

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH : BOMBAY

Date of order : 26-2-96

1. R.P. No. 30/96
in
O.A. No. 425/92

Shankar Ramchandra Kadam
& 146 Others Petitioners.

versus

Union of India & 9 Others Respondents.

2. R.P. No. 31/96
in
O.A. No. 259/93

Padmakar Arjunrao Deshmukh
& 6 Others Petitioners.

versus

Union of India & Others Respondents.

PER HON'BLE MR. N.K. VERMA, MEMBER ADMINISTRATIVE:

These are the Review Petitions against the judgement and order of the Tribunal in OA No. 425/92 and 259/93, which were decided by a common order on 6.12.95. The applicants in these two Review Petitions have brought to notice that there are serious errors in the judgement contrary to the pleadings as well as facts. In the Review Petition No. 30/96 in relation to OA No. 425/92 the applicant has canvassed again the ratio of the judgement in the case of Uttamrao Hanumanrao Jadhav in OA No. 823/87 by which the seniority was required to be determined between direct recruits and promotees on the basis of continuous officiation in the cadre notwithstanding the dates of confirmation.

Since the said judgement of the Tribunal was upheld by the Hon'ble Supreme Court by the dismissal of S.L.P. filed on behalf of Union of India and a Review Petition No. 18/93 was also dismissed by the Tribunal, the matter relating to the fixation of inter-se seniority between direct recruits and promotees has been settled. The revised seniority list subsequent to the judgement is now based on the length of service after their initial appointment as direct recruits. The applicants have prayed in these R.Ps that by the present judgement in these O.As, the whole matter has been sought to be re-opened which stood concluded by the earlier judgement of this Tribunal in O.A. No. 823/87 Uttamrao Hanumantrao Jadhav & Ors. This is an error apparent on the face of the record and the present judgement, therefore, deserves to be reviewed. The applicants have also brought to the notice that the judgement went much beyond the pleadings as it was nobody's case that the judgements in the case of U.H. Jadhav & Ors. (O.A No. 823/87) and K.K. Patkar (O.A. No. 213/87) ought to be reviewed. The present judgement in these OAs has sought to be review^{ed} the judgements in the earlier OAs which is not permissible for a Division Bench to do. The effect of the judgement in the present OAs is that the reliefs granted in the earlier judgements are liable to be withdrawn. The present judgement, therefore, deserves to be reviewed to remove this anomalous and incongruous situation.

Another error has crept in by permitting grant of seniority to a promotee official for the period when he was not even eligible for being promoted to the post of Inspector. The reliance of the Division Bench

on the Ministry of Home Affairs Memorandum dated 22nd December, 1959 is not correct as in the earlier OAs of U.H. Jadhav & Others, the Bench did not accept this contention made on behalf of Union of India as well as on behalf of the promotee officials. The Said O.M. dated 22.12.59 had not only become obsolete as it was not being applied after the judgements of Hon'ble Supreme Court in various matters in which Hon'ble Supreme Court has stressed on seniority being determined on the basis of length of service as also the fact that the Ernakulam Bench of this Tribunal by its judgement dated 26.3.1991 in the case of V. Narayanan & Ors. versus Collector of Central Excise & Customs reported at ATR 1991 (2) C.AT. 66, has declared the paragraph 7 of the O.M. dated 22.12.59 as violative of Articles 14 and 16 of the Constitution and it also held that the fixing of the seniority in the case of those applicants basing on O.M. dated 22.12.59 was irregular and improper. The applicants have stressed the point that this D.B. did not have the liberty to disagree with the judgement of the Co-ordinate Benches of the Tribunal as given by the Ernakulam Bench and Hyderabad Bench earlier to that, besides the ratio of the judgement in Jadhav's case.

2. In the other Review Petition No. 31/96 in O.A. No. 259/93, the R.P. has been filed by Padmakar Arjunrao Deshmukh without having been verified by the learned counsel for the petitioners in that matter. Apart from this defect, this R.P. is also a repetition of the points made by the petitioners in R.P. No.30/96.

Besides, the petitioners in this R.P. have brought to the notice the judgement of the Hon'ble Supreme Court in the case of P.S. Mahal & Others vs. Union of India & Ors. reported at AIR 1984 S.C. 1291 wherein the vires of Government O.M. dated 22.12.59 has been interpreted by their Lordships and subsequently in case of J.S. Lamba & Ors. vs. Union of India reported at AIR 1985 SC 1019 wherein the Hon'ble Supreme Court has held that the seniority of the applicant cannot be fixed in accordance with the O.M. dated 22.12.1959.

3. We have given the Review Petitions our serious consideration. The applicants in both these O.As under reference had at no time questioned the vires of the Government O.M. dated 22.12.1959 as would be seen from the relief clauses reproduced in R.P. No. 30/96. The entire adjudication in these two O.As was to recast the combined seniority list of the Inspectors of various Collectorates as on 1.1.91 on the basis of the continuous officiation in the cadre after being duly appointed and joined in the cadre leaving out the date of confirmation. In the pleadings and arguments, the learned counsel for the applicants totally relied on the ratio of the judgement given in the case of U.H. Jadhav & Ors. (O.A. No. 823/87) which recast the seniority of the direct recruits vis-a-vis Jadhav & others, who have according to certain seniority lists ^{had} been appointed and joined earlier to him. The O.As were filed to remove the anomalous situation created by the interpolation by Jadhav and others in the combined seniority list. Our judgement

