

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.519/97

Date of Decision: 21.02.2002

Shri D.S. Bhutkar & Ors.

Applicant(s)

Shri S.P. Saxena.

Advocate for Applicants

Versus

Union of India & others

.. Respondents

Shri R.R. Shetty for R.K. Shetty

Advocate for Respondents 1 to 4

CORAM: HON'BLE SHRI S.L. JAIN. .. MEMBER (J)
HON'BLE SMT. SHANTA SHAstry. .. MEMBER (A)

(1) To be referred to the Reporter or not?

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

(3) Library

Shanta S.
(SMT. SHANTA SHAstry)
MEMBER (A)

Gajan

TRIBUNAL OF APPEALS
TARIKH: 15 NOVEMBER 1959

ORIGINAL APPLICATION NO. 600
SOON, YRAUBERG LTD. V. BHARAT

MEMBER (A) MEMBER (B) MEMBER (C) MEMBER (D)

D. B. DURKAL
R. R. BURGESS
C. S. TOSSEDU
N. B. MITRE

PRESENTED WORKING as General Technologist Associate
KODAK COMPANY OF AMERICA to the Interference
Registration, PUNE-411 059.

U. S. PLESSA
S. M. U. R. NAYAK
C. R. SAMBHU
B. B. PATEL
L. R. HIRKHAJEE
A. B. BEDI

PRESENTED WORKING as Senior Technologist Associate
RESEARCH & DEVELOPMENT MODEL LAB
LAPOLATTO, PASHAN, PUNE-411 059.

BY ADVOCATE MR. SAXENA.

VALUATION

NOTION OF INVESTMENT
THEORETICAL ASSESSMENT
MATERIALS OF DEFENCE
DHO PO, NEW DELHI-110 011.

THE SCIENTIFIC AND
TECHNICAL GENERALIST
DEVELOPMENT DEPARTMENT,
MULTIFACETED DEFENCE, GANDHI BHAVAN
NEW DELHI-110 011.

DEFENCE,
TECHNICAL DEPARTMENT
PUNE-411 059.

DEFENCE, KODAK COMPANY OF AMERICA
LAPOLATTO, PASHAN
PUNE-411 059.

B. B. DURKAL,
SENIOR TECHNOSTIC ASSOCIATE,
NO. 1, A. S. T. MUKUND ROAD,
NEW DELHI-110 059.

8. 11.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 519/97

THIS THE 21ST DAY OF FEBRUARY, 2002

CORAM: HON'BLE SHRI S.L. JAIN. MEMBER (J)
HON'BLE SMT. SHANTA SHAstry MEMBER (A)

1. D.S. Bhutkar,
2. R.R. Bhagwat
3. C.S. Joseph
4. N.P. Mule

Presently working as Senior Technical Assistant
in the Institute of Armament Technology,
Girinagar, Pune-411 025.

5. U.S. Prasad
6. Smt. U.R. Nair,
7. d.K. Jawale
8. B.B. Patil
9. r.R. Kulkarni
10. S.S. Bhise. ... Applicants

Presently working as Senior Technical Assistant
in the High energy Material Research
Laboratory, Pashan, Pune-411 021.

By Advocate Shri S.P. Saxena.

Versus

1. Union of India,
through the Secretary,
Ministry of Defence,
DHQ PO, New Delhi-110 011.
2. The Scientific Advisor &
Director General, Research &
Development Organisation,
Ministry of Defence, Sena Bhavan
New Delhi-110 011.
3. Director,
Institute of Armament Technology,
Girinagar, Pune-411 025.
4. Director,
High Energy Material Research
Laboratory, Sutarwadi,
Pune-411 021.
5. B.B. Sarkar,
Senior Technical Assistant,
D.I.P.A.S., Lucknow Road,
New Delhi-110 054.

...2.

