

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.571/98

Date of Decision: 28.06.2002

Shri Prakash Narayan & anr.

Applicant(s)

Shri S.P. Saxena.

Advocate for applicants

Versus

Union of India & others.

Respondents

Shri R.K. Shetty.

Advocate for Respondents

CORAM: HON^{BLE} SMT. SHANTA SHASTRY. .. MEMBER (A)
HON^{BLE} SHRI SHANKER RAJU. MEMBER (J)

- (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 F
(SMT. SHANTA SHASTRY)
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 571/1998

THIS, THE 28 TH DAY OF JUNE, 2002

CORAM: HON'BLE SMT. SHANTA SHASTRY. MEMBER (A)
HON'BLE SHRI SHANKER RAJU. MEMBER (J)

1. Prakash Narayan I.O.F.S.,
Joint General Manager,
Ordnance Factory,
Dehu Road - 412 113.

2. Rajinder Kumar, I.O.F.S.,
Joint General Manager,
High Explosives Factory,
Khadki, Pune - 411 003.

... Applicants

By Advocate Shri S.P.Saxena

v/s.

1. The Union of India,
Through The Secretary,
Ministry of Defence,
DHQ PO, New Delhi-110 011

2. The Chairman,
Ordnance Factory Board,
10-A, Shaheed Khulram Bose Road,
Calcutta- 700 001.

3. S.N.Patil, I.O.P.S.,
Joint General Manager,
Ordnance Factory,
Bhandara - 441 906

4. Smt.Aziz Ali Rana Aminah, I.O.F.S.,
Chief Vigilance Officer,
M.I.D.C., Chanakya Bhavan,
Africa Avenue, Chanakyapuri,
New Delhi-110 021.

5. A.K.Haikerwal, I.O.F.S.,
Vigilance Officer,
British India Company,
Kanpur.

6. Sashi Dhar Dimri, I.O.F.S.,
Joint General Manager,
Ordnance Factory,
Kanpur - 208 009.

7. Dr.S.R.Chakraborty, I.O.F.S.,
Joint General Manager,
Ordnance Factory, Khamaria,
Jabalpur - 482 005.

...2.

8. S.C.Maji, I.O.F.S.,
Director,
Ordnance Factory Board,
6, Esplanade East,
Calcutta - 700 001.

9. B.B.Pharas, I.O.F.S.,
Joint General Manager,
Ordnance Factory, Khamaria,
Jabalpur - 482 005.

... Respondents

By Advocate Shri R.K.Shetty

(ORDER)

Per Smt.Shanta Shastri, Member(A)

The applicants in this case are aggrieved by the action of the respondents in lowering of their seniority position in the seniority list of the Indian Ordnance Factory Service Officers in the grade of Deputy General Manager/ Junior Administrative Grade (NF) without any show cause notice to them. The applicants apprehend that they would be superseded by Respondents 3 to 9 who according to them are junior to them and whose seniority has been revised upwards. The applicants are therefore, seeking a direction to the respondents to assign seniority to the applicants vis-a-vis Respondents 3 to 9 correctly by restoring their interse seniority as had existed earlier and on the basis of the select panel for the post of DGM (NF) Joint General manager.

2. The applicants No.1 & 2 are Group-A Civilian Officers employed as Joint General Manager of Ordnance Factory, Dehu Road and High Explosives Factory, Khadki respectively. They are in the pay scale of Rs.4500-5700 in the Junior Administrative Grade (NF). The applicants submit that the post of DGM (NF)/ JAG (NF) has been

...3.

renamed as Joint General Manager (JGM) with effect from January, 1998 by respondent No.2 and the post carries the same scale of pay of Rs.4500-5700 (pre-revised). The applicants submit that promotion from the post of Works Manager to the post of DGM is done on the basis of selection method on the criteria of merit cum seniority. Further promotion or placement to the DGM (NF)/ JAG (SG) the post renamed as JGM is also effected on the basis of seniority through an internal screening committee and not a regular DPC. Thereafter, further promotions are done through DPC on merit cum seniority basis. Direct recruits or promotees appointed to the post of Assistant Works Manager are assigned to particular trades like Engineer, Electrical, Civil, Chemists, Metallurgists, Non-Technical etc. The promotion of officers of the each of the above trade used to be in their own trade upto the rank of DGM. Separate seniority list were being maintained by the respondents for each of the above trades. This position continued till 1990. Thereafter, the respondents started preparing a combined seniority list of all officers of different trades grade-wise. Both the applicants were promoted to the post of DGM/JAG with effect from 31.7.1986. There was no dispute about interse seniority between the applicants and the respondents 3 to 9 till 1990. A combined seniority list of IOFS officers of all trade showing the position as on 01.7.1990 was published. In the said seniority list the applicants 1 and 2 were