and order in this matter has been passed on the facts and citations brought to our notice during the course of arguments. The case of V. Narayanan & Ors. versus Collector of Central Excise & Customs decided by the Ernakulam Bench and the cases of P.S. Mahal vs. Union of India & J.S. Lamba vs. Union of India (supra) decided by the Hon'ble Supreme Court were never brought in support of the arguments of the learned counsel for the applicants. In any case, the facts and circumstances of the case now brought to our notice have no relevance in the present case. In the case of V. Narayanan & Ors. vs. Collector of Central Excise & Customs, the vires of para 7 of the Government O.M. dated 9.2.86 was adjudicated and the same was declared null and void and accordingly, the seniority list prepared on the basis of that O.M. was directed to be recast on the basis of the principles laid down in the remaining part of the O.M. dated 7.2.86. In the case of P.S. Mahal, the matter related to appointments in the Central Public Works Department as Assistant Executive Engineers under the rules issued on 21.5.54, the problems of inter se seniority between the Assistant Executive Engineers and the Assistant Engineers arose because of the quota system which came into existence ^{on} 25.8.1949. The appointments, thereafter, continued with these problems upto 1971 when the seniority list of the Executive Engineers promoted from the grade of Assistant Engineers showed as juniors to several Executive Engineers promoted much later from the grade of Assistant Executive Engineers. In that case, at one time reliance was placed by the respondents on the Ministry of Home Affairs O.M. dated

22.12.59, but the learned Solicitor General appearing on behalf of the Union of India conceded that the said O.M. has no application to this case and was irrelevant and the Hon'ble Court also accepted the same view. Thus, it would be seen that there was no adjudication regarding applicability or the vires of O.M. dated 22.12.59 in the case of P.S. Mahal & Ors. (supra). Hon'ble Supreme Court decided that case on merits dehors Ministry of Home Affairs O.M. dated 22.12.59. So far G.S. Lamba's case is concerned, the Hon'ble Supreme Court has enunciated the following principles:

"Where recruitment to a service or a cadre is from more than one source, the controlling authority can prescribe quota for each course. It is equally correct that when the quota is prescribed, a rule of seniority by rotating the vacancies can be a valid rule for seniority. But as pointed out earlier, if the rule of seniority is inextricably intertwined with the quota rule and there is enormous deviation from the quota rule, it would be unjust, in-equitous and unfair to give effect to the rota rule. In fact, as held in O.O. Singla's case (AIR 1984 SC 1595) giving effect to the rota after noticing enormous departure from the quota rule would be violative of Article 14. Therefore, assuming that quota rule was mandatory in character, as pointed out earlier, its departure must permit rejection of rota rule as valid principle of seniority."

The Supreme Court has again in the same ruling held that :

"....giving effect to the rota rule after noticing the enormous departure from the quota rule would be violative of Articles 14 and 16, that selection or recruitment of one year shall have precedence over selection or recruitment of the next year and this is what is known service jurisprudence as seniority, according to continuous officiation in the cadre or the grade... This is in tune with fair play and justice and ensures equality as mandated by Article 16."

We have held in our judgement that there was no break down of quota and rota rule in the instant case. The applicants due to non-availability of promotees were

eligible for appointment as Inspector only for two years or so which cannot be considered to be a break down of quota rule. The promotees were given their dates of seniority against the vacancies reserved for their slots in the prescribed ratio and there is nothing wrong in such a system which was accepted by everybody when they got their appointments in the Inspector grades between the period 1973 to 1985, while the respondents have claimed that they had applied the MHA's OM dated 22.12.59. We did find that this was not done very meticulously and precisely and that is why we have given an order that they must recast the seniority list taking into account the exact stipulations of MHA's O.M. Dated 22.12.59, which may mean disturbing the seniority erroneously assigning to direct recruits as well as promotees. Since the seniority lists are only provisional subject to correction the order passed by us will have a salutary effect of bringing all the anomalies and errors to a logical and final correction. The rejection of S.L.P. by the Hon'ble Supreme Court does not confer upon the judgement and order passed by the Tribunal or the High Court the sanctity of final adjudication in the matter. It has been held by the Full Bench of the Tribunal in the case of Dr. J.P. Sharma vs. Chief Secretary, Delhi, reported at 1995 (2) AIR 368, that :

"what is binding on all Courts within the territory of India, as provided in Article 141, is the law declared by the Supreme Court. The dismissal of S.L.P. by an unreasoned order does not amount to declaration of law under Article 141 of the Constitution and the said order cannot be treated as an affirment of the views expressed by the Court or the Tribunal against whose order/judgement the SLP was preferred."

In this, we are also supported by the latest judgement of the Hon'ble Supreme Court delivered by three Member Bench in the case of Union of India & Anr. versus G.K. Vaidyanathan & Ors. reported at (1996) 32 ATC 135. It has been held by the Hon'ble Supreme Court in paragraph 12 of the judgement/order that since the quota rule cannot be said to have broken down on going through the facts of the case although excess recruitment were made during the period 1978 to 1981 in the promotions from both direct recruits and promotees, it was not necessary either to deal with the decisions cited by the Benches on the question when the quota rule can be said to have broken down or with the question whether the principle contained in OM dated 7.2.1986 can be given retrospective effect.* In that matter the judgements of two Benches of the Tribunal were different. The Hon'ble Supreme Court held that the decision of the Madras Bench was based upon concession and cannot be treated as a decision on merit. Our decision in the instant matter was based on the merits of the case. A judgement given by another Division Bench of this very Bench or any other Bench for that matter is not binding as we have disagreed with the conclusions arrived at by the earlier D.B. of this Tribunal with our own reasons as stated in the judgement / order.

4. In view of this, we find these two Review Applications totally devoid of merits and the same are dismissed.

(N.K. VERMA)
Member (A)

(B.S. HEGDE)
Member (J)