

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:  
AT HYDERABAD

ORIGINAL APPLICATION NO.1053 of 1999

DATE OF JUDGMENT: DECEMBER, 2000

BETWEEN:

M.HARA BHUPAL

.. APPLICANT

and

1. Union of India, rep. by  
The Secretary, Ministry of Home Affairs,  
North Block, New Delhi-110001 & Others .. Respondents

COUNSEL FOR THE APPLICANT: Mr.M.RAMA RAO

COUNSEL FOR THE RESPONDENTS: Mr.BN SHARMA


CORAM:


HON'BLE SHRI JUSTICE D.H.NASIR, VICE CHAIRMAN

HON'BLE SRI M.V.NATARAJAN, MEMBER (ADMN.)

1. Whether Reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether the Judgment is to be circulated to the other Benches.

JUDGMENT DELIVERED BY HON'BLE SRI M.V.NATARAJAN, MEMBER (A)

  
(HMVN)  
M(A)

  
(HDHN.J)  
V.C.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:  
AT HYDERABAD

ORIGINAL APPLICATION NO.1053 of 1999

DATE OF JUDGMENT: 22<sup>nd</sup> DECEMBER, 2000

BETWEEN:

M.HARA BHUPAL

.. APPLICANT

and

1. Union of India, rep. by  
The Secretary, Ministry of Home Affairs,  
North Block, New Delhi-110001,
2. The Director,  
Intelligence Bureau (M.H.A.),  
North Block, New Delhi-110001,
3. Union Public Service Commission,  
rep. by its Secretary,  
Dholpur House, Shajahan Road,  
New Delhi-110011,
4. Shri N.K.Vashist,  
Section Officer,  
C/o The Deputy Director (Estt.),  
Intelligence Bureau (MHA),  
North Block, New Delhi-110001,
5. Shri Chandrasekhar Tiwari,  
Section Officer,  
C/o the Deputy Director (Estt),  
Intelligence Bureau (MHA),  
North Block, New Delhi-110001,
6. Shri Monik Rattan Patodhi,  
Section Officer,  
C/o The Deputy Director (Estt.),  
Intelligence Bureau (MHA),  
North Block,  
New Delhi-110001.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.M.RAMA RAO

COUNSEL FOR THE RESPONDENTS: Mr.BN SHARMA

CORAM:

HON'BLE SHRI JUSTICE D.H.NASIR, VICE CHAIRMAN

HON'BLE SRI M.V.NATARAJAN, MEMBER (ADMN.)

JUDGEMENT

ORDER (PER HON'BLE SHRI M.V.NATARAJAN, MEMBER (ADMN.))

OA No.1053/99 of Shri M.Hara Bhupal, S/o Shri  
M.Narasimha Rao, prays this Tribunal to issue appropriate

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orders or direction,

i) declaring that the vacancies notified to UPSC against 1986 and 1987 examinations were that of corresponding quota of 1986 and 1987 promotion quota, duly setting aside the impugned memo NO.4/Seniority (CC)/98(9)-2535, dated 10.8.98 of the 2nd respondent;

(ii) directing the Respondent NO.2 to revise the Part-II seniority list of Section Officers of the Intelligence Bureau also by correctly rotating the examinee candidates of 1986 and 1987 examinations with the 1986 and 1987 promotees in terms of DoP&T O.M.No.35014/2/80(Estt.D), dated 7.2.86 duly filling up the blank slots now being shown in 1986 batch against the examination quota following the recent revision of seniority list of Section Officers of pre-1986 period;

(iii) declaring that suppression of vacancies for the examination quota for 1986 examination as arbitrary and illegal and consequently declare that out of the 37 promotions ordered in 1986 and 1987 together, only four could be treated as regular and 33 could at best be treated only as adhoc pursuant to para 5 of the DoP&T O.M.No.35014/2/80(Estt.D), dated 7.2.86 and as such they have to be brought down to 1988 batch and they, along with 1988 promotees, have to be rotated with examinee candidates of 1988 batch; and consequently direct the respondents to fix the seniority of the applicant at appropriate place viz., at Sl.No.332 in the seniority list dated 31.12.1991; and

(iv) calling upon the Respondents 1 to 3 for production of the actual complete list of qualified candidates including the non selected candidates of 1986 Section 'Officers' Limited Departmental Examination pertaining to Intelligence Bureau (Category-VIII) on the basis of their written test and ACRs and on the basis of the same direct the Respondents 1 to 3 to fill up the correct number of posts against the examination quota.

