

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 130/91
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DATE OF DECISION 13.9.95

Govind Sharan Srivastava Petitioner

Mr. K.L. Thawani Advocate for the Petitioner (s)

Versus

Union of India & Others Respondent

Mr. U.D. Sharma Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Gopal Krishna, Vice Chairman

The Hon'ble Mr. O.P. Sharma, Member (Administrative)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes.
2. To be referred to the Reporter or not ? Yes.
3. Whether their Lordships wish to see the fair copy of the Judgement ? No.
4. Whether it needs to be circulated to other Benches of the Tribunal ? Yes.

(O.P. SHARMA)
MEMBER (A)

C. Krishna
(GOPAL KRISHNA)
VICE CHAIRMAN

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.130/91

Date of order: 13-9-95.

Govind Sharan Srivastava : Applicant

Vs.

Union of India & Ors. : Respondents

Mr.K.L.Thawani : Counsel for applicant

Mr.U.D.Sharma : Counsel for respondents

CORAM:

Hon'ble Mr.Gopal Krishna, Vice Chairman

Hon'ble Mr.O.P.Sharma, Member(Adm.)

PER HON'BLE MR.O.P.SHARMA, MEMBER(ADM.).

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Govind Sharan Srivastava has sought a declaration that the order of seniority declaring Shri Bhanwarlal Meena as senior to the applicant in the cadre of Jr. Technical Assistant (DO) is illegal and the applicant is senior to Shri Bhanwarlal Meena in the cadre of Jr.Technical Assistant (DO) in the Western Region of Geological Survey of India, Jaipur.

2. The applicant's case is that he was appointed as Draftsman Gr.II on 24.8.1971, was confirmed as Draftsman Gr.I w.e.f. 1.3.1979 and was promoted as Jr.Technical Assistant (DO) w.e.f. 8.4.1985. One Shri Bhanwarlal Meena, an S.T candidate was appointed as Draftsman w.e.f. 17.9.1976. The applicant's name appears at Sl.No.3 of the seniority list of Draftsman issued by the department upto 31.12.1986 whereas the name of Shri Bhanwarlal Meena appears therein at Sl.No.21. Shri Bhanwarlal Meena, who is respondent No.4 in this application, was promoted as Jr.Technical Assistant (DO) w.e.f. 20.10.1984, on the basis of reservation for ST candidates. The applicant was not considered by the DPC for promotion to the post of Jr.Technical Assistant (DO) as there were not enough general category vacancies to enable

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consideration of the applicant's case. The applicant was promoted on the basis of the recommendations of the next DFC, w.e.f. 8.4.1985. The department issued a seniority list for Jr.Technical Assistant (DO) as on 31.12.1988 (Annx.A7) in which Shri Bhanwarlal Meena has been shown at Sl.No.4 whereas the applicant has been shown at Sl.No.5. The applicant made a representation to the authorities to revise his seniority as per rules but the respondent No.3, Deputy Director General (Western Region), Jaipur has rejected the representation vide order Annx.A1 dated 15.3.1991.

3. According to the applicant Shri Bhanwarlal Meena got earlier promotion by virtue of being ST candidate. It has been laid down in a number of judgments that where a junior belonging to a reserved category gets promotion on the basis of reservation jumping over his seniors, he cannot enjoy the benefit of higher seniority in the promotion post and that whenever persons left behind are promoted they regain their original seniority in the promotional post as they had in the lower post from which they had been promoted. In case the applicant is not considered senior to Shri Bhanwarlal Meena, he will be further left behind in the matter of promotion to the post of Sr.Technical Assistant (DO).