listed at Sl. No.240 and 243 respectively, whereas Respondents 3 to 9 were listed between 250 and 262. Thus, the applicants were admittedly senior to the Respondents 3 to 9. The applicants were further promoted to the post of DGM (NF)/JAG (SG) with effect from 01.10.1991 vide letter dated 04.10.1991. They were listed at Sl. No.86 and 89 whereas Respondents 3 to 9 were listed between Sl. No. 96 and 108 of the promotion order/ select list. Thereafter, the respondents issued a seniority list of all the IOFS officers as on 01.01.1992 and suddenly the applicants seniority was disturbed and they were placed at Sl. No.133 and 136 while Respondents 3 to 9 were included at Sl. No.123 to 130. The applicants submitted a representation against the downgradation of their seniority on 26.3.1992. The same was rejected by letter dated 07.9.1992 communicated through letter dated 22.9.1992. The applicant No.2 submitted a further representation on 18.02.1993. While these representations were pending, Respondent No.2 issued a fresh combined seniority list of the IOFS officers showing the position as on 01.01.1993. In this list, the applicants were shown below Respondents 3 to 9 as in the list of 1992.

3. The applicants submit that they had met the senior officers, Members and Chairman of the Ordnance Factory Board and represented their case of improper

seniority orally. According to them they were assured that the issue would be re-examined. The applicants waited for action, but nothing materialised.

4. The applicants' contention that they were senior to Respondents 3 to 9 and they are entitled to continue in their higher position in the seniority list of officers in the JAG (NF) as they were promoted on 04.10.1991 and were shown/ placed higher than the respondents in that order. The applicants contend that the respondents without any valid or justified reason have lowered the seniority of the applicants vis-a-vis Respondents 3 to 9. No notice or show cause was given to the applicants before unsettling their settled position. This is against the principles of natural justice and is contrary to law.

5. The respondents have taken a preliminary objection that the application is beyond the period of limitation and suffers from delay and latches. The cause for grievance arose in 1992 whereas, the OA has been filed in 1998. Again in the interim period one of the private respondents has been promoted to the next higher grade of SAG with effect from 05.3.1998 and even the applicants have been promoted to the grade with effect from 20.01.1999. The representation dated 26.3.1992 of Applicant No.2 had been duly considered and rejected by the respondents vide their letters dated

17.9.1992 and 22.9.1992. The applicants could have approached this Tribunal then itself. The applicants further representation of 18.02.1993 against the seniority list of 01.0.1993 was also disposed of vide letter dated 11.8.1993. The applicant had sufficient time to agitate the matter before this Tribunal. An employee cannot make representation at any point of time and approach this Tribunal stating that the application is within the limitation as prescribed under Section 21 of the Administrative Tribunals Act. The respondents had cited the judgment of the Mumbai Bench of the Tribunal in the case of Satyanarayan Vs. CSIR 1995 (2) 485 ATC holding that section 20 and 21 of the Administrative Tribunals Act cannot be interpreted to mean that the employee aggrieved by an order passed by the competent authority can make a representation at any point of time and then approach the Tribunal. However, in OA 997/97 this Tribunal held that mere sending of successive representation cannot save limitation. The Supreme Court also has held in the case of R.C. Samantha & another Vs. Union of India & Others (ST 1993 (3) SC 418) that delay deprives a person of the remedy available in law. The respondents have further relied on the Supreme Court in L. Chander Kumar Vs. Union of India (1997 (3) SCC 261). It has been held therein that Section 21 specified strict limitation period and does not vest the Tribunal to condone the delay. The


respondents have therefore pleaded that, on the single ground of delay and latches the OA deserves to be dismissed.

6. Coming to the merits, the respondents submit that till 1989 the IOFS officers seniority list was maintained trade wise upto the JAG level following the provision of Rule 26 (1) of the IOF Recruitment Rules 1972 vide SRO 8 dated 03.01.1973. Therefore, there is no question of comparing the seniority position of officers of Engineering discipline with that of an officer in the Chemical, Metallurgical or Administrative discipline in any grade. Consequent upon constitution of Rule 26 (1) by amendment of recruitment rules vide SRO No.279 dated 12.9.1989 a combined seniority list of officers belonging to different trade in the grade of JAG was prepared and published for the first time showing seniority position as on 01.7.1990 provisionally. Further, one Shri B.S. Bhatia a JAG officer of the IOFS had challenged the seniority list of 01.7.1990 in OA No.625/1991. Therefore, on the advice of the DOP&T and in pursuance of the directions given by the Tribunal in the aforesaid OA and after taking into account the various discrepancies that had inadvertently crept in while integrating seniority of persons of various disciplines the seniority list was recast as on 01.01.1992 and accordingly the applicants have been rightly placed in the seniority list and

:8:

therefore, it does not call for unsettling of the seniority now. The respondents submit that the applicants were considered and were recommended by the DPC for selecting candidates to the Senior Time Scale on 22.9.1979. Whereas all the private respondents were recommended by an earlier DPC of 02.6.1979. Therefore the respondents 3 to 9 were rightly placed enbloc seniors to the applicants who were recommended by the later DPC. Therefore even on merits, according to the respondents, the OA deserves to be dismissed. However, the applicants have claimed that they were senior to respondents 3 to 9 as per the seniority list of 01.7.1990. That list was only a provisional list. The applicants have also argued that they were placed in the JAG (NF) vide order dated 04.01.1991 and in the aforesaid order, they were shown higher than Respondents 3 to 9. The respondents submit that the post of JAG (NF) in the IOFS is not a promotion post. Therefore the placement shown in that order has no bearing on the interse seniority. Though the applicants have produced a chart it is only from 1990 claiming that they are senior to respondents 3 to 9 since 1975. However, according to the respondents, it is a misleading chart. No assurance was given to the applicants when they met the higher authorities in person. According to the respondents, their action does not call for any interference by the Tribunal.