2. The applicant joined the Intelligence Bureau, Ministry of Home Affairs as Steno-Typist on 11.12.1967. He was appointed as Personal Assistant with effect from 30.12.1970 against the direct recruitment. Later he was appointed as Section Officer with effect from 23.2.89 against the examination quota pursuant to his selection to the Limited Departmental Competitive Examination held in November/December 1987.

3. As succinctly brought out by the learned counsel for the applicant, the grievance raised in the OA is that, had the respondent correctly estimated the vacancies in 1986 and 1987, and had the respondent fixed the seniority of the applicant on the basis of the 1:1 ratio between the examinees and the promotees in terms of DoP&T OM NO.35014/2/80-Estt.(D), dated 7.2.86 duly filling up the blank slots, then the applicant would gain his seniority by about 13 places. The applicant feels that mischief has been done by, (i) under-estimating the vacancies of 1986 and 1987, (ii) not following the DoP&T circular and assigning the positions as envisaged in the DoP&T circular.

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4. The learned counsel for the respondents raised a few preliminary weighty objections i.e, verbosity in framing the relief, period of limitation, non joinder of parties, and that the prayer seeks to unsettle the settled things. None represented the private Respondents 4 to 6.

5. We have carefully gone through the voluminous documents filed before us both by the applicant and the respondents, the various court decisions in this regard, O.M.No.35014/2/80-Estt.(D), dated 7.2.86 of the Ministry of Personnel, DoP&T circular NO.22011/5/76-Estt.(D), dated 24.6.78, the common seniority list as finalised by the Ministry of Personnel in No.4/4/95-CS.I, dated 15.5.96 which has been filed before us as an additional material paper, rejoinder, salient points of the case, written arguments, additional reply statement on behalf of the respondents, and the seniority list in Memo No.4/Seniority(CC)/2000(12)-898-1042, dated 21.6.2000. We have also gone through the orders issued by the Chairman on 22.9.2000 in PT 170/2000 in (OA No.1053 Hyd/1999) staying transfer of the OA from Hyderabad Bench to the Principal Bench passed on 28.7.2000, and the final orders of the Principal Bench that the Hyderabad Bench will fix a date of final hearing of the OA and pass appropriate orders.

6. The applicant had filed representation regarding revision of his seniority through his representation dated 27.4.98. Through their letter No.4/Seniority(CC)/98(9)-2535, dated 10.8.98, the applicant was informed that he was appointed as Section Officer on 23.2.89 on the basis of 1987 examination and has, therefore, been placed en-bloc below the last position upto which rotation was possible with the promotee Section Officers of 1988. The Department's contention is that the Section Officers of the

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Limited Departmental Competitive Examination 1986 and 1987 became available to them in 1987 and 1988 respectively, as such, they cannot fill up the blank slots created on the direction of the Hon'ble Supreme court.

7. A few of the Court/Tribunal decisions which have a bearing on the common seniority list of the Section Officers which brought out the intensity of feelings among the constituents of the cadre on the one hand, the corresponding responsibility on the Department to redraw the said list after delineating the principles laid down in the decisions, and the manner in which the settled issues tend to get unsettled, are referred to in the two succeeding paragraphs. The designation of the applicant in this OA at the relevant time, and the applicants in the decisions referred to are different; but the principles laid down are one and the same.

8. The Principal Bench in OA 1675/87 dated 26.4.89 set-aside the seniority list issued in August 1987. In that OA, the applicants were direct recruit Assistants who were promoted as Section Officers in 70/71 on seniority-cum-fitness basis through a D.P.C, who had been given notional dates, with the observation that; "The respondents who were promoted on the basis of the Limited Departmental Competitive Examination shall be assigned seniority with reference to the applicants on the basis of the dates of their actual appointment/promotion".

9. In OA 723/90 of the Central Administrative Tribunal, Calcutta Bench, on their satisfaction that the judgement of the Principal Bench had not been correctly followed while redrawing the seniority list in 1989, the seniority list of Section Officers published on 27.4.89 was

set-aside with a direction to draw up the seniority list in terms of the judgement of the Principal Bench of the Central Administrative Tribunal in OA 1675/87 and 31/88.

