

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.1070/1994

DATED: Tuesday this, the 31st DAY OF OCTOBER, 2000

Shri R. Sivathanu, Applicant.

(Applicants by Shri S.P.Saxena, Advocate)

Versus

Union of India & Ors Respondents

(Respondents by Shri R.R.Shetty, Advocate)

CORAM

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

Hon'ble Shri S.L.Jain, Member (J)

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

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

(3) Library. Yes - B.S.

(B.N. Bahadur)
Member (A)

sj*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.1070/94

DATED: This Tuesday, the 31st DAY OF OCTOBER, 2000.

CORAM: HON'BLE SHRI B.N.BAHADUR, MEMBER (A)
HON'BLE SHRI S.L.JAIN, MEMBER (J)

Shri. R. Sivathanu,
Admin. Officer Gr.I
Office of the Chief Engineer,
Southern Command,
Pune - 411 001.
(Applicant by Shri S.P.Saxena, Advocate)

Applicant

Versus

1. The Union of India through the
Secretary, Ministry of Defence
South Block, New Delhi 110 011.
2. The Engineer-in-Chief,
Kashmir House,
New Delhi - 110 011.
3. The Chief Engineer,
Southern Command
Pune 411 001.
4. Shri N. Mahadevan,
Admin. Officer Gr.I
Office of E-in-C.,
Kashmir House,
New Delhi 110 011.
5. Shri K.C.Agarwal,
Admin. Officer Gr.I,
Office of E-in-C, Kashmir House,
New Delhi 110 011.
6. R. Balasubramaniam,
Admin. Officer Gr.I
Chief Engineer Office
S.C. Pune.1
7. P.Sethumadhavan, Admin. Officer Gr.I
Office of Chief Engr/SC,
Pune-1.
(Respondents by Shri R.R.Shetty, Advocate)

Respondents

ORDER

[Per: B.N.Bahadur, Member (A)]

This is an Application made by Shri R. Sivathanu seeking
a direction to Respondents for the assignment of proper seniority
to him, in the Grade A.O. 11 by placing him above Shri

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N.Mahadevan in the Seniority List of that Grade (A.O.II). A relief is also sought to the effect that further promotion be considered on the basis of the such claimed seniority and such promotion provided from the date of promotion of the aforesaid Shri M.Mahadevan. Consequential reliefs are also sought.

2. The facts of the case, in brief, are that the Applicant joined the Respondent's Organisation, as a civilian employee, as L.D.C. on 26.12.1961, and was provided promotions on different dates as noted in para 4.2 of O.A. Finally, he was promoted as A.O. grade I in the Office of Respondent No.3. His grievance is that his immediate junior in the Grade of O.S.II, has superceded him in the matter of promotion to the post of O.S.Grade I and further to the post of A.O.II. The Applicant had filed an Application before this Tribunal (O.A.760/88) and the Applicant contends that this O.A. was allowed by the Tribunal vide its Order dated 24.9.1991 (Exh. A.7). It is the allegation of the Applicant that this judgement was not implemented by the Respondents.

3. In the further part of the Application, the Applicant describes how his promotion to the level of A.O. grade II was provided in July, 1990 as against the entitled date of January 1984. Also described are the circumstances under which a DPC could not be held in view of a stay in another case, and how after a review DPC, a wrong position was assigned to the Applicant in the Seniority List of A.O. Grade II.

4. The Respondents in the case have filed in the reply where the claim of the Applicant is resisted, and it is asserted that the Applicant is seeking the same reliefs as he had sought in the



earlier O.A. and that this Application is hit by the principles of *res judicata*. It is pleaded that on this ground alone the Application deserves dismissal. It is stated that the Respondents had assigned seniority to the Applicant in the post of Supdt. Grade II and Grade I in compliance of Tribunal's Order dated 24.1.1991 and placed the Applicant above Shri Mahadevan and provided the consequential promotional benefits in respect of the posts of Office Supdt. Grade I, and A.O. Grade II and A.O. Grade I through a review DPC. It is pointed out that the Contempt Petition filed in this regard was also dismissed on 19th April, 1993 (R.2).