...9.



7. The applicants have filed MP No.796/98 for condonation of delay. According to the applicants, though the representation dated 26.3.1992 was replied by letter dated 22.9.1992 this reply did not specify the reasons for lowering the seniority of the applicants, it only stated that their seniority has been fixed correctly as per the rules and instructions on the subject. It was a vague reply which was not acceptable. The reply dated 26.8.1992 given to applicants further representation was again a vague reply. In the meantime, the applicants state that the wife of applicant No.2 suffered a tragic death on 23.11.1995. This had totally shocked the applicant No.2 and it took him some time to recover from the shock. He was not in fit condition to move the Tribunal for filing any application and it is only after coming out of the shock that he submitted his representation challenging the new seniority list issued by respondents in January, 1997 and the same has not been replied to. Considering this position the applicant has prayed to condone the delay, it being due to unavoidable circumstances.

8. The private respondent No.3 has also filed his reply in the matter. We have perused the same. // The learned counsel for the applicant has produced the judgment in Kuldipchand Vs. Union of India of the

Supreme Court 1996 LAB & IC 578 wherein in para 4 it was held that mere rejection of the claim of seniority does not disentitle the applicant therein to claim his seniority over the private respondents for consideration by the Union. In that case, the appellant had disputed the correctness of the seniority list made on 23.12.1982 in his representation dated 10.01.1983 and 01.8.1993. They were duly considered and rejected. The appellant allowed the same to become final and did not challenge the same till post of accountant became vacant. When it was rejected, he filed the writ petition in the High Court. There was a considerable delay in claiming his seniority over respondent. It was concluded that taking into consideration the fact that the preparation of seniority list was illegal and therefore the mere fact that he did not challenge the seniority list which was illegally prepared till he was aggrieved of non-consideration to the post of accountant, his legitimate right to be considered cannot be denied. Under these circumstances, the delay is of no consequences for considering claims of the respondents therein and the appeal was dismissed. The applicants are accordingly seeking condonation of delay.

8. We have heard the learned counsel for the applicants as well as the official respondents and private respondents and have given our careful consideration to the rival contentions. We find that the

seniority of the applicants was downgraded when the combined seniority list was prepared of the IOFS officers from all trade. The respondents have already stated that this was the first combined seniority list and both the applicants were shown senior to the private respondents as on 01.7.1990. It was only a provisional seniority list. The seniority list was finalised only in 1992, wherein the applicants had gone down in the seniority. Earlier the seniority was maintained trade wise and this has now been changed providing for a combined seniority list, in the process the applicants have gone down in the seniority. The respondents have also pointed out as to how the private respondents were cleared for the post of JAG earlier than the applicants and therefore, they were rightly shown above the applicants in the seniority list of DGM/JAG. The entire argument of the applicants is based on the facts that they were shown senior in the seniority list of 01.7.1990 to the private respondents and also they were shown high in the order dated 04.01.1991 while promoting them to the grade of DGM (NF)/ JAG (SG). The respondents have clearly pointed out that the seniority list of 01.7.1990 was only a provisional list which had to be finalised in consultation with the DOP&T and in pursuance of the judgment delivered in case of similarly situated persons in OA No.625/91. Further they have also explained that the promotion to the post of DGM (NF)/ JAG (SG) is not a promotion which would count for

seniority. We are satisfied on merits that the applicants have no case.

9. That apart, as rightly pointed out by the respondents the OA suffers from delay and latches and is hopelessly barred by time. The cause of action arose in 1992 and when the representation was rejected in 1992 and again in 1993 and thereafter they have approached the Tribunal in 1998 their action is highly belated. As has already been cited by the learned counsel for the respondents settled seniority position cannot be unsettled after a long time. This has been so held in case of R.V. Sivaiah Vs. K. Addanki Babu (1998 SCC (L&S) 1656). The applicants have filed M.P. for condonation of delay. We are however not satisfied with the explanation given for the delay in approaching the Tribunal. The cause of action arose in 1992-93 and the representations were rejected in 1992 and 1993. The wife of applicant No.2 died in 1995 and even after that the applicant has approached in 1998. It is very clear that the applicants had ample time to approach this Tribunal to agitate their issue. Even though the applicant No.2 was not in a position to approach the Tribunal the applicant No.1 could have approached within limitation. No reasons have been given for the delay by the applicant No.1. The M.P. for condonation of delay is rejected. On the ground of limitation, delay and latches, we hold that the OA deserves to be dismissed.

10. In view of the above, the OA is dismissed both on ground of limitation as well as on merit. We do not order any costs.

S. Raju
(SHANKER RAJU)
MEMBER(J)

Shanta S-
(SMT. SHANTA SHASTRY)
MEMBER(A)

10/10/01
B
37

Gajan