

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.843 of 1997

DATE OF ORDER: 18th FEBRUARY, 1999

BETWEEN:

1. V.V.Hanumantha Rao,
2. P.Raghurama Murthy,
3. Mohammed Ekhalevulla,
4. Akula Rajendra Prasad,
5. P.Satyanarayana,
6. B.Adinarayana,
7. G.Chandra Sekhara Rao,
8. M.Veeramaheshwara Rao,
9. N.Ananda Rao,
10. M.Immanial,
11. S.Lakshminarayana Rao,
12. A.Padmaja,
13. Prabahakara Rao Pakki,
14. Ratho Narsinga Rao,
15. Yennamuri Subbamani,
16. Gurrala Satya Rao,
17. Dadhi Rao Ramakrishna,
18. Kaldari Venu Gopala Krishna Tolasi Ram,
19. Koilada Sambasiva Rao,
20. Kollu Satyanarayana,
21. Velayudhan Ramnarayana,
22. Peela Suryanarayana,
23. Raveendranath Sirkar,
24. Pydi Venugopalam,
25. Adatrao Suryaprakasa Rao,
26. Eti Prakasa Rao,
27. Shamagam Venkata Ramana,
28. Gorle Venkatappa Rao,
29. Palepu Dasaradhudu,
30. Raghupathi Bhaskara Rao,
31. Nakka Babuji,
32. Erram Devenand John Samuel,
33. Kolany Mahdavan Sajeewan,
34. Aresseril Kunjunni Balachandran,
35. Lalam Rajababu,
36. Yenda Adivishnumurthy,
37. Timiri Kumara Raja Vijaya Dasa Sekhar,
38. Venturi Rama Krishan Choudary,
39. Behapudi Philip John Ratnam,
40. G.Damel.

.. APPLICANTS

AND

1. The Secretary,
Ministry of Defence,
Naval Headquarters,
New Delhi 110011,
2. The Chief of the Naval Staff
(for Director of Logistics),
Naval Headquarters,
New Delhi 110 011,

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3. The Flag Officer Commanding-in-Chief,
Headquarters, Eastern Naval Command,
Naval Base, Visakhapatnam,

4. V.Siva Kumar,
5. U.Mallikarjuna Rao,
6. P.Babu Rao,
7. DSN Murthy,
8. USVVN Raju,
9. GV Suryanarayana,
10. MP Ramesh Babu,
11. B.Nooknadiu,
12. A.Rama Murthy,
13. B.Mohana Rao,
14. GK Naidu,
15. K.Nirmala Rao,
16. JNS Sarma,
17. SGK Murthy,
18. Kotyada Appa Rao,
19. R.Ramana,
20. D.Kondala Rao,
21. T.Ganga Raju,
22. Davala Venkata Rao,
23. CHVS Tirumala Kumar.

.. RESPONDENTS

COUNSEL FOR THE APPLICANTS: Mr. KSR ANJANEYULU

COUNSEL FOR THE RESPONDENTS: Mr.V.RAJESWARA RAO FOR
OFFICIAL RESPONDENTS

Mr.M.P.CHANDRA MOULI FOR
PRIVATE RESPONDENTS

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

JUDGMENT

ORDER (PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Mr.K.S.R.Anjaneyulu, learned counsel for the applicant, Mr.V.Rajeswara Rao, learned standing counsel for the official respondents and Mr.M.P.Chandramouli, learned counsel for the private respondents.

2. There are 40 applicants in this OA. They were initially appointed as Assistant Store Keepers in the pre-revised scale of ^{pay of} Rs.110-240/950-1200. Subsequently, they

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were promoted as Store Keepers in the scale of pay of Rs.1200-2040. A seniority list was circulated by the letter No.SE/2076 dated 11.3.92 (Annexure 3 at Page 24 to the OA) in accordance with the Naval Headquarter's letter NO.SE/2076, dated 7.7.93 (Annexure-4 at page 25 to the OA). As per that list, all the applicants were shown seniors to R-4 to R-23. Thereafter, another gradation list of 1994 was circulated in 1994 wherein^{also} all the 40 applicants were shown as seniors to R-4 to R-23. It is now submitted that the Naval Headquarters, New Delhi circulated a seniority list bearing NO.SE/2076, dated 27.12.96 (Annexure-1 at page 17 to the OA) revising the seniority of the applicants showing them as juniors to R-4 to R-23 in this OA. The above letter dated 27.12.96 was purported to have been issued taking into consideration the judgement of this Tribunal in OA 673/92 and that was circulated for obtaining representations, if any, before finalising.