10. The Supreme Court in Civil Appeal No.1467/98 arising out of SLP (Civil) No.2663/97 had considered the decision of the Principal Bench of the Central Admve. Tribunal in OA 1675/87 and OA 31/88 and the Central Admve. Tribunal, Calcutta Bench in OA 723/90. While observing that the Principal Bench concluded their judgement indicating that quota-rota rule of seniority had not been followed and the only just and fair principle for determining the seniority in the circumstances of the case would be the date of continuous officiation in the post of Section Officer. A Special Leave Petition filed before the Supreme Court challenging the decision of the Principal Bench had earlier been dismissed. The Calcutta Bench quashed and set-aside the seniority list which was before them and directed the respondents to draw up the seniority list in terms of the judgement of the Principal Bench of the Central Admve. Tribunal passed in OA 1675/87 and OA 31/88 and keeping in view the observations of the Supreme Court in the SLP mentioned earlier.

11. The Department taking note of the principles laid down in the Supreme Court decision through Office Memorandum No.4/4/95-CS.1, dated 15.5.1996 observed, the Central Admve. Tribunal, Principal Bench, New Delhi in their judgement dated 22.3.95 in OA Nos. 996/93, 157/94, 492/94 and 629/94 quashed the common seniority list of Section Officers published with the OM No.4/28/92-CS.I, dated 29.1.93 and directed preparation of a fresh common

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seniorty list in the manner indicated in the judgement. A draft common seniority list was sent to the Ministries/Departments participating in CSS, on 3.7.95. A total of 1082 representations filing objections were received within the stiplated time of 7.8.95. While doing so, the Department has pointed out that; "after 1.7.84 till 1.7.91 the unfilled DR vacancies have been carried forward for two years, and for the 3rd year they have been diverted to the promotion quota".

12. In the circumstances of the case, therefore, unless we have sufficient and justifiable cause, we would not like to make an intervention in the seniority list. No evidence has been let in before us to satisfy us that the Principal Bench decision in OA 1675/87 dated 26.4.89, which has been followed in OA 723/90 of Calcutta Bench of the Tribunal and confirmed by the Supreme Court in SLP (Civil) No.2663/97 that; "the respondents who were promoted on the basis of the Limited Departmental Competitive Examination shall be assigned seniority with reference to the applicants on the basis of the dates of their actual appointment/promotion", has been set-aside in any other judicial forum. Admittedly, the applicant herein has been assigned a seniority with reference to the date of his appointment namely, 23.2.89.

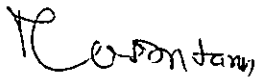
13. Having thus held, we get on to the arguments put-forth by the learned counsel for the applicant referred to in paragraph 3 i.e, had the respondent correctly estimated the vacancies in 1986 and 1987, and had the respondent fixed the seniority of the applicant on the basis of the 1:1 ratio, the applicant would have gained his seniority.




Assuming there were <sup>more</sup> ~~not~~ reported vacancies of 1986 and 1987, the question before us is whether the applicant could have been given a seniority against those years' vacancies or, in other words, a notional seniority. A perusal of the decisions referred to convince us that to do so would be violative of the decisions extracted in paragraphs 8, 9 and 10.

14. The applicant's submission that mischief had been done to him, cannot be accepted as he is not entitled to a seniority preceding the date on which he was appointed as a Section Officer through the 1987 Limited Departmental Competitive Examination.

15. For the aforesaid reasons, we find no merit in this OA. The OA is dismissed accordingly. No order as to costs.

  
(M. V. NATARAJAN)  
MEMBER (ADMN.)

  
(D. H. NASIR)  
VICE CHAIRMAN

DATED: DECEMBER, 2000



vsn

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH:HYDERABAD

COPY TO:-

1ST AND 11ND COURT

1. HDHND  
H.M.V.N. (Ad) Nanda
2. HRRN (ADMN) MEMBER
3. HDSJP (JUDL) MEMBER

TYPED BY \_\_\_\_\_ CHECKED BY \_\_\_\_\_  
COMPARED BY \_\_\_\_\_ APPROVED BY \_\_\_\_\_

4. D.T. (ADMN)

THE HON'BLE MR. JUSTICE DH. NASIR  
VICE-CHAIRMAN

The Hon'ble Mr. H.V. Watarwan Nanda (Ad)  
THE HON'BLE MR. R. TANGARAJAN  
MEMBER (ADMN)

5. SPARE

THE HON'BLE MR. BS. JAI PARAMESHWAR  
MEMBER (JUDL)

6. ADVOCATE

DATE OF ORDER 22/2/00

7. STANDING COUNSEL

MA/RA/CP: NP

IN  
CA. N. 1053/99

ADMITTED AND INTERIM DIRECTIONS  
ISSUED

ALLOWED

C. P. CLOSED

R. A. CLOSED

DISPOSED OF WITH DIRECTIONS.

DISMISSED

DISMISSED AS WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS

per  
a

