

Ub (47)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD.

OA.166/94.

Date of order: 2-2-96.

Between:-

G. Sundaramma ... Applicant.
And

The General Manager,
Ordinance Factory Project,
Ministry of Defence, Government of India,
Eddumailaram, District Medak.

... Respondent.

Counsel for the Applicant: Mr. P. Naveen Rao, Advocate.

Counsel for the Respondents: Mr. V. Rajeswar Rao

CORAM:

HON'BLE MR. JUSTICE V. NEELADRI RAO, VICE CHAIRMAN
HON'BLE SHRI R. RANGARAJAN, MEMBER ADMINISTRATIVE.

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DA 166/94.

Dt. of Order: 2-2-96.

(Order passed by Hon'ble Justice Shri V.N.Rao,
Vice-Chairman).

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The applicant herein was one of the Direct Recruit~~ee~~es to the post of Lower Division Clerk (LDC) in the respon-
-dents organisation. By the time the order of appointment was given to the applicant, she was pregnant. Government of India, Ministry of Health O.M. No.F.5-21/68-M.A. dt.12-12-68 and O.M.No.5-15/71-M.A., dt.5-10-1971 lays down that a woman candidate, who was found to be pregnant of 12 weeks' standing or over, should be declared temporarily unfit until the confinement is over. Hence the applicant ^{was} is permitted to join duty on 22-2-88 after the confinement was over. As the applicant was again pregnant due to during the period of probation, and the post natal problems, her probation was extended for a period of two years and her probation was declared as satisfactory by order dt. 21-2-92. The applicant was confirmed in the post of LDC as o on 22-2-92. Proceedings dt.21-4-93 (Annexure-5) was issued, whereby the seniority list was prepared by taking the date of confirmation as criteria. Being aggrieved, the appli-
cant filed this O.A. praying for setting aside the confir-
mation of the applicant with effect from 22-2-92 and for
a consequential assignment of seniority at Sl.No.20
(which would be 29 if earlier 9 persons are added) by
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holding that linking of date of confirmation with the seniority ^{is} ~~as~~ illegal, arbitrary and unconstitutional and for a consequential direction to the respondents to confirm the applicant from the date of joining in the service and to prepare a seniority list of LOCs by taking the ranking assigned in the select list of candidates prepared for appointment ~~as on the relevant date~~ and to review ~~of~~ promotions made on the basis of the said seniority list.

2. O.M.No.9/11/55-RPS dt.22-12-1959 states that seniority follows confirmation, and consequential promotion of officers in each grade shall rank senior to those who are officiating in that grade. The Apex Court held in 1990 (II) JT 264

(The Direct Recruit Class II Engineering Officer's Association & Others Vs. State of Maharashtra & Others) that

wherein an incumbent is appointed to ^a post according to ~~the date of his confirmation~~ ^{Recruitment} Rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. Basing on the same, the Department of Personnel & Training issued O.M.No.20011/5/90 Estt (D) dt.4-11-92 (Annexure-3) to the additional material papers filed by the applicant, modifying the General Principle No.3 and proviso to General Principle No.4 and proviso to General Principle No. 5(1) contained in OM dt.22-12-1959 referred to herein before and para-2.3 of the O.M. dt.3.7.86, of Department of Personnel & Training to state that seniority of a person ~~regarding~~ ^{rel} appointment to a post according to Rules, would be determined by the order of merit indicated

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(49) (50)

- 4 -

at the time of initial appointment and not according to the date of his confirmation. It further states that the said modification comes into effect from 4-11-92 i.e. the date of the O.M..

