

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.506/1998.

Mumbai, this the 13th day of March, 2003.

Hon'ble Shri Govindan S.Tampi, Member (A),
Hon'ble Shri K.V.Sachidanandan, Member (J).

Rachhpal Singh,
C/o. G.S.Walia,
Advocate, High Court
Industrial Traders Bldg.,
Opp. Maha. State Co-Op. Bank,
Nagindas Master Road, Fort,
Mumbai - 400 023.
(By Advocate Mr.R.G.Walia)

...Applicant.

1. Administrator,
Union Territory of Daman &
Diu and Dadra
Nagar Haveli,
Secretariat Building,
Moti Daman - 396 220.
2. V.R.Kothra
Group Instructor
Under The Principal,
Industrial Training Institute,
Daman, Union Territory of
Daman & Diu and Dadra
Nagar Haveli.
3. G.N.Patel,
Craft Instructor (Electrician)
Under The Principal,
Industrial Training Institute,
Daman,
Union Territory of
Daman & Diu and Dadra
Nagar Haveli.

...Respondents.

(By Advocate Mr.V.S.Masurkar for
R-1, Mr.K.R.Yelwe for R-2 and
none for R-3.)

“ O R D E R ”

By K.V.Sachidanandan, Member (J).

The applicant joined as Craft Instructor (Turner) Daman in the year 1980 after serving for two years as a Craft Instructor in Goa. The regular appointment of the applicant as a Craft Instructor (Turner) is w.e.f. 21.9.1978 at Goa. Whereas,

...2.

Respondent No.2 initially joined the service as Craft Instructor on 17.10.1978 and Respondent No.3 joined the service as Craft Instructor on 7.1.1978 in Daman. The tentative seniority list issued on 5.1.1993 of the Crafts Instructors and allied Trade Instructors of Industrial Training Institute Diu, Daman as on 2.11.1992. The names of Respondent Nos. 2 and 3 are shown above the applicant. The dates of joining the regular services are also mentioned. Exhibit 'B' is the copy of the said tentative seniority list. The applicant made a representation on 19.1.1993 against the said tentative seniority list since he was aggrieved that he was shown junior to Respondents No.2 and 3, though he had joined service earlier. It is further averred that, the Respondent Nos.2 and 3 do not fulfil the eligibility conditions as per Recruitment Rules. When the qualification for appointment to the post of a particular cadre are prescribed, they must be satisfied before a person can be considered for appointment. Seniority would have relevance only among persons eligible. It cannot be a substitute for eligibility much less can it override it in the matter of appointment to the next higher cadre. The applicant submits that he had earlier filed a Petition claiming promotion to the post of Group Instructor which is next higher post (viz. O.A. No.218/1991), which was allowed. A case was posted against applicant and he was put under suspension, but subsequently reinstated and the suspension was revoked. He made a representation on 2.6.1997 claiming the seniority over Respondent Nos. 2 and 3. Applicant states that he was placed in the higher scale of Rs.440-750 w.e.f. 21.09.1978. Thereafter,

the applicant represented on 13.8.1997 claiming to be declared as senior to Respondent Nos.2 and 3. But, vide letter dt. 8.12.1997 his representation was finally rejected by the 1st Respondent without dealing with the points raised by the applicant. Aggrieved by the said action on the part of the Respondents, he has filed this O.A. claiming the following reliefs:

- a) This Hon'ble Tribunal will be pleased to call for the records and proceedings which led to the passing of the impugned order dt. 8.12.1997 and after going through its validity, constitutionality, propriety, quash and set aside the same.
- b) This Hon'ble Tribunal will be pleased to quash and set aside the impugned seniority lists dt.23.6.1993, in so far as the Applicant and Respondent Nos.2 and 3 are concerned.
- c) This Hon'ble Tribunal be pleased to hold and declare that the Applicant is senior to Respondent No.2 and 3 as Craft Instructor.
- d) Any other or further order as to this Hon'ble Tribunal may deem necessary in the circumstances of the case may be passed.
- e) Cost of this Original Application be provided for.