3. It is stated that the applicants had submitted identical representations in the first week of February 1997 (Annexure-6 at page 31 to the OA) stating interalia that the direct recruits who were appointed on 1.12.86 and afterwards were placed above them though the applicants were appointed much earlier. They further represented that the seniority of the direct recruit Store Keepers appointed after 1.3.86 has not been fixed in terms of the Ministry of Personnel & Training OM No.35014/2/30-ESTT(D) dated 7.2.86 (Annexure 7 at page 37 to the OA) which had superseded the Govt. of India, Ministry of Defence/^{earlier} Memo No.28(6)/67/D (Appts.) dated 29.6.73 (Annexure 8 at page 41 to the OA).

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4. It is stated that while representations of the applicants were pending, the Naval Head quarters vide letter No.SE/2212/SK-SSK/96 dated 12.3.97 (Anexure 2 at page 19 to the OA) promoted R-11, R-4, R-12, R-8 and R-13 as Senior Store Keepers who were appointed on 1.12.86 as Store Keepers. They submit that in view of the OM dated 7.2.86, the private respondents should be given seniority in accordance with that letter and those who were appointed earlier, earlier to 1.3.86, as Store Keepers should be governed by the seniority as instructed in the OM dated 29.6.73.

5. This OA is filed to set-aside the ^{seniority} list circulated by the Naval Headquarters, New Delhi letter No.SE/2076, dated 27.12.96 (Annexure-1 at page 17 to the OA) applying the provisions of the OM dated 29.6.73 to the respondents 4 to 23 who were appointed on 1.12.86 and afterwards by holding that those instructions were arbitrary, illegal and unsupportable in law and to hold that the consequential promotion given to R-11, R-4, R-12, R-8 and R-13 vide Naval Headquarters letter No.SE/22/2/SK-SSK/96 dated 12.3.97 (Annexure 2 at page 19 to the OA) based on the impugned seniority list is arbitrary, illegal and also to set-aside that promotion list. It is further prayed to give direction to the respondents to apply for the purpose of fixing their seniority the provisions of OM dated 7.2.86 (Annexure 7 at page 37 to the OA) to all the private respondents 4 to 23 who were appointed on 1.12.86 and thereafter and ^{to} revise the seniority accordingly giving due seniority to the applicants with all consequential benefits.

6. An interim order dated 8.7.97 was passed in this OA. As per that interim order, it is directed that, "If

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any promotion that is going to be made in future in pursuance of the seniority list (at Annexure-I), the same is subject to the outcome in this A. This has to be mentioned in the promotion order to be issued in future on the basis of the above seniority list".

7. A reply has been filed in this OA by the private respondents as well as the official respondents. The private respondents submit that they ~~follow~~ ^{adopt} the submissions of the official respondents in their affidavit.

8. A rejoinder has also been filed in this OA. We have perused the whole records.

9. The main contention of the respondents is that the seniority of the Store Keepers of the Stores Organisation was communicated by the letter NO.SE/2076 dated 27.12.96 (Annexure 1 at page 17 to the OA) and ^{that the} ~~earlier~~ seniority list was revised in pursuance of the direction given by this Tribunal in OA 673/92 and also taking into consideration the direction in OAs 27/91, 788/91, 1453/93 and 1601/93. OA 673/92 was disposed of by the order dated 25.4.95 directing ^{the respondents} ~~to~~ ^{list} to revise the seniority ~~list~~ basing on the principles contained in the OM dated 29.6.73. It has become final and there was no review and hence the OA is liable to be dismissed on that ground alone.

9. The applicants in OA 673/92 were appointed as inservice candidates in the year 1984 ~~in~~ ^{to} the post of Store Keeper under the direct recruitment quota for the vacancies which had arisen in the year 1981 and 1982. The selection

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was also completed in the year 1984 and all the applicants in OA 673/92 were selected. However, those selected candidates could not be appointed immediately due to ban on recruitment. Ultimately appointment orders were issued in December, 1986. Accordingly their seniority was decided basing on the principles laid down in the OM dated ²⁹7.6.73. When their seniority list was altered based on the OM dated 7.2.86, the same was challenged in OA No.673/92. As the OM dated 7.2.86 stipulates that the seniority already determined according to the existing principles in respect of the vacancies for which the recruitment had already taken place it will not alter the seniority and they are to be governed as per the earlier principles of seniority, submit the respondents. Since the applicants in OA 673/92 were already selected in the year 1984 but were actually appointed in 1986 due to ban, the Tribunal upheld that OM dated 7.2.86 is not applicable to the applicants in OA 673/92. In view of that, the present seniority was altered which is challenged in this OA. The order in OA 673/92 dated 25.4.95 is enclosed as Annexure 5 at page 27 to the OA.

