counsels appearing on both sides.

2. The applicant is working as a Licensing Assistant in the office of the Joint Chief Controller of Imports and Exports. On the date of application he was working at Pune. He joined this department as an LDC in the year 1967. He came to be promoted as UDC by order dt. 4.9.1979 while he was working at

Ahmedabad. Subsequently, he was promoted as Licensing Assistant by an order dt. 26.5.1984. It appears subsequently he came to be reverted to the post of UDC. He challenged the order of reversion in O.A. No.396/91. That O.A. came to be allowed and his ad-hoc promotion as Licensing Assistant was ordered to be continued. It appears some officials challenged the seniority list in O.A. No.263/86 before the Bench of this Tribunal at Ahmedabad, that O.A. was allowed. It is stated that the applicant is claiming seniority on the basis of general seniority and not on the basis of option being given to seniors to go on transfer on promotion and seniors declining the said option and then juniors being promoted which was the subject matter of O.A. 263/86. Though the applicant has been shown as senior in the earlier seniority list, in the seniority list of 1993 the applicant's name is not at all shown. Therefore, the applicant is aggrieved by the action of the respondents in not showing his name in the seniority list dt. 4.2.1993 which is being challenged in this application. Therefore, the applicant has approached this Tribunal for quashing the seniority list dt. 4.2.1993 and for a direction to the respondents to give proper seniority to the applicant as per the seniority position he had in 1987 seniority list and as a consequence the applicant should be given further promotions etc.

3. The respondents in their reply have asserted that applicant's promotion to UDC and further promotion as Licensing Assistant were purely on ad-hoc basis. According to them the seniority position was reviewed as per the Judgment of the Ahmedabad Bench of this Tribunal in T.A. 263/86. They have pleaded about the option given to employees to go on transfer on promotion and about some seniors declining promotion and then juniors getting ad-hoc promotion. The respondents have reviewed the promotion of the applicant and held that applicant became due for promotion as UDC in 1983, which is shown in the seniority list dt. 27.3.1991. It is therefore, pleaded

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that the applicant has no case and he is not entitled to any other reliefs.

4. After hearing both the counsels and after going through the records along with whatever documents that were relied upon and subsequent events which are brought to our notice, advisedly we are not making any observations on merits, but giving certain directions to the respondents to decide the seniority position of the applicant.

It is well settled that Courts and Tribunals should ~~not~~ take notice of subsequent events and mould the reliefs accordingly.

The applicant is challenging the legality of 1993 seniority list. It is now brought to our notice that there was a seniority list issued in 1987 and that was challenged before a Bench of this Tribunal at Ahmedabad and also in another case before this Tribunal. Both the Ahmedabad Bench of the Tribunal and this Tribunal have quashed the 1987 seniority list and directed the administration to prepare a fresh seniority list in terms of the directions given by the Supreme Court in Bhaskaran's case. Now, as a result of our directions and the directions of the Supreme Court in Bhaskaran's case the Administration have now prepared a fresh and latest seniority list which is issued under Circular No.2/99 dt. 14.1.1999. That means, the latest seniority list is prepared just about two months back or about a month and odd prior to the date of completion of arguments in this case. Now, how can we give direction about the impugned seniority list of 1993 when the latest seniority list of 14.1.1999 ^{has} ~~have~~ been issued and placed before us by the Administration at the time of arguments. It is mentioned in the Circular No.2/99 that this new seniority list came to be issued on the directions of the Supreme Court in Bhaskaran's case, directions of the Ahmedabad Bench of the Tribunal in O.A. No.632/96 and O.A. No.115/91 and directions of this Tribunal in O.A. No.47/90 etc. Therefore, if the administration has now

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prepared a new and latest seniority list as per the directions of the Supreme Court and directions of Benches of this Tribunal, how can we decide the legality and correctness of latest seniority list at the time of at the time of arguments. There are no pleadings on either side about the correctness or otherwise about this 1999 seniority list. The applicant's name is shown at S1.No.4 in the new seniority list of 1999. The learned counsel for the applicant has questioned the correctness of the applicant's position in this 1999 seniority list. In our view, we cannot decide the correctness or otherwise of this latest seniority list which is not part of the record and which is not covered by pleadings on either side. Further this seniority list is prepared as per the directions of the Supreme Court and two Benches of this Tribunal. The seniority list was produced at the time of arguments and we are only referring to it to show that the impugned 1993 seniority list no longer survives and we have this latest seniority list of 1999 and unless this is set aside or quashed the applicant cannot get a better seniority position.

5. This 1999 seniority list is a draft seniority list which has not yet become final. We therefore, give liberty to the applicant to make a representation to the Administration about the correct position to which he is entitled in this seniority list. Then while finalising the seniority list the Administration should consider the representation of the applicant and other directions which we are now issuing so that the final seniority list may be prepared giving proper position to the applicant.