6. J.R. Badakh,
Senior Technical Assistant,
V.R.D.E., Ahmednagar-414 006.
7. S.G. Katarni,
Senior Technical Assistant,
D.R.D.L., Hyderabad.
8. P.N. Reddy,
Senior Technical Assistant,
D.R.D.L., Hyderabad.
9. N.C. Madhu,
Senior Technical Assistant,
D.R.D.L., Hyderabad.
10. Dilip Ratolikar,
Senior Technical Assistant,
D.R.D.L., Hyderabad.
11. K. Ashokan,
Senior Technical Assistant,
C.V.R.D.E., Avadi,
Madras-600 054.
12. Shri M. Suryanarayana, STA,
N.S.T.L., Vigyan Nagar,
Visakhapatnam-530 027.

By Advocate Shri R.R. Shetty for Shri R.K. Shetty
for Respondents 1 to 4.

ORDER

Hon'ble Smt. Shanta Shastray. Member (A)

The issue involved in this OA is about seniority of the applicants as in OA No.522/97 and 541/97. However, the facets in this case are slightly different. In this case, the applicants were all appointed by direct recruitment, applicant No.1 to 4 were selected on 21.5.1987 and the applicants 5 to 10 were selected on 22.5.1987 for direct appointment. The applicants have challenged the letter dated 22.8.95 whereby the sanction of President was conveyed for placement of Senior Scientific Assistants (SSA) numbering

128 in the higher pay scale of Rs.2375-3500 in the grade of SSA as well as the letter dated 07th March, 94 placing another 216 SSA in the higher pay scale of Rs.2375-3500 with retrospective effect from 01.01.1988 in compliance with the directions of the Hyderabad Bench of the Tribunal in their judgment dated 22.7.93 in OA Nos. 1030/92, 114/93, 201/93, 287/93, 428/93, 842/93, 109/93 and 1110/93. The applicants have also assailed the reply dated 10.4.96 given to the representation made by Shri D.S. Bhutkar i.e. Applicant No.1.

2. According to the applicants, they were selected and appointed as SSA by Selection Committee interview held in May, 1987. Respondent No.6 was promoted with effect from 15.9.1987. Thus, the applicants are senior to Respondent No.6 i.e. Shri Badakh. Similarly Respondents 7 to 10 were also promoted to the SSA post by a DPC held on 15.9.87. They are, therefore, junior to all the applicants, who were selected in May, 1987. Respondent No.5 was directly selected on 27.3.87 by the Selection Committee. The applicants submit that seniority list of SSA was issued on 15.9.94 and they observe that the list was not prepared properly giving an undue and illegal higher position to Respondents 5 to 10 in the aforesaid selection list. It is in violation of the principles of rules for seniority. The applicants state that on the basis of an award of arbitration dated 12.8.1985 sanction was given for

applicants were enlisted higher in the seniority list illegally. This is also contrary to the recruitment rules of 1968 as well as the DOPT letter dated 06.02.1989.

4. One of the applicants made a representation on 20.02.1996. The applicants claim that the placement of SSA in the higher scale is only by way of upgradation and it is not a promotion.

5. The applicants submit that the respondents issued DRTC Rules 1995 superseding the earlier recruitment rules. These rules were published in the gazette~~s~~ of India in August, 1995 and were made effective in August, 1995. By these rules, the various grades/posts under Respondents 2 to 4 were completely restructured. The applicants cadre of SSA in the scale of Rs.1640-2900 was redesignated as Senior Technical Assistant (STA) (Group-C post) in the same scale, but in the case of those SSA, who were already placed in the higher scale of pay of Rs.2375-3500 prior to the notification of the 1995 Rules they were redesignated as Technical Officer-A (Group-B post) carrying the scale of Rs.2375-3500. Thus, the applicants were denied the Group-B post.

6. The applicants have therefore prayed that they should be declared as senior to Respondents 5 to 12 and

to direct the respondents to include the names of the applicants above the name of Respondent No.6 in the seniority list of 15.9.94 and to hold that they are entitled to the higher scale of pay of Rs.2375-3500 with effect from 23.7.90 when Respondent No.7 was given the higher scale of pay. The applicants have also demanded that they should be redesignated as Technical Officer Grade-A from the date DRTC Rules came into force and to grant them all arrears of difference of pay and allowances arising from the above directions with consequential benefits.