3. The impugned seniority list in this case is dt. 21-4-93. It is contended for the applicant that as the impugned seniority list was published subsequent to the O.M. dt.4-11-92, the said seniority list had to be held as illegal as the date of confirmation was taken as the basis while the rank at the time of selection/the date of appointment had to be taken as basis for fixation of seniority as per the O.M. dt.4-11-92. It is also urged for the applicant that this Hyderabad Bench of the C.A.T. held as per judgement dt.28-7-93 in OA 381/92 that the O.M. dt.4-11-92 is applicable even in regard to seniority list published earlier to that date, and the same was reiterated by us as per judgement dt.17-2-94 in OA 1134/91 and accordingly the impugned seniority list had to be quashed.

4. The learned standing counsel^{for respondents} submitted that as it is a case where the probation of the applicant was extended for which the applicant alone is responsible, the date of confirmation was taken as basis for fixation of seniority.

5. But our attention was not drawn to any Rule or O.M. or instructions to the effect that in case of extension of probation, the concerned employee had to ~~be~~^{have to} effect the

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...5.

seniority and he/she had to be placed below those who completed probation. O.M.dt.4-11-92 is explicit to the effect that the seniority had to be determined on the basis of the order of merit indicated at the time of initial appointment and not according to the date of confirmation. The date of completion of probation was not taken into consideration at any time for fixation of seniority. Ofcourse if one had not completed probation by the date his/her turn for promotion had come up for consideration, he/she would not be eligible for consideration for promotion. To that extent only the employees suffers, if there is extention of probation, for progress in the department. But otherwise, the date of completion of probation is no bar for fixation of seniority.

6. Seniority list in this case was finalised only after the issual of OM dt.4-11-92. There is no need to consider for the disposal of this case, as to whether the orders/OMs/Instructions linking the seniority with confirmation have to be held as void, and accordingly even the seniority lists which were published prior to 4-11-92 have to be directed to be modified in regard to those who were in the same cadre by the date of the Original Application.

7. It is submitted that the judgements in OA 381/92 and OA 1134/91 were stayed by the Apex Court. But we consider this O.A. instead of differing it till the disposal of the SLPs, where by the judgements in OA 381/92 and OA 1134/91 are disposed of, as this is a case where the xxxx xxxxx xx

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Copy to:-

1. The General Manager, Ordinance
Factory Project, Ministry of Defence,
Government of India,
Bddumailaram, District Medak.
2. One copy to Mr. P. Naveen Rao, Advocate,
CAT, Hyderabad.
3. One copy to Mr. V. Rajeshwar Rao, CGSC, CAT, Hyd.
4. One copy to Library, CAT, Hyd.
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seniority list was published subsequent to 4-11-92 i.e. the date of the O.M., referred to above.

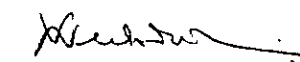
8. It is further stated that the juniors of the applicant on the basis of the merit at the time of selection were already promoted as UDCs before filing of this O.A. and also during the pendency of the O.A. and the applicant was also promoted as UDC during the pendency of the OA.

9. For the reasons stated in this order, this O.A. is disposed as under :-

"The seniority list in regard to the batch of the applicant had to be prepared on the basis of the merit rank ^{was} at the time of selection as LDC. The case of the applicant for promotion to the post of UDC has to be considered as on the date on which her junior as per revised seniority list to be prepared as per this order was promoted as UDC ^{after} (on or beyond 22-2-92). If the applicant is going to be promoted accordingly, the date of her promotion as UDC has to be pre-poned notionally and on that basis her pay should be fixed accordingly and the arrears have to be given from the date of promotion as UDC.

10. O.A. is ordered accordingly. No order as to costs. //


(R. RANGARAJAN)
Member (A)


(V. NEELADRI RAO)
Vice-Chairman


Dy. Registrar (J)

Dated: 2nd February, 1996.
Dictated in Open Court.

8A-168/94

12/3/96

I COURT

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. R. RANGARAJAN : M(A)

Dated: 2-2-1996

ORDER/JUDGMENT

M.A./R.A./C.A.No.

in

O.A.No.

T.A.No.

(w.p.No.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

Ordered/Rejected.

No order as to costs.

No spare copy