4. The respondents Nos.1 to 3 (official respondents) in their reply have taken a preliminary objection to the maintainability of the application. According to them, the seniority list had initially been prepared on provisional basis and had been circulated vide letter dated 30.3.1989 and comments regarding its accuracy had been invited within 15 days from the date of issue of the said letter. The applicant did not make any representation regarding the seniority assigned to him in the said list. It was accepted as final vide letter dated 7.7.'89 (Annx.F2). Therefore, the applicant

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is now estopped from challenging it after a lapse of more than 1½ years, by filing the present O.A. in March 1991. Therefore, the application is barred by limitation. On merits, they have stated that since Shri Ehanwarlal Sharma was promoted as Jr.Technical Assistant (DO) earlier than the applicant, the former was senior to the applicant. Both Shri Meena and the applicant were considered by the DPC which met on 15.10.'84 but Shri Meena was selected against vacancy reserved for ST candidate, whereas the applicant was promoted later, on 8.4.1985, on availability of a general vacancy. The applicant would be considered for promotion to the post of Sr.Technical Assistant (DO) when he comes within the zone of consideration.

5. The respondent No.4 in his reply has stated that he is senior to the applicant as Jr.Technical Assistant (DO) because he was promoted to the said post earlier than the applicant. Therefore, his name was correctly placed at Sl.No.4 in the seniority list of Jr.Technical Assistant (DO). The applicant was promoted to the said post about 6 months later and therefore, his name was placed at Sl.No.5 in the said list. One post of Jr.Technical Assistant (DO) is reserved for ST candidate and he has rightly been granted promotion to the said post on the basis of reservation.

6. The applicant has also filed a rejoinder to the reply filed by the respondents Nos.1 to 3, in which, he has inter alia denied that the application is barred by limitation. He has stated that he came to know about the wrong seniority assigned to him only during January 1991. His representation against assignment of wrong seniority (Annx.A3) was decided by the respondents by Annx.A1 dated 15.3.1991. Hence, the application filed by him on 25.3.1991 cannot be rejected as barred by limitation.

7. During the arguments the learned counsel for the

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applicant relied upon the order of the Allahabad Bench of the Tribunal in Vir Pal Singh Chouhan & Ors. Vs. Union of India & Ors. (1987) 4 ATC 685 wherein the Tribunal held that where a junior belonging to a reserved category gets promotion by jumping over his seniors on account of reservation, such junior cannot claim protection of seniority against his erstwhile senior who was waiting for his chance for promotion but could not be promoted because of reservation. In this order the Tribunal held that the persons senior in the lower cadre from which promotions took place should get back his seniority on promotion to the higher grade. He also relied upon certain other judgments referred to in the said order of the Tribunal, which are as follows:

- a) A Janardhana Vs. Union of India & Ors, AIR 1983 SC 769
- b) State of Punjab Vs. Hira Lal & Ors, AIR 1971 SC 1777
- c) General Manager, Southern Ry. & Anr. Vs. Rangachari, AIR 1962 SC 36

On the point of limitation, the learned counsel for the applicant stated that since a final reply on merits to the representation of the applicant had been received in March 1991, and since the application had been filed within the same month, shortly thereafter, the applicant's application could not be treated as barred by limitation.

8. The learned counsel for the respondents maintained that since the applicant had not objected to the provisional seniority list circulated for eliciting objections in March 1989, and since the said list had attained finality vide letter dated 7.7.89 (Annx.F2), the applicant was not entitled to challenge it now. Regarding merits of the case, the learned counsel for the respondents Nos.1 to 3 stated that the accepted principle now was that a person appointed to the promotion post earlier is to be reckoned as senior to the one

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who is appointed to such post later. He relied upon the judgment of the Hon'ble Supreme Court in Karam Chand Vs. Haryana State Electricity Board & Ors, 1988 (5) SLP 660, wherein the question of grant of seniority to a person promoted on the basis of reservation was considered. The Hon'ble Supreme Court held that where the promotion to the higher post was on a regular basis, the seniority of the promoted official had to be reckoned from the date of his appointment to the said post according to the provisions of the relevant rules. He also relied upon the Full Bench judgment of Punjab & Haryana High Court in Jaswant Singh & Ors. Vs. the Secretary to Govt. of Punjab, Education Deptt. & Ors. 1989 (4) SLP 257 wherein the High Court had held that whatever the source from which the recruitment is made, the seniority is normally to be determined with reference to the appointment or promotion to that particular cadre, as once persons are promoted they form one class and the length of service in that class would alone be the basis of determining the seniority. He added that the representation made by the applicant against the seniority was a belated one and therefore, this would not extend limitation in favour of the applicant. For this view, he relied upon the order of the Ernakulam Bench of the Tribunal in N.K.Balachandran Pillai Vs. Central Administrative Tribunal (1995) 29 ATC 450.

