

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.1024/98

Date of Decision: 28.06.2002

Shri P.M. Joshi and.

Applicant(s)

Shri A.I. Bhatkar.

Advocate for applicants

Versus

Union of India & another.

Respondents

Shri V.S. Masurkar.

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 ✓

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(SMT. SHANTA SHASTRY)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 1024/1998

THIS, THE 28TH DAY OF JUNE, 2002

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

1. Mr. P.M. Joshi and
2. Mrs. A.P. Joshi both
presently working as
L.D.Cs in Naval Armament
Depot, Karanja. ... Applicants

By Advocate Shri A.I. Bhatkar.

Versus

1. The Union of India through
Secretary, Ministry of Defence
Sena Bhavan, South Block,
New Delhi.
2. The Chief of the Naval Staff,
Naval Head Quarters,
DHQ PO, New delhi.
3. The Flag Officer Commanding-in-Chief
Headquarters, Western Naval
Command, Shahid Bhagat Singh Road,
Mumbai-400 001.
4. The Director General of Armament
Supply, Naval Headquarters,
New Delhi.
5. The General manager,
Naval Armament Depot,
Gun Gate, Mumbai-400 023.
6. The General Manager,
Naval Armament Depot,
Karanja.
7. V.K. Nandakumar, LDC
8. Smt. Premlatha, LDC
9. P Sankara Pillai, LDC
10. R. Sitaram, LDC
11. D Shiva Prasad, LDC
12. Smt. G. Nalini, LDC
13. J A Vartak, LDC
14. Smt. Shaila N Mahamkar, LDC
15. K J Chandarana, LDC
16. K V Sawan LDC
17. S T Gamare, LDC
18. J A Gharat, LDC
19. K N Thali LDC
20. A V Vengurlekar, LDC. ... Respondents

By Advocate Shri V.S. Masurkar.

...2.

Respondents 6 to 9 C/o General Manager, Naval Armament Depot, Alwaye-683 563, State Kerala, Respondents 10 & 11 C/o The General Manager, Naval Armament Depot, Vishakapathnam-530 009, Andhra Pradesh, Respondents 12 to 20 C/o The General manager, Naval Armament Depot, Gun Gate, Mumbai-400 023.

O R D E R

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

The applicants in this case are aggrieved by the orders dated 05.11.1990 and 07.8.1991 issued by Respondent No.5. The application is also against the seniority list of LDC as on 01.6.1998 published 29.6.1998.

3. The applicants are working as LDC in the Naval Armament Depot at Karanja. The applicant No.1 was initially appointed as casual LDC from 20.1.1983 to 31.3.1983 and continued from time to time for a period of 3/6 months. Applicant No.2 was initially appointed as casual labour LDC from 01.3.1983 to 31.5.1983 and continued from time to time thereafter. They were converted as regular temporary employees i.e. regular temporary LDC with effect from their original/ initial dates of appointment i.e. 20.1.1983 and 01.3.1983 respectively vide Civilian Establishment Order No.8/84. The order appointing the applicants on regular basis was issued only in 1985 with effect from 25.11.1985 and therefore, the respondents published seniority list wherein the applicants were given seniority from their appointment on regular basis i.e. from 25.11.1985. The applicants represented against the incorrect seniority

given to them and reply was received on 05.11.1990 informing that the seniority was to be considered from the date of regular appointment. The applicants made further representation on 15.12.1990 pointing out that the benefit have been granted to similarly situated person. They have received reply on 07.8.1991 that the benefit of the judgment had been given to those individuals who have approached the Tribunal. According to the applicants, the injustice continued.

4. It is the contention of the applicants that they were sponsored by the Employment Exchange for appointment as casual LDC. They fulfilled all the eligibility criteria for the post of LDC. They have the required qualification and age. They were interviewed by the selection board. They also passed the medical examination and they were appointed as casual LDC as per rules and against the then existing regular vacancy. They are continuing to hold the same post from their initial date of appointment. The applicants have further submitted that while giving them regular temporary status vide Civilian Establishment Order No.8/84. The date of such conversion is shown as 20.01.1983 and 01.3.1983 in respect of applicants No.1 & 2 respectively. It means that they have been regularised from 20.01.1983 and 01.3.1983 whereas in the impugned seniority list the applicants have been shown as having been regularised with effect from 25.11.1985,

thus giving them a lower seniority position. This, according to the applicants is unfair. The applicants contend that it is now well settled law that the seniority has to be counted from the date of initial appointment in accordance with rules.

5. The respondents have filed their written reply and opposed the OA on the ground of limitation, delay and laches. The seniority list which have been impugned are of 1990 and 1991 and the applicants have filed the OA in 1998 i.e. beyond the period of limitation as has been prescribed under Section 21 of the Administrative Tribunals Act 1985. Further, the applicants have made a representation and it was replied on 05.11.1990. The applicants had ample time to approach the Tribunal much earlier. Therefore, the application is grossly barred by time and deserves to be dismissed on the ground of limitation, delay and laches.