6. The whole controversy on the question of seniority list arose because in this particular department whenever orders of transfer or promotions were issued, many seniors were declining to go to the places to which they were posted. Then the Department has to cancel the order of promotion and then issue fresh promotion orders. This was causing lot of difficulties to the Administration. Therefore, the administration issued Circulars calling for

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options from eligible candidates due for promotion whether they are desire to go on transfer on promotion or not. If the seniors agree and give willingness they would be promoted and sent to different places ^{of} promotion. If the seniors decline promotion on transfer then juniors were being considered and promoted on ad-hoc basis. Then, when regular promotion took place the seniors who declined ad-hoc promotion were again considered and given promotion and seniority over the ad-hoc promotees. This position was challenged before the Gujarat High Court in Special Civil Application No.1533/83. That Writ Petition came to be transferred to the Ahmedabad Bench of this Tribunal after the Administrative Tribunals Act and numbered as T.A. NO.263/86, which was filed by Mr. and Mrs. John. The Ahmedabad Bench of this Tribunal in that case by order dt. 14.8.1987 held that the ad-hoc promotees on the basis of option circular will not get seniority over the seniors who declined to go on promotion. Subsequently, one Mr.Bhaskaran who was aggrieved by the decision of the Ahmedabad Bench of the Tribunal moved an application for review of that Judgment; the Review Petition came to be dismissed; then he and others moved the Supreme Court in Special Leave Petition which came to be granted. Then, the Supreme Court, in the reported case of P.Bhaskaran and Others V/s. Union of India and Ors. (1996 (32) ATC 801) reversed the decision of the Ahmedabad Bench of the Tribunal and held that the seniors who declined promotion on the basis of option circular cannot claim seniority over ad-hoc promotees. However, on facts the Supreme Court did not disturb the finding about Mr. and Mrs.John being given seniority, since their stand was that they were never given option at all before considering their juniors. On the question of law, the Supreme Court has clearly held that seniors who decline promotions as per the option circular cannot get seniority over the ad-hoc promotees.

Therefore, the Administration will have to re-do the exercise and prepare a seniority list. Now, the respondents say that this 1999 seniority

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list is prepared as per the directions of the Supreme Court and as per the directions given by the Ahmedabad Bench of this Tribunal and by this Tribunal in subsequent decisions.

7. In O.A. No.632/96, the Ahmedabad Bench of this Tribunal quashed the seniority list dt. 24.2.1997 and directed the Administration to prepare a fresh seniority list on the basis of the law declared by the Apex Court in Bhaskaran's case. Similar question arose before this Tribunal in Ajit Babu's case and by Judgement dt. 7.4.1998 in O.A. No.47/90 a Bench of this Tribunal, to which one of us was a party (R.G.Vaidyanatha, Vice-Chairman) agreed with the views of the Ahmedabad Bench of the Tribunal in O.A. No.632/96 and gave a similar direction to the Administration.

8. Now, the Administration has taken the position that the latest seniority list is as per the directions given by the Supreme Court and directions of the Ahmedabad Bench of the Tribunal in O.A. No.632/96 and directions of this Tribunal in O.A. No.47/90. As already stated on the available pleadings and materials on record, we cannot consider the correctness or legality of 1999 seniority list. Further, it is only a draft seniority list and hence we are giving directions so that the administration can prepare the final seniority list.

. We may also mention that even the applicant's ad-hoc promotion in 1979 was subject to the final decision on Special Leave Application No.1533/83 (vide the remarks column against ^{his} the name in the order of promotion dt. 26.5.1984 produced by him and which is at page 28 of the paper book). This Special Leave Application No.1533/83 was transferred to the Bench of this Tribunal at Ahmedabad Bench and came to be re-numbered as T.A. No.263/86. Though the respondents have produced some DPC records before us it does not throw any light on the point under consideration.

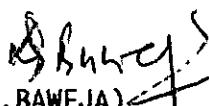
. The applicant's ad-hoc promotion as UDC was on 4.9.1979. The

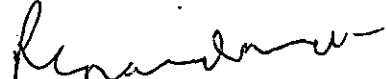
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administration has to go through the relevant records and then decide as to on what basis applicant was given ad-hoc promotion. Was it because his seniors declined to go on transfer on promotion and thereby he was given ad-hoc promotion. If that is the position, then the applicant will get seniority from the date of ad-hoc promotion in view of the law declared by the Supreme Court in Bhaskaran's case. Further, if the applicant's ad-hoc promotion was because it was given on the local seniority basis and not on zonal seniority, then the administration will have to find out as to what was his position in the seniority list in 1979 and if he has been given ad-hoc promotion due to pendency of litigation and on the basis of local seniority, administration must find out as to in which year he would be entitled to regular promotion on the basis of his position in the zonal seniority list. Then the applicant should be given regular promotion as per his entitlement as per his seniority position in the zonal seniority list. After giving him seniority position in UDC's post, then he must be given regular promotion as per his entitlement and as per his seniority list as Licensing Assistant. On the basis of this exercise the applicant's name should be interpolated and placed in a proper place in the final seniority list to be prepared on the basis of draft seniority list dt. 14.1.1999. If necessary, the Competent Authority must himself decide and pass a speaking order on the basis of these directions. If necessary, this exercise can be done by a Review DPC. We direct the Competent Authority to pass a speaking order for giving proper place to the applicant in the draft seniority list of 1999. We are also giving liberty to the applicant to make a detailed representation about his proper position in the 1999 seniority list. In view of these directions being given by us and in view of the subsequent events brought to our notice, advisedly we are not expressing any opinion on merits of the case.



9. In the result, the O.A. is disposed of subject to observations made in para above. We hereby give liberty to the applicant to make a detailed representation claiming proper position in 1999 draft seniority list within four weeks from to day. As observed in para 8 the Competent Authority shall examine all the questions including the representation of the applicant and if necessary to get the exercise done by a Review DPC and then a speaking order be passed about the proper place to be given to the applicant ^{in the} ~~under~~ seniority list. Needless to say, if the applicant is aggrieved by any such speaking order to be passed by the Competent Authority or by the Review DPC, he may challenge the same according to law. All contentions on merit ^{are} left open. In the circumstances of the case, there will be no order as to costs.


(D.S. BAWEJA)
MEMBER(A)


(R.G. VAIDYANATHA)
VICE-CHAIRMAN 17-3-99

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