9. We have heard the learned counsel for the parties and have gone through the material on record as also the judgments cited before us.

10. We may first take up the preliminary objection raised on behalf of the respondents Nos.1 to 3. The fact remains that Annx.A1 dated 15.3.1991 deals with the applicant's representation against alleged assignment of wrong seniority on merits. He has not been informed by this communication that

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since the seniority list had already become final as stated in Annx.P2 dated 7.7.1989, he was not entitled to agitate the question of seniority now. In this particular case, it is on 15.3.1991 that the applicant came to know about the reasons for assignment of seniority lower than that granted to respondent No.4. Therefore, for this reason as also in the interest of justice, we hold that the application does not deserve to be rejected on the technical ground of limitation.

11. As regards the merit of the case, the learned counsel for the applicant heavily relied upon the order of the Tribunal in Vir Pal Singh Chouhan's case. We have carefully gone through the said order. No doubt the substance of the ratio of this order is that a junior belonging to a reserve category when promoted to a higher post on the basis of reservation will not continue to be reckoned senior on the promoted post after his erstwhile senior in the lower grade (from which both are promoted to the higher post) is also promoted to the higher post and the erstwhile senior will regain his seniority. For arriving at this conclusion, the Tribunal has analysed and referred to various judgments of the Hon'ble Supreme Court and various High Courts. The above conclusion arrived at by the Tribunal is mainly based on principles of equity. There is however, no judgment of the Hon'ble Supreme Court relied upon by the Tribunal which directly deals with this point and whose ratio is the same as that laid down by the Tribunal in its order. The Tribunal has also referred to the judgment of the Allahabad High Court in the case of J.C.Malik Vs. Union of India (1978) 1 SLR 844 in which the point decided is whether reservation is against vacancies or against posts. There is also reference to a judgment of the Madhya Pradesh High Court in this order of the Tribunal in which of course the ratio is practically the same

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as laid down by the Tribunal in its order.

12. As regards the judgment in A. Janardhana's case, the question involved was of relative seniority between the direct recruits and the promotees. We have carefully gone through the judgment and we do not find in it anything that supports the contention of the applicant. The learned counsel for the applicant had relied particularly upon para 18 of this judgment. We do not find anything in this paragraph which is of any assistance in resolving the controversy in this case. The judgment in Hira Lal's case also does not help the applicant at all. The ratio of the judgment as given in the head-note is that the mere fact that reservation made under Article 16(4) may give extensive benefits to the person concerned but this does not by itself make the reservation invalid. The learned counsel for the applicant referred to paras 12, 23, 26 and 28 of this judgment but we find that there are only 13 paragraphs in this judgment. Regarding the judgment in General Manager, Southern Ply.'s case, this was a judgment of 5 Judges of the Hon'ble Supreme Court. Hon'ble Justice K.N. Wanchoo was one of the Judges who had delivered a dissenting judgment in this case. The majority in this judgment held that reservations contemplated by Article 16(4) can be made not merely to initial recruitment but also to the posts to which the promotions are to be made. Hon'ble Justice Wanchoo had held otherwise and this view had concurred in by Hon'ble Justice N. Rajagopalan Ayyangar, one of the other five Judges in this case. However, in any case the issue involved in the present case was not directly decided even by the majority of the Judges in that judgment. So ultimately what remains before us as being in favour of the applicant is the order of the Allahabad Bench of the Tribunal in Vir Pal Singh Chouhan's case and the judgment of Madhya Pradesh High Court, referred to in the said order.