5. In the same Written Statement ahead, it is further pointed out by Respondents that retrospective promotions to Higher Grade do not entitle the Applicant for Pay and Allowances in view of the provisions of F.R.17, and that Pay and Allowances are available only from the date from which the Officers assumes the duties to the post. Hence the Applicant was not entitled to the Pay and Allowances, of the Higher Posts, merely because of notional promotion and no Pay & Allowances can be provided for the period in which the Applicant has not worked in a particular post.

6. It is further averred by the Respondents that A.O. grade II and A.O. Grade I being selection posts, the seniority in these Cadres will go by the Order of Selection and hence the Applicant who was placed lower in merit than the aforesaid Shri Mahadevan shall be placed junior to him in the Cadre of A.O. Grade II and A.O. Grade I. Hence Applicant's claim is not merited. Parawise replies are given in detail in the further part of the Written Statement and these have been considered.

7. The Learned Counsels on both sides were heard in the matter. Learned Counsel for the Applicant, Shri S.P.Saxena, took

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us to the facts of the case, and stated that although the statements of the Respondents first states that benefit had been provided upto the Grade of Office Supdt. Grade I, the contention was that Applicants will be proved the Seniority later since some Court injunctions were operating. However, Mr. Saxena contends that eventually on 13.9.1983 Shri Mahadevan was given higher seniority in the Grade of A.O. Grade I and this is now the Applicant's main grievance. Learned Counsel for Applicant contended further that in another O.A., the Respondents had taken the stand that this was not a selection post and a contradictory stand was now being taken. This cannot be allowed. The attention of the Tribunal was drawn to the comparative statement at page 34, showing the chronological status of concerned persons in various grades in the hierarchy/seniority Shri Saxena argued at length with reference these charts.

8. It was argued on behalf of applicant that he has to be considered for promotion with reference to the ratio laid by the Hon'ble Supreme Court in the matter relating to *Uttar Pradesh Jal Nigam vs. Prabhat Chandra Jain & Ors.* [1996 (1) SCCLJ 335] since no adverse CR entries were ever communicated to the Applicant. And, if this post is a non-selection post, then supercession would not be possible. Learned Counsel for Applicant also referred to the document at Exh. A.4, to make the point that the same C.Rs. were used and no fresh C.R. became available for consideration for promotion in the short period of 15 days. And hence the contentions raised were valid for the post of A.O.I also. Learned Counsel for the Applicant ended with the arguments with the plea that the Original Record of the DPC and CRs should be perused by the Tribunal so as to ensure that more discrimination vis-a-vis Mahadevan had been made.



9. Arguing the case on behalf of Respondents their Learned Counsel Shri Ravi Shetty (for Shri R.K.Shetty) first took up the point regarding maintainability, and contended that the Application was barred by the principles of res judicata. He referred to the facts contained in para 4.5 of the Application and made the point that the Respondents had already followed, and acted upon, the directions of the Tribunal made in O.A.736/88 on 24.9.1991. It was further argued by Shri Shetty that the support sought by Applicant from the ratio of the Case of Uttar Pradesh Jal Nigam was not justified, as the ratio settled by Supreme Court in this case was not applicable to the present case. It was also asserted that this was a matter of 1993, whereas the judgement in the Jal Nigam Case, came in 1996.

10. Let us first restate the factual position of the hierarchy relevant in the present case. The heirarchical structure is as follows:

LDC >>> UDC >>> OS Gr.II >>> O.S.Gr.I >> A.O.Gr.II >> A.O.Gr.I

11. It is an admitted position that the applicant has been provided the correct seniority placement vis-a-vis Mahadevan at the levels of OS Gr.II and OS Gr.I. In fact during arguments, the learned Counsel for the Applicant did state that the grievance lies in regard to Mahadevan's being given higher seniority in the subsequent higher grade. *bb* The stand of the Respondents is contained in Para-1 of their written statement (page-52/63). It is contended that retrospective promotion to higher grade does not entitle the applicant for pay and allowances in view of provisions of FR 17 from any date earlier to the date of resumption of charge. Further, since posts of AO