7. The respondents have filed their written statement and submit that it is a fact that the applicants No.1 to 4 were interviewed on 21.5.1987 whereas Respondent No.6 Shri J.R. Badakh was appointed on 15.9.87. Further, a seniority list of all the SSAs was published on 10th June, 1991 and the private respondents were shown as senior to the applicants therein. The applicants, according to the respondents have approached this Tribunal by filing the OA in May 1997, whereas the cause of action arose in 1991 and prior to that. The settled seniority position cannot be unsettled after a long lapse of time. This is the view consistently held by the Hon'ble Supreme Court in the matter. Therefore, the application deserves to be dismissed. The respondents have further submitted that the ratio for direct recruit and promoted was different

from time to time. In 1968, according to the then recruitment rules the post of SSA was to be filled 1/3rd by direct recruitment and 2/3rd by promotion failing which by direct recruit^{ment}. By the amendment of 14.9.1987 of the recruitment rules, the promotion was to be to the extent of 80% from amongst the SSAs and the remaining 20% was from amongst Artists etc. Direct recruitment was done away with. The respondents, further submit that the DPC to the grade of SSA is held twice a year on fixed date namely 15th March and 15th September for existing vacancies. In so far as holding of Selection Board for direct recruits is concerned, no fixed date is there. So the vacancies existing as well as anticipated ones were taken into consideration for the entire year. According to the respondents, the seniority has been fixed between direct recruits and promotees as per rules existing at various points of time. The respondents have further contended that the seniority list containing the names of the applicants as well as Respondents 5 to 12 was not issued for the first time on 15.9.94 but was initially issued as far back as in 1991. The applicants have failed to challenge the same in time. The applicants did not have any grievance regarding their seniority till such time they realised that they were not going to get the higher pay scale.

8. The respondents further submit that Respondents 5 and 11 were appointed after due extention of time

given to them for joining by the competent authority and their seniority was therefore, maintained as per procedure. The period of nine months has to be calculated from the date of offer of appointment. Respondents 5 and 11 were appointed without depression of seniority after taking into consideration the relevant rule position. It has also been mentioned that no one selected after the two respondents in the respective Labs have joined before them. The respondents have prayed to dismiss the OA as being without any merits.

9. We have heard the learned counsel for both the sides and have given careful consideration to the rival pleadings. In our considered view when the seniority list was published in June, 1991 the applicants should have challenged the same which they failed to do. In fact they kept quiet even after the seniority list of 15.9.94 was issued showing the applicants much below respondents 5 to 11. The applicants did not even challenge the seniority list at that time. They represented against the impugned letter dated 22.8.1995. Their request is already time barred.

10. The contention of the applicants is, that the respondents cannot take shelter of limitation when the statutory Rules expressly cast duty on them to act in the prescribed manner. Having failed to do that,

limitation cannot come in the way of applicants' prayer. In our considered view, the applicants had never thought of representing against the seniority list showing them as juniors to some alleged seniors. ^{We have to hold that} ~~to unsettle the settled position by~~ However, since their application is barred by limitation, the issue cannot be agitated after so many years. The respondents have also filed sur-rejoinder. In the sur-rejoinder they have explained as to how the applicants were placed below Respondents 5 to 11 in the seniority list of 1991. Therefore, the statement of the applicants in the rejoinder that the applicants 1 to 4 were unaware of the seniority list of 1991 as the same was not shown to them is an after-thought by the applicants to improve their case in the rejoinder. having not made any such submission in their OA stating that they were unaware of the seniority position before 1994. In our considered view, as the application is hopelessly barred by limitation, it fails and is accordingly dismissed without any order as to costs.

Shanta S

(SMT. SHANTA SHAstry)
MEMBER (A)

S.L. Jain

(S.L. JAIN)
MEMBER (J)

Gajan

Order/Judgement dt 21/2/2002
to Appellant/Respondent(s)
on 24/5/02

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