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13. In Param Chand's case ⁽¹⁷⁾ the question involved was regarding determination of seniority of members of the service in Haryana State Electricity Board. According to Rule 9 of the Punjab PWD (Electricity Branch) Provisional Service Class III (Subordinate Posts) Rules, 1952, which were applicable to the service, seniority of persons serving on probation or in an officiating capacity was to be determined in the order of dates of their appointments. An exception to the rule was that if a person is promoted temporarily to a post earlier than his senior, for reasons other than the inefficiency of the senior, they will take rank interse according to their relative seniority in the class from which they were promoted. The appellant in that case had been promoted to the higher post on the basis of reservation available to members of SCs. He had not been granted seniority in accordance with the date of his appointment to the promotional post on the ground that his appointment to the promotional post was temporary and therefore it fell within the exception referred to above. The Hon'ble Supreme Court held that appointment to the promotional post on the basis of reservation was a regular appointment and it was not purely temporary appointment to fall within the category of exception. Therefore, the seniority of the appellant in that case was to be reckoned from the date of his appointment to the said post. Although the judgment is based on the interpretation of the relevant rules, it is significant to note that the question formulated by the Hon'ble Supreme Court for consideration was whether an employee promoted to a post reserved for SC/ST is entitled to have seniority determined from the date of his appointment to the post or whether his seniority interse would be reckoned as it was in the class or grade from which he was promoted to a post in the higher rank. This question appears to have been answered by the Hon'ble Supreme Court by stating that an employee is

entitled to have a seniority determined from the date of his appointment to the promotion post even when he is promoted on the basis of reservation.

14. The Full Bench judgment of the Punjab & Haryana High Court in Jaswant Singh's case also affirms the same principle. This is what the Hon'ble Punjab & Haryana High Court have stated in para 17 of their above judgment:

"17. We are also unable to agree with the learned counsel on the second point raised by him that the inter se seniority between the Scheduled Caste candidate who was promoted out of turn on the basis of the roster point to be filled by promotion is (Sic) a reserved post and the non-Scheduled Caste candidate who was promoted to that cadre subsequently shall be the inter se seniority between them in the cadre in which they were originally recruited or in the previous cadre before promotion. In other words, the seniority of the Scheduled Caste in the cadre to which he was promoted would be ambivalent and fluctuating so that his seniority will be going up and down during his entire tenure depending upon the seniority of the general category candidates in the previous cadre who were subsequently promoted. Whatever source from which the recruitment is made, the seniority is normally to be determined with reference to the appointment or promotion to that particular cadre as once they are recruited or promoted, they form once class and the length of service in that class alone would be the basis for determining the seniority....."

15. We may also make reference to a Full Bench Judgment of the Tribunal in V. Laxminarayanan Vs. Union of India & Ors. (1993) 24 ATC (FB) 420 wherein the Full Bench held in para 24 that seniority is to be fixed according to the date of promotion even where the promotion was due to reservation and that an earlier appointee whether on account of reservation or


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otherwise is senior to the one who is appointed later.

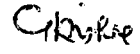
16. We are of the view that in view of the judgment of the Hon'ble Supreme Court in Karam Chand's case and the Full Bench judgment of the Tribunal in V. Laxminarayanan's case, the ratio of the order of the Allahabad Bench of the Tribunal in Vir Pal Singh Chouhan's case is no longer good law and therefore, it need not be followed.

17. In the instant case, we find that respondent No.4 was appointed to the promotional post of Jr.Technical Assistant (DO) about 6 months earlier than the applicant. Both the applicant and respondent No.4 were considered by the same DPC held on 16.10.1984. The said DPC had recommended 3 candidates for general category and one candidate each for SC and ST category. Respondent No.4 was selected against the vacancy reserved for ST candidate and was promoted on 20.10.1984. The applicant was thereafter promoted on 3.4.1985 on availability of a vacancy for general candidate. In view of the fact that the respondent No.4 had been appointed to the promotional post on an earlier date, he was entitled to be treated as senior to the applicant in the post of Jr.Technical Assistant (DO). Therefore, the applicant is not entitled to any relief in the matter of seniority vis a vis respondent No.4.

18. In the result, the O.A. is dismissed with no order as to costs.


(O.P. Sharma)

Member(A)


(Gopal Krishna)

Vice Chairman.