6. The respondents also contend that there is application for condonation of delay.

7. The applicants submit that though they have not made separate application for condonation of delay, they have explained the delay in para 3 of the OA under the heading Limitation. They have stated that the applicants were hopeful that their grievance would be

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settled by the department as in case of similarly situated persons like those who have got the seniority from the date of initial appointment. According to them the department ought to have applied the same principles to the case of applicants, but the department has failed to do so. Therefore, the applicants waited till the seniority list was issued in June, 1998 when their genuine grievance was not settled by department. The applicants have further submitted that there is no question of unsettling the settled position because so far no further promotion has been ordered on the basis of the impugned seniority list. No prejudice will be caused to any one if the relief is granted to the applicants. Therefore, they have prayed to condone the delay in the interest of justice. The applicants have cited the judgment of the Full Bench of the Mumbai Tribunal in OA No.950/92 decided on 30.4.1998. The reference to the Full Bench was whether chargemen appointed on casual vacancy or on casual basis, but further continued to work for a number of years with or without break are entitled to be regularised and get seniority from the date of their initial appointment or from the date of order of regularisation when they came to be absorbed permanently in that cadre. The Full Bench concluded that the chargemen appointed on regular or on casual basis but continued to work for a number of years without break are entitled to get seniority from the date of their initial appointment and not from the

date of regularisation. The applicants are therefore claiming relief based on the ratio given in the aforesaid judgment. The applicants also ought to have been treated as regularised from the date of their initial appointment and their seniority should have been shown according to that.

8. The applicants further submit that the respondents have promoted the LDCs as UDCs from the select panel only upto Sl. No.22 and therefore, there will be no unsettling or affecting of the seniority of the persons already promoted upto Sl. No.22. The applicants have also pointed out that they have given explanation for delay and the same has not been controverted by the respondents and therefore, it cannot be held against the applicants. The applicants are continuing and no further promotion has been made beyond Sl. No.22 and they can be given seniority from the date of initial appointment. The applicants have further referred to the case of Inderpal Yadav wherein the Supreme Court held that applicant should not be made to come to courts if there is already a benefit extended to similarly placed persons. The applicants also cited the judgment in Direct Recruits Class II Engineering Officers Association Vs. State of Maharashtra 1990 SCC (L&S) 339 which has been relied upon by the Full Bench in OA No.950/94. The applicants are relying on judgment in 1991 (1) SCSLJ 86.

9. The respondents vehemently opposed the OA on the ground of limitation and cited various judgments as follows: (a) Bhoopsingh Vs. Union of India & Others JT 1992 93) SC 322. It has been held therein that the judgment and orders of the court in other case do not give cause of action. The cause of action has to be reckoned from the actual date. In this case, the termination of service was challenged after 22 years on the ground that similarly dismissed employees have been reinstated as a result of their earlier petition. The relief was revised on the ground of inordinate and unexplained delay.

10. State of Karnataka Vs. S.N. Kotrayya & Others 1996 SCC (L&S) 1488. The Supreme Court observed in this case that although it is not necessary to give explanation for the delay which occurred within the period mentioned in sub section 1 or 2 of Section 21 of the Administrative Tribunals Act. The explanation should be given for the delay which was occasioned after expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should satisfy itself whether the explanation offered was proper. In this the explanation offered for the delay was that the applicants therein had come to know of the relief granted by the Tribunal in August, 1989 and they filed the petition immediately thereafter. It was held that it is not proper explanation at all. The Supreme Court

therefore refused to condone the delay. The learned counsel for the respondents again submitted that the prayer not made for condonation cannot be granted. The respondents further relied on another judgment in Director of Settlement & others Vs. V. Ramprakash 2002 Volume I SCSLJ 91. The respondents reiterated the plea of limitation, delay and laches and have drawn support from the judgment in the matter of Ramesh Chand Sharma Vs. Uddamsingh Kamal.

11. We have heard the learned counsel on both sides. The issue is short namely whether seniority is to be counted from the date of initial appointment or from the date of regularisation. The Full Bench has held that it should be from the date of initial appointment. As far as the merit of the case is concerned, the applicants ought to have been treated as regularised from the date of initial appointment particularly when the applicants were sponsored by the Employment Exchange were selected against regular vacancy and continued in the same post all along and are continuing in the same post even as of today. This being the position, in view of the judgment in the case of Direct Recruits Class II Engineering Officers Association (supra) the applicants are entitled to count their seniority from the date of their initial appointment. However, though the cause of action arose, way back in 1990 the applicants approached this Tribunal

belatedly. We have perused the various judgments relied upon by the respondents. It is crystal clear that settled seniority cannot be unsettled after a long lapse of time as has been held by the Supreme Court in the case of K.R. Mudgal Vs. R.P. Singh 1986 (4) SCC 531. It is essential that one who feels aggrieved by the seniority assigned to him should approach the court as early as possible as otherwise in addition to the creation of sense of insecurity in the minds of the Government servant, there would also be administrative complication and difficulties.

12. The Supreme Court has also observed in P.K. Ramachandran Vs. State of Kerala & another JT 1998 (7) SC 21 that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribe and the courts have no power to extend the period of limitation on equitable grounds. We are therefore not inclined to condone the delay.

13. The applicants have also argued that the respondents had revised seniority of some of the LDC though they too approached belatedly. The respondents submit that the seniority had been revised in their cases based on the initial date of appointment in pursuance of the orders of the Tribunal. In our considered view ⁴~~therefore~~, the delay and latches in the

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present case are so overwhelming that we are unable to grant any relief in the matter as it would unsettle the settled position. Their case cannot be compared with those who obtained relief from the Tribunal. The applicants therein had approached the Tribunal within a reasonable time. Therefore, the application is dismissed on the ground of limitation, delay and latches. No costs.

S. Raju

(SHANKER RAJU)
MEMBER (J)

Shanta S

(SMT. SHANTA SHASTRY)
MEMBER (A)

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