2. The Respondents have filed a detailed reply contended that this Tribunal was constituted w.e.f. 1.11.1985 and the claim of the applicant pertains to the year 1978 and therefore, the Respondents contest the point of jurisdiction of this Tribunal, since it is prior to the constitution of the Tribunal. Besides, the seniority is being claimed from the date of appointment as Senior Craft Instructor which arose in the year 1978 and therefore, the present application filed on 22.1.1998 suffers from delay and laches and hence, even on this ground the OA deserves to be dismissed. The claim of the applicant for

seniority over and above Respondent Nos.2 and 3 is not maintainable for the simple reason that the applicant was appointed in the lower post of Junior Craft Instructor w.e.f. 21.9.1978 whereas the Respondent Nos. 2 and 3 were appointed in the higher post with higher grade i.e. Senior Craft Instructor w.e.f. 17.10.1978 and 7.11.1978 respectively. The applicant joined as Craft Instructor (Turner) in the scale of Rs.440-750 at ITI Daman w.e.f. October, 1980 on transfer from Goa. Applicant had joined his initial duties as Junior Craft Instructor in the Trade of Turner 21.9.1978 at ITI in Goa as per the order dt. 19.9.1978. The said document is not annexed by the applicant, hence Respondents have annexed the same as Exhibit R-1. The Respondents have also annexed Exhibit R-2 and R-3 the appointment orders of Respondent Nos. 2 and 3 as Senior Craft Instructors on 17.10.1978 respectively. The copy of the final seniority is Exhibit R-5 dt. 23.6.1993. The names of Respondent Nos.2 and 3 are shown as above that of the applicant taking into consideration the Circular dt. 3.11.1981 issued by the Commissioner, Labour and Employment (Exhibit R-6). In view of the above true position the applicant was placed junior to Respondent Nos. 2 and 3 even at that time. Since the applicant was appointed in the lower post vis-a-vis staff appointed to the senior posts, applicants claim that he is senior due to his joining date is absolutely incorrect. The Respondent Nos.2 and 3 were appointed as Senior Craft Instructors at the time of their initial appointment and were possessing the Educational qualifications commensurate with the Rules. The cause of action admittedly arose in the year 1978 itself. As per the Recruitment

Rules the qualification required is SSC passed with subject of Maths and Science and National Trade Certificate in the concerned Trade. Copy of the Recruitment Rules is annexed and marked as Exhibit R-9. The applicant was placed under suspension and the orders of Tribunal was fully complied and that has nothing to do with the seniority of the applicant. The applicant was admittedly appointed to the lower grade and pay scale and subsequently due to upgradation of pay scale his name ranked below all those appointed on higher grade before upgradation of pay scales irrespective of their date of joining service. Considering these aspects, the respondents submitted that the OA is to be dismissed.

3. We have heard Mr.R.G.Walia for the applicant, Mr.V.S.Masurkar for R-1, Mr.K.R.Yelwe for R-2 and none for Respondent No.3.

4. The Learned Counsel for the applicant submitted that having ^{been} selected on the same day in the same grade it is not justified that the applicant is pushed down and put on the lower seniority list and deny the promotional avanues than that of Respondent Nos.2 and 3. He also has submitted that though the seniority list which is being challenged pertains to 1978 since it is a recurring cause of action, the question of limitation does not arise. The Learned Counsel for the Respondents, on the other hand submitted that the settled law on the subject on the question of jurisdiction is very clear that this Court may not have jurisdiction prior to its constitution and therefore, the OA has to be dismissed.

5. We have given due consideration to the arguments and

pleadings taken by the Learned Counsel. The grievance of the applicant is even though the applicant has joined along with Respondent Nos. 2 and 3 he was not given due seniority like that of Respondent Nos. 2 and 3 and therefore, the action of the Respondents is faulted.

5. Before dealing with the merit of the case, we will consider the jurisdiction aspect of this Tribunal. Admittedly, this Tribunal has come into existence on 1.11.1985 and it has been decided by judicial pronouncements that this Tribunal will not have jurisdiction to any matters prior to its constitution i.e. 1.11.1985. Our attention is taken to the decision in the case of V.K.Mehra v. The Secretary, Ministry of Information and Broadcasting (ATR 1986 (1) CAT (Principal Bench) 203), wherein it has been held that the Administrative Tribunals Act, 1985 does not vest any power or authority in CAT to take cognizance of a grievance arising out of an order passed prior to 1.11.1982. Therefore, that the legal position is clear that this Tribunal may not have jurisdiction over the matters pertaining prior to 1.11.1982. Admittedly, in the present case the cause of action for the applicant arose in the year 1978, when he claims his seniority on par with Respondent Nos. 2 and 3. Therefore, we are of the view, that this Court may not have jurisdiction since the cause of action arose prior to 1985. On the sole ground this OA can be dismissed.

