

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

Original Application No. 1423/1995
Bombay the 1st day of Jan.1998.

Prem Lal Mangoji Meshram, R/o Buddha Nagar, Unit No. 2, Behind Baba Decoration, Nagpur. 440 017.

.....Applicant.

Versus.

1. Union of India through the Secretary, Department of Rural Development, Krishi Bhawan, New Delhi.
2. The Secretary to the Government of India, Department of Personnel and Training (DOPT), Nirwachan Sadan, Ashoka Road, New Delhi.
3. The Agricultural Marketing Adviser to the Government of India, Directorate of Marketing and Inspection, Head Office, N.H.-IV, Faridabad.
4. The Joint Agricultural Marketing Adviser, Directorate of Marketing and Inspection, Branch Head Office, New Secretariat Building, Nagpur. 440 001.

.....Respondents

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Mr. R.V.Joshi, learned counsel for the Applicant.

Mr. M.G.Bhangade, learned counsel for the Respondents.

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HONOURABLE MR. M.R.KOLHATKAR, MEMBER (A)

HONOURABLE MR. A.K.MISRA, MEMBER (J)

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PER HON'BLE MR.A.K.MISRA :

The applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs :

- a) To quash and set aside the seniority list of U.D.Clerks Grade dated the 10th December, 1986 (Annex.A/2) ;
- b) To quash and set aside clarifications issued by the Secretary to the Government of India, Department of Personnel and Administrative Reforms dated the 31st May, 1986 regarding mode of interpolation etc. (Annex.A/1) ;

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- c) To quash and set aside office order Nos. 72/86 and 125/86 dated 11.6.86 and 21.8.86 for inclusion of 12 officials in select list zone of U.D. Clerks Grade 1979/1980 (Annexure A/3 and A/4) ;
- d) To quash and set aside the draft seniority list of Assistants borne on the cadre of the Department of Rural Development dated 2nd April 1993 (Annex.A/5) ;
- e) To revive the correct seniority list of Upper Division Clerks Grade as on 1.6.1983 (Annex. A/7) ;
- f) To recast suitably the draft seniority list of Assistants circulated on 2.4.1983 in the light of revival of correct seniority list of U.D.Clerks Grade ;
- g) Any other relief alongwith the cost of the petition.

2. Notice of this O.A. was given to the respondents who have filed their reply. The respondents have mentioned that the seniority list was correctly prepared as per the D.O.P.Ts O.M. and the same is not liable to be interfered with. The Judgment delivered by the Principal Bench of C.A.T. is not applicable in the instant case, as claimed by the applicant. The applicant has not made those persons a party who are likely to be affected if the relief as prayed for by the applicant, is granted. Therefore, for all these reasons, the O.A. deserves to be dismissed.

3. We have heard the learned counsel for the parties and gone through the records.

4. The brief facts of the case are as follows :

5. The applicant is at present working as a regular Assistant in the office of the Directorate of Marketing and Inspection, Nagpur, with effect from 12.11.1991. The applicant while he was working as L.D.C. appeared in a departmental competitive examination held by the Staff Selection Commission, New Delhi, for selection to the grade of U.D.C., in the year 1980. The applicant passed the examination and he was placed at serial No. 10 in the seniority list of temporary UDCs as on 1.6.1983 vide Annexure A/7. He belonged to the

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departmental examinee quota of 1980. As per the office order No. 14 dated 22.2.1984, 10 L.D.Cs were included in 1981 select list of promotees and were placed at serial Nos. 11 to 19. The applicant was shown at serial No. 10 in the seniority list of temporary U.D.Cs as on 1.6.1983 which is Annexure A/8. He alleges that this seniority list was correctly drawn as per the regulations laid down for the purpose vide Department of Personnel & Training O.M. dated 17.12.1981. It is further alleged by the applicant that the Secretary to the Government of India, Department of Personnel and Administrative Reforms, later on issued certain clarifications for drawing up of the select list of U.D.Cs vide their O.M. dated 31.5.1984 (Annexure A/1), to recast the select list wherever necessary. On the basis of the instructions of the Department of Personnel and Training, as referred to above, the Secretary to the Government of India, Department of Rural Development, New Delhi (respondent No. 1), issued two office orders dated 11.6.1986 and 31.8.1986 (Annexures A/3 and A/4) respectively. According to these orders, 12 officers who were earlier included in the select list zone with effect from 17.12.1981, were recasted and included in the select list for the year 1979-80. Out of these 12 candidates, first 6 candidates were shown as select list U.D.Cs of 1979 and remaining six candidates were shown as select list UDCs of 1980. It is alleged by the applicant that after taking into consideration the recasting of select lists of 1979-1980, seniority of 12 UDCs was revised and interpolated with departmental examinees of 1979-80 in the ratio of 3:1 and thereafter, a final combined list of UDCs (both promotees and departmental examinees) borne on the cadre of department of Rural Development as on 1.2.1986, was prepared and circulated vide O.M. dated 10.12.1986 (Annex.A/2). In this impugned list (seniority list of temporary U.D.Clerks), the applicant was shown at No. 22 making him junior to all the above referred 12 promotees whereas he was correctly shown at No. 10 in the earlier seniority list of the year 1983. The applicant further alleges that the Secretary to the Government of India, Department of Personnel and Administrative Reforms, vide its order dated 26.5.1984 (Annex.A/13), issued clarifications regarding drawing-up the select list of UDCs working in the Planning Commission and Department of Agriculture and Cooperation, New Delhi. The said O.M. is word for word similar to the impugned O.M. issued by the respondent No. 1 in material facts. The said O.M. alongwith the seniority list based thereon were successfully challenged before the C.A.T., New Delhi, in the case of Venkitraman and Others Versus Union of India and Others decided on 10.7.1990. The Tribunal was pleased to quash the said O.M. alongwith