10. The respondents further submit that the direction in OA 1323/93 and batch dated 13.2.93 is not applicable in this case and they are from different categories. The applicants in OA 1323/93 and batch are Inspectors of the Central Excise whereas the applicants herein are Store Keepers. The direction in OA 673/92 was issued with reference to the appointment of the Store Keepers on the prevailing circumstances existing therein. Hence the seniority case of Stores Keepers cannot be considered as per the direction given in OA 1323/93 which was disposed of

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on the facts and circumstances with reference to the recruitment of Inspectors of Central Excise. In view of the above, the respondents pray for dismissal of this OA.

11. The applicants in the rejoinder submit that the Full Bench of this Tribunal reported in 1997(1) ATJ (CAT) 10 (Veer Vikram Dev Kumar v. Union of India) had held that the OM dated 7.2.86 is prospective and not retrospective. As the language of provision is clear, the court cannot innovate and glean the meaning of the OM dated 7.2.86. It was held conclusively by the Full Bench that the OM dated 7.2.86 particularly paragraph 7 is prospective in its operation. The judgement of this Tribunal in OA 673/92 was thus overruled by the Full Bench and hence the order in OA 673/92 cannot be taken note of for preparing the seniority list. Further the applicants are not parties ^{to} ~~in~~ OA 673/92 and hence they are entitled to challenge that judgement when the direction in that OA had come to their notice and the judgement in that OA is not binding on the applicants herein. As the private respondents were appointed in December 1986 i.e, after 1.3.86 which is not disputed, the mistake that had occurred in the application of that ^{OMA} ~~memo~~ and wrong interpretation of rule position is liable to be altered and the seniority refixed. They also submit that in OA 1323/93 and batch it has been clearly stated at page 19 in para 22 (Page 73 to the OA) that "even if the selection process for direct recruitment was started in 1985, as the applicants were appointed after 7.2.86, they cannot be governed by the OM dated 22.12.59 as mere consideration for selection does not ~~confer any right~~

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vest any right in the incumbent, obviously if not finally selected or appointed and no right to the post is acquired. It is only after the selection process culminates in appointment, that the right for the post is crystallised." They also rely on some other judgements to substantiate their case which will be discussed in due course.

12. The present case is a seniority dispute case between the promotees and the direct recruits. The OM No.9/11/55/RPS dated 22.12.59 stipulates as to how the rota quota rule has to be fixed. However, that OM was reviewed and a fresh OM No.35014/2/80-Estt.(D) dated 7.2.86 was issued for fulfilling the rota and quota rule. The OM dated 22.12.59 provided that the relative seniority of the direct recruits and promotees shall be determined according to the rotation of vacancies between them which shall be based on the quota of vacancies reserved for each as given in the Recruitment Rules. Thus, by application of these provisions, there could be cases of direct recruits shown as senior to promoted persons with longer years of service after promotion and vice-versa. These principles were modified by the OM dated 7.2.86. The revised principles did away with the system of assigning an earlier year of seniority to the persons who were appointed in the later years. It is provided in para-7 of the OM that the OM shall take effect from 1.3.86 and the seniority already determined in accordance with the existing principles on the date of issue of the OM i.e, 7.2.86 ~~will~~ ^{shall} not be reopened. It is, therefore, clear that the said OM was prospectively applicable. That ~~is also~~ ^{apart it is} so declared by the Full Bench of CAT in the ~~reported~~ case reported in 1997(1)

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ATJ (CAT) 10 (Veer Vikram Dev Kumar and Ors. v. Union of India and others).

13. As the whole issue involves ~~the~~ principles of seniority, it is not necessary for us to consider each and every case of the applicants and private respondents to fix the date of their seniority position. It is also not possible in view of the fact that there are 40 applicants and 19 private respondents in this OA. Hence it is sufficient if the ~~seniority~~ ^{principle}, on which the seniority list should be prepared, is indicated and further direction given to the respondents to prepare the seniority list accordingly.