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Gr.II and Gr.I are selection posts and promotions are made on selection basis, the seniority in the post of AO Gr.II and AO Gr.I shall be in the order of their selection by the DPC. Further, it is contended that the applicant had held lower than Shri Mahadevan during DPC, he was placed below him in the selected panel. Thus, it is averred, the applicant will have to rank lower, as correctly done, in the posts of AO II and AO I. It is stated that applicant has been considered by Review DPC for the post of AO II and AO I and promoted to these posts vide orders dated 22/12/1993 and 7/1/1994, respectively. Thus, the Respondent claims that all benefits provided to applicant in the earlier OA has been made available, and he can have no grievance now.

12. It is important to note that the OA-736/88 which provided benefits of seniority to the applicant was dated 24/9/91. If any promotions have taken place subsequently to selection posts, where the Applicant and his junior has been considered, then obviously the right to seniority cannot be automatic in a selection post. It will depend on the decision taken by the DPC. We have also perused the records of the DPC produced before us as also the CR file (original) in respect of Shri R.Sivathanu. We have before us minutes of the following DPC meetings:-

- (a) Review DPC for selection of AO Gr.I dated 30/12/93
- (b) Minutes of DPC meeting held on 29/6/96 for selection of officers for Sr.Administrative Officer.

In the selection for post of AO Gr.I, the review has been made of proceedings of 4/8/87, and a note has been taken of the various decisions of Benches of this Tribunal including Applicant's case

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and it has been decided to place various officers whose cases have been reviewed at the different serial numbers vis-a-vis the earlier list. This is a conscious decision based on DPC assessment. In the 1987 DPC gradings were recorded and these clearly show Mahadevan has merited higher in grading to the Applicant.

13. In the DPC meeting proceedings of meeting held on 29/6/96, we see yearwise panels drawn up from the year 1992-93 to the year 1995-96. Here we find that in 1992-93 Applicant and Mahadevan are at the same rating. But the Applicant does not find a place obviously because of the limits of vacancies. It is clear therefore that it is not that DPC assessment has not been made. DPC assessment has been made. We shall, however, not place ourselves in the position of the DPC, or Appellate Authority *as per settled law, and attempt* reassessing the decisions of DPC, *Ans*

We have also seen the DPC minutes of the Meeting held on 10th Dec. 1993 for Review of cases to the post of A.O. Grade 11.

14. We must say that, on the basis of the papers perused by us in the Original DPC file, we do not find any evidence of any irregularity, or any miscarriage of justice. The gradings are a part of the process of consideration of Officers for promotion in selection posts, and suitable placements in the seniority lists can be made in the case of officers judged to be "outstanding". In the Rejoinder filed by the Applicant he has stated, *inter alia*, that he is aware that the post of A.O.Gr.1 was a selection post but has expressed apprehension that the Review DPCs have not been fair to him in that they have not applied similar criteria for assessment for him as they have done for Shri Mahadevan. He contends that his CRs are no inferior to those of Shri Mahadevan. Now as stated above, we have looked into this case, within the

parameters of the law settled by the Hon'ble Supreme Court in this regard. We did not have the CRs. of Shri Mahadevan and others which were considered by the various DPCs and we did not even asked for it, because the Tribunal cannot place itself in the position of a DPC or a Supervisory body and undertake fresh assessment as if sitting in judgement over the proceedings of the DPC taken as per Rules, as stated above. Nevertheless, we find no *prima facie* infringement of Rules and Regulations or any *malafide* action against the applicant.

15. We are not convinced, therefore, that there is any case made out by the Applicants for interference by this Tribunal in this matter. The O.A. is, therefore, dismissed with no orders as to costs.

S.L. Jain
(S.L.Jain)

Member (J)

sj*

B.N. Bahadur
(B.N. Bahadur)

Member (A)

31-10-2000