6. However, it is in fairness that we also go into the merit of the case. The Respondents have filed Annexure R-1, R-2 and R-3 orders. R-1 dt. 19.9.1978 issued by the Commissioner, Labour and Employment pertaining to the applicant states that

the applicant was temporarily appointed as Junior Craft Instructor Turner w.e.f. the date he joins the post on an initial pay of Rs.380/- in the pay scale of Rs.380-12-500-EB-15-560 plus other allowances as admissible under the rules and posted at Industrial Training Institute Farmagudi. So it is very clear that the applicant was appointed as Junior Craft Instructor Turner by this order. Whereas, the order pertaining to R-2 and R-3 issued by the same authority Annexure R-2 and R-3 clearly shows that they are appointed temporarily as Senior Craft Instructors in the I.T.I. Daman on an initial pay of Rs.425/- p.m. in the pay scale of Rs.425-15-560-EB-20-640 plus other allowances as admissible under the Rules. The date of the said orders are 6.11.1978 and 14.12.1978. It is pertinent to note that this was issued by the same authority, wherein the Respondents appointment was as Senior Craft Instructors and the pay scale is also higher than that of the applicant. Therefore, it is very clear that the applicant and Respondent Nos.2 and 3 are not similarly placed. Respondent Nos. 2 and 3 are on a higher pay scale and on a higher grade even at the time of their initial appointment. The entire argument advanced by the applicant for grant of the benefit on par with that of the Respondent Nos.2 and 3 cannot be sustained on the factual aspect. Therefore, the OA does not merit. Apart from that, the seniority list annexed (Annexure R-7) which is issued in 1981 shows that the applicant is placed at the bottom and the Respondent Nos.2 and 3 are on top of the seniority list, which is also an indication that the applicant is not senior to that of Respondent Nos.2 and 3. On this factual reasons, the OA does not

merit and therefore, has to be dismissed.

7. The applicant has taken our attention to a decision reported in 1989 SCC (L&S) 229 in S.K.Kaul & Ors. Vs. Secretary to Government of India to canvass the position that the nature of duties performed by the applicant and the Respondent is one and the same and therefore is entitled for the upgradation. From the factual aspect mentioned above, it is clear that the nature of duties performed by these employees are not one and the same, they are on a different cadre and different scale of pay and different grades and therefore this decision, squarely does not apply to the case of the applicant. The Respondents have drawn our attention to a decision reported in Uday Pratap Singh and Ors. Vs. The State of Bihar & Ors. (1995(1) S.C. Services Law Judgments 27) and canvassed the position that no Executive Orders can give retrospective appointment so as to destroy the seniority of employees who had entered the cadre much prior to their entry. Besides, another decision was cited in the case of Himachal Road Transport Corporation Conductors' Union Vs. Himachal Road Transport Corporation & Ors. (2001(4) SLR SC 27), in which the Hon'ble Supreme Court has laid down the dictum that for determining the seniority on two different cadres and where the condition of appointment and pay scales were different one cannot claim benefit for determination of their seniority.

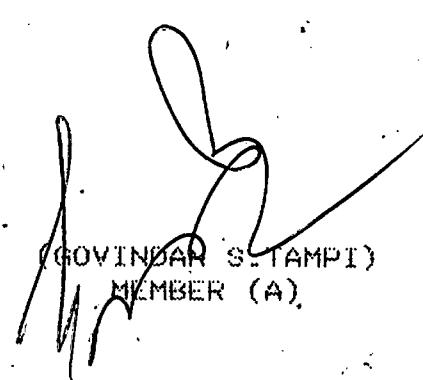
8. We are in respectful agreement with the decisions cited by the Respondents. The decision cited by the applicant will not be applicable to the facts of the case while those cited by the Respondents counsel are squarely applicable to the facts of the

present case. Thus, on the legal aspect also the applicant has no case.

9. In the conspectus of the facts, we are of the view that the applicant has failed in substantiating his claim and the OA does not merit and it is only to be dismissed. We do so accordingly and dismiss the OA. In the circumstances, we direct the parties to bear their own costs.



(K.V. SACHIDANANDAN)
MEMBER (J)



(GOVINDAN S. TAMPPI)
MEMBER (A)

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