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the seniority list. Thereafter, applicant made a representation for suitably revising the seniority list circulated by the respondents on 10.12.1986 and thereafter sent several reminders to the respondents. The respondent No. 1 informed the applicant that the matter under reference, is under examination in consultation with the D.O.P.T. and the decision would be intimated as and when taken. Since the respondents did not decide the matter, applicant filed an O.A. No. 369/1994. This O.A. was disposed of by the Tribunal vide its judgment dated 5.12.1994 and respondents were directed to consider the representation of the applicant within two months from the date of communication of the order. Thereafter, respondent No. 1 informed the applicant that his representation for revision of his seniority, cannot be acceded to, vide its O.M. dated 31.1.1995 (Annex.A/11). Aggrieved by the decision of the respondent, applicant again made representations and ultimately filed the present Original Application. The applicant has challenged the seniority list on the ground that 12 officers belonging to the select list zone of UDCs, issued on 17.12.1981, were retrospectively brought to the select list zone 1979-1980 and their names were interpolated with the departmental examinees of the year 1979 and 1980 affecting the seniority of the applicant by 12 numbers. The respondents by interpolating the names of such candidates, treated dis-similar persons alike. Since the department has not followed the judgment rendered by the Principal Bench of C.A.T., New Delhi, therefore, the revised seniority list is required to be quashed and the same is required to be recasted on the basis of the seniority list of the year 1983. Twelve promotees belonging to the year 1981 select list, cannot be brought back to select list of 1979-1980 and thus, by interpolating their names, those 12 persons were wrongly given seniority above the applicant. Consequently, applicant has sought quashing of all those orders as mentioned.

6. The respondents filed their reply in which it has been mentioned that the applicant is seeking seniority over 12 persons but those 12 persons have not been impleaded as respondents, therefore, the O.A. suffers from non-joinder of necessary parties and is liable to be dismissed. It is pleaded by the respondents that seniority list of U.D.Cs issued by the Ministry of Rural Development on 17.6.1983 was not the correct seniority list. The revised list dated 10.12.1986 was issued keeping in view the clarifications issued by the Department of Personnel and Training dated 31.5.1984 and those 10 candidates were adjusted against the select list of the year 1979 and 1980. Thus, the seniority list is correct as per the latest



departmental instructions and clarifications. By its judgment, the Principal Bench of C.A.T. has quashed the O.M. relating to Planning Commission and Department of Agriculture and Cooperation but that judgment cannot be interpreted as having quashed by implication the O.M. dated 31.5.1984 which is still in force. The seniority list prepared by the department is entirely in conformity with the D.O.P.Ts O.M. dated 31.5.1984, therefore, the same is not liable to be interfered with. The applicant has not been able to make out a case of violation of Articles 14 and 16 of the Constitution. The departmental promotees, promoted in pursuance of D.O.P.Ts O.M. dated 17.12.1981 belonged to the select list of 1981 and not to the year 1980, as stated by the applicant. The adjustment of promotees in the seniority list was made as per the prevailing practice and decision given by the D.O.P.T. who is the nodal authority. The impugned seniority list is absolutely in accordance with the D.O.P.Ts instructions issued from time to time. Therefore, the O.A. deserves to be dismissed.

7. We have heard the learned counsel for the parties and considered the arguments and gone through the record.

8. The learned counsel for the respondents raised a preliminary objection and argued that the applicant has sought quashing of the seniority list in which 12 persons who have been shown senior to the applicant but these persons have not been made parties. Therefore, the applicant is not entitled to any relief. The O.A. deserves to be dismissed.