14. The main contention of the respondents in this OA is that the ~~seniority~~ seniority of the respondents was fixed in accordance with the judgment of this Tribunal in OA 673/92. It was directed in the judgment in OA 673/92 to fix the seniority of the applicants therein as per the OM of dated 22.12.59 followed by the further instructions in this connection by the OM dated 7.6.73. The OA 673/92 was disposed of on 25.4.95. Subsequently, number of OAs were disposed of in certain fashion. The direction in all those subsequent OAs came up before the Full Bench in Veer Vikram Dev Kumar's case cited supra and the Full Bench had held that the OM dated 7.2.86 is only prospective. ^{In operation} As OA No.673/92 was disposed of earlier to the Full Bench judgment, that Full Bench judgment cannot be treated as a binding principle to decide the issue of the seniority in the present case of the applicants and the private respondents.

15. In view of what is stated above, two main issues arise in this OA. They are

(i) Whether the OM dated 7.2.86 is prospective or not; and

(ii) Whether the direct recruits appointed after 1.3.86 can get the benefit of the OM dated 22.12.59 for fixing seniority even though they were empanelled earlier to 1.3.86 for the vacancies that had arisen earlier to 1.3.86 but appointed only after 1.3.86.

16. OA 673/92 was disposed of on 25.4.95 on the basis of the facts available in that case. The applicants herein were not parties ~~to~~^{to} that seniority dispute in that OA. Normally, the seniority disputes are to be resolved after hearing the affected parties. Probably no insistence was advanced to implead the affected parties in that OA as it could have been thought that the dispute is in regard to the rule position and not the actual fixation of the date of seniority. The interpretation of the rule was further reviewed and a final decision was taken by the Full Bench. Hence, it cannot be said that the direction given in OA 673/92 will hold good even in the circumstances when the Full Bench had reviewed and revised it. It has been clearly stated in the Full Bench judgement in Veer Vikram Dev Kumar's case that the OM dated 7.2.86 is prospective only and did not have retrospective effect. When the Full Bench judgement is followed in the similar other OAs, it has to be held that ruling has to be applied to the applicants in OA 673/92 even if that OA is decided otherwise. It is seen that the impugned seniority list was issued on 27.12.96 later than the issue of the judgement of the Full Bench in Vikram Dev Kumar's case which was

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delivered on 21.11.96. When a different view directions in OA No.673/92 was taken by the official respondents should have given thought to it especially when the impugned seniority list was issued on 27.12.96 after 21.11.96 when the Full Bench judgement was delivered. Further it looks that the impugned seniority list is not ^{yet} finalised after taking into account the objections raised by the affected employees whose names appear in that impugned seniority list.

17. Hence the first question has been answered by the Full Bench directing that the rules pertaining to the seniority as enunciated in the OM dated 7.2.86 is only prospective. It was further held by the Full Bench that it is not for the Court or the Tribunal to innovate and glean the meaning of the OM. It was also held that the plain language of the OM in para 7 of the OM is ^{that it is} only prospective in its operation.

18. The Full Bench judgement does not indicate whether the candidates selected and empanelled earlier to 1.3.86 from which date the OM dated 7.2.86 came into operation but appointed after 1.3.86, can get their seniority as per the earlier OM dated 22.12.59 read with the OM dated 7.6.1973. Hence this point needs consideration in this OA as a second point for resolving the dispute.

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19. The Hyderabad Bench of this Tribunal had disposed of a case reported in 1995(31) ATC 71 (M.Krishna Swamy v. Union of India) ~~disposed of~~ ^{decided} on 16.2.95, two months earlier to the disposal of the OA 673/92 which was disposed of on 25.4.95. In Krishna Swamy's case, the applicant therein was interviewed on 26.12.88 by the Selection Committee for consideration for selection to the Indian Administrative Service for the sole vacancy from non-State Civil Service in Andhra Pradesh. The applicant therein was selected and the selection was approved by the Union Public Service Commission on 14.2.89. The vacancy for which he was selected arose on the afternoon of 30.6.89. Originally he was given 1984 as the year of allotment. It was altered to 1982 on consideration of the representation of the applicant therein. The applicant therein had filed that OA seeking direction to the respondents to assign 1977 as the year of allotment.