9. We have considered the argument. No doubt, if the impugned seniority list is quashed, these 12 persons who have been shown senior to the applicant in the seniority list and are not party before us in the O.A. would be affected. In our opinion, no order can be passed against such persons who have not been given an opportunity of being heard or to show cause. Thus, in our opinion, the applicant is not entitled to the relief claimed. This O.A. has been pending since 1995 and objection regarding non joinder of necessary parties was raised by the respondents as far back as September 1996. In spite of this objection, the applicant has taken no steps to make these affected persons party-respondents in the O.A. Looking to the circumstances, we are not inclined to grant time to the applicant to make these persons party now. In our opinion, the O.A. suffers from non-joinder of necessary parties and is required to be dismissed on this ground alone. However, we shall now proceed to

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decide the case on merits.

10. The learned counsel for the applicant has argued that judgment rendered by the Delhi Bench of C.A.T. in V.Venkitaraman and Others Versus Union of India and Others in T.A. No. 1066/1985 decided on 10.7.1990, fully applies in the instant case. In this case, the learned Delhi Bench had quashed the O.M. issued by the Ministry of Agriculture. This O.M. is word for word similar to the O.M. which is under challenge in this case and, therefore, as per the decision in Venkitaraman's case, the O.M. dated 31.5.1984 (Annex.A/I) deserves to be quashed. The learned counsel for the respondents has opposed this argument on the ground that the facts of the case in hand are different than the facts of the case decided by the Principal Bench. Moreover, the Delhi Bench has only quashed the O.M. issued by the Ministry of Agriculture dated 26.5.1984. Therefore, the decision is not applicable in the instant case.

11. We have considered the rival arguments. No doubt, the O.M. under challenge is similar to the one quashed by the Delhi Bench of C.A.T. but the same was not under challenge before that Bench, therefore, it holds good at present with full force. The same cannot be held to have been quashed by the Principal Bench of C.A.T. Delhi by implication. In our opinion, the facts of the case cited above are different than the applicant's case. In that case, the petitioner and others were confirmed in the year 1982-83 and it was held by the Tribunal that subsequent preparation of seniority list by interpolating other candidates resulted into de-confirmation of the applicant and others. In such circumstances, it was held by the Bench that no such action can be approved under the Law which has resulted into de-confirmation of confirmed candidates without notice to them, consequently, the O.M. issued by the Ministry of Agriculture was quashed. But, this is not the case here. Hence, the judgment of the Principal Bench of C.A.T. does not help the applicant.

12. The applicant has stated in his O.A. that he had successfully appeared in the limited departmental competitive examination in the year 1980, therefore, in our opinion, the applicant would be treated as departmental examinee of the year 1980. The 12 candidates who were subsequently shown senior to the applicant belong to the select list of U.D.Cs of the years 1979 and 1980. It may have so happened that select lists of 1979 and 1980 might not have been issued in time, therefore, the select list which was issued on 17.12.1981 indicating these 12 candidates belonging to select lists of 1979 and

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1980 cannot be interpreted as select list of candidates of 1981. The applicant has not shown in the O.A. that there existed no vacancy for departmental promotion in the years 1979 and 1980. If there were no vacancies for departmental promotions relating to these two years then certainly the candidates shown in the select list of 1981 would not be entitled for seniority from the years 1979 and 1980. But this is not the case here. Even the seniority lists circulated vide letters dated 17.6.1983 (Annex.A/7) and dated 28.4.1984 (Annex.A/8) are that of temporary U.D.C's borne on the cadre on 1.6.1983. Therefore, if under the instructions issued by the D.O.P.T., the seniority list has been recasted by the department, it cannot be said that the same has wrongly been recasted. There is no dispute so far as the ratio of interpolation (3:1) is concerned. Therefore, the candidates belonging to select lists of 1979 and 1980 have been interpolated in the given ratio. Consequently, the final seniority list of temporary U.D.Cs borne on the cadre of the department as on 1.2.1986 circulated vide letter dated 10.12.1986, Annex.A/2, cannot be said to be wrong and is not liable to be quashed.

13. In our opinion, the applicant has not been able to make out a case that Seniority List (Annex.A/2) has not properly been recasted or that candidates shown in the list issued on 17.12.1981 do not belong to the Select Lists of 1979 and 1980. The present O.A. in our opinion is devoid of any merit and deserves to be dismissed.

14. The Original Application is, therefore, dismissed without costs.

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(A.K.MISRA)

Judicial Member

M.R.Kolhatkar

(M.R.KOLHATKAR)

Administrative Member

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