20. Rule 3(3)(iii) of the IAS (Regulation of Seniority) Rules, 1987 lays down the method for assigning the year of allotment to an officer appointed by selection. But the same was amended in 1989 which had come into effect on 3.2.89. The question which arose for consideration was as to whether the seniority Rule 3(3)(iii) prior to amendment in 1989 or the said rule as amended in 1989 has to be followed for assigning the year of allotment to the applicant. It was held by the Tribunal as follows:-

"It is manifest from Rule 3(3)(iii)(c) of the rules that the weightage mentioned in rule 3(3)(iii)(b) shall be

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calculated with effect from the year in which the officer is appointed to the service. Thus, the year of appointment is the criterion for giving the weightage. (Para 6)

The seniority is the condition of service. One can claim seniority only on appointment to a particular service. Till he becomes a member of a service, the question of claiming the seniority does not arise. Thus, consideration in regard to fixation of seniority arises after one becomes a member of the service. In the present case, the vacancy for non-State Civil Service candidates in AP service had actually arisen on 30.6.89 i.e, long after the amended seniority rules had come into effect. Thus, even when the vacancy had arisen after the amendment, the contention that the date of interview is the criterion for consideration as to whether the pre-amended or amended seniority rule is applicable, is not tenable. (Paras 7 and 8)

The amended rule makes it clear that the weightage had to be given with reference to the year of appointment. The amended rule of seniority is not interlinked with the recruitment rules. Even Rule 3(3)(iii) of the 1987 rules before its amendment is not interconnected with the Recruitment Rules. Thus, when

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seniority is a condition of service and as the seniority rule as in regard to a selectee even before 3.2.1989 is not inter-linked with the recruitment rules, it is just and proper to hold that the seniority rule which was in force as on the date of appointment of the selectee, has to be made applicable for assigning the year of allotment.
(Paras 9 & 10) (Emphasis added)

The appointment of the applicant to IAS was subsequent to 3.2.89, long after the relevant seniority rule was amended. Further the vacancy itself had arisen only after 3.2.89. Hence in view of the above relevant facts, the contention of the respondents that the amended rule 3(3)(iii) is applicable has to be sustained. The year of allotment assigned to the applicant is in accordance with the said amended rule."
(Para 15)."

21. This OA is exactly similar to the OA in the above reported case. In the present case, the private respondents were selected and empanelled earlier to the issue of the OM dated 7.2.86 which came into force from 1.3.86. But they were actually appointed in December 1986 after 1.3.86. The seniority conditions prevailing on the date of appointment will decide the seniority of the direct recruits appointed after 1.3.86 and this is borne by the decision given in the above reported case. It is not necessary to further analyse this in view of the precedent decision in a similar case. Hence it has to be held that the direct recruits appointed after 1.3.86 will be governed

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by the OM dated 7.2.86 for their seniority vis-a-vis promotees promoted and posted earlier to 1.3.86. The above is also in consonance with the reported case reported in 1992(1) AISLJ page 7 (Shankarsan Dash v. Union of India) wherein it is observed by the Apex Court that mere qualifying in a selection does not confer any right to appointment. Right accrues only after being appointed. Similar is the view held by the Apex Court in the reported case in 1998(1) ATJ 176 (Govt. of Orissa v. Haraprasad Das).

22. In view of what is stated above, the following directions are given to finalise the seniority of the Store Keepers:-


(i) The OM dated 7.2.86 is prospective in nature and not retrospective; and

(ii) The employees recruited after 1.3.86 even if they were empanelled and selected earlier to 1.3.86, their seniority will be in accordance with the OM dated 7.2.86 as they were appointed to service after 1.3.86.

(iii) The impugned seniority list should be amended as per the principles laid down as above in (i) and (ii) and consequential benefits, if any, arising thereof should be granted to the employees concerned.

23. The OA is ordered accordingly. No order as to costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)


(R. RANGARAJAN)
MEMBER (ADMN.)

DATED : 18th February, 1999

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23/99
Ist and IInd Court.

Copy to:

1. HDHND
2. HHRP M(A)
3. HGSOP M(3)
- ~~4. D.R. (A)~~
5. SPARE

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH:HYDERABAD.

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VICE - CHAIRMAN

THE HON'BLE H.RAJENDRA PRASAD :
MEMBER (A)

THE HON'BLE R.RANGARAJAN :
MEMBER (A)

THE HON'BLE MR.B.S.JAI PARAMESHWAR:
MEMBER (B)

DATED: 18.2.99

ORDER/JUDGMENT

M.A./R.A/C.P.NO.

IN

O.A.NO. : 843/97

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

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