

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH
JAIPUR

Date of decision: 2.01.2004

OA No.237/2002

with

MA No.374/2002

Ganpat Lal Balai s/o Shri Ram Chander Balai r/o Village
Paladi Meena, Agra Road, Jaipur.

.. Applicant

VERSUS

1. Union of India through Secretary, Ministry of Information and Broadcasting, Akashwani Bhawan, New Delhi.
2. The Director General, All India Radio, Parliament Street, New Delhi.
3. Station Director, All India Radio, Akashwani, M.I.Road, Jaipur.

.. Respondents

Mr. Ganesh Meena - counsel for the applicant.

Mr. Tej Prakash Sharma - counsel for the respondents

CORAM:

Hon'ble Mr. M.L.Chauhan, Member (Judicial)

Hon'ble Mr. A.K.Bhandari, Member (Administrative)

ORDER

Per Hon'ble Mr. M.L.Chauhan.

The present application has been filed against the order dated 18.4.2002 (Ann.A3) whereby representation of the applicant for correction of seniority of Clerk Grade-II in Rajasthan zone as on 1.1.94 was rejected.

2. Facts of the case are that the applicant was initially appointed as Clerk Grade-II (LDC) pursuant to

his selection by the Staff Selection Commission (SSC) and joined the services on 4.6.90. Thereafter the respondents published the seniority list of Clerk Grade-II in Rajasthan zone as on 30.6.91 and the name of the applicant was placed at Sl.No.65 in the said seniority list. It is further averred that in the seniority list of LDC as on 31.12.91, name of the applicant was at Sl.No.64. The applicant has further alleged that the said seniority list was prepared on the basis of the date of joining of service. Further, another seniority list of LDC was published by the respondents showing the seniority as on 1.11.93 and the said seniority list was also based on the date of joining of service. The name of the applicant stands at Sl.No.55 in the said seniority list. Copy of these seniority lists have been annexed with the OA as Schedule A, B and C. The respondents again issued a seniority list which was published by the respondents showing the position as on 1.1.94 in Rajasthan zone in which the name of the applicant was placed at Sl.No.38. This seniority list was prepared on the basis of order of merit determined by the SSC. In this seniority list, employees placed at Sl.No.23-Smt. Mamata Gupta, Sl.No.24-K.K.Tiwari, Sl.No.25 -R.A. Sharma, Bai Narayan Singh, Sl.No.32-Nand Lal and Sl.No.34- M.C.Sharma who were previously junior to the applicant, were shown senior to the applicant . Copy of the said seniority list has been placed on record at Schedule-D. Being aggrieved by this seniority list, the applicant submitted representation to the respondents on 17.11.94. It is further alleged that the applicant submitted several written and verbal representations to the respondents for publishing seniority on the basis of date of joining of the employees

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as was prepared previously. Since no heed was paid to the representation of the applicant, one more representation was submitted on 21.2.2002 (Ann.A2). The respondents vide letter dated 18.4.2002 informed the applicant that the seniority of the Clerk Grade-II was determined as per the D.O.P.T. instructions. It is against this seniority list the applicant has filed this OA thereby praying that the seniority list of Clerk Grade-II/LDC as on 1.1.94 published by the respondents as Schedule-D and letter dated 18.4.2002 (Ann.A3) be quashed and set-aside and the respondents may be directed to prepare seniority list of Clerk Grade-II in Rajasthan zone on the basis of their initial date of joining in service. The applicant has also stated that the respondents have adopted SSC merit formula for determining the seniority of Clerk Grade-II only whereas in the case of English Stenographer Gr.III the seniority list has been prepared on the basis of date of joining . Thus, the action of the respondents is illegal, arbitrary and discriminatory.

3. Notices of this application were given to the respondents. The respondents have filed reply.

3.1 By way of preliminary submissions, it has been stated that the applicant by filing this application has challenged the seniority list dated 1.1.94 after a delay of 8 years and no reason has been given by the applicant for approaching this Tribunal after a lapse of 8 years. Therefore, the OA is liable to be dismissed as the same has not been filed within the stipulated time as prescribed under Section 21 of the Administrative Tribunals Act, 1985.

3.2 On merits, it has been stated that the aggrieved

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persons preferred representations against the seniority list dated 1.1.94 and after receiving the representations against the seniority list dated 1.1.94, the seniority list has been prepared as per directions of the D.O.P.T. Memorandum dated 3.7.86 and the Director General, All India Radio Memorandum dated 28.3.95. According to the directions, the seniority list is to be prepared as per the rank of the SSC. The rank of the applicant was below the rank of Smt. Mamta Gupta, Shri K.K. Tiwari, Shri Ramavtar Sharma and Shri M.C.Sharma. The applicant was placed below in the seniority list of LDCs mentioned above and Shri Narayan Singh and Shri Nand Lal were placed below the applicant in the seniority list keeping in view of the rank to the cadre. Copy of the DOPT memorandum dated 3.7.86 and DG, AIR Office Memorandum dated 28.3.95 and the seniority list of LDC dated 1.1.2001 have been placed on record as Annm.R1, R2 and R3. The allegation of the applicant that the respondents have adopted SSC formula for determining the seniority of the Clerks only has been denied. It has further been stated that the seniority of Hindi/English Stenographers Gr.III is also determined as per merit of the SSC. As such there is no discrimination.

3.3 It may also be pointed out here that subsequent to filing of the OA, the applicant has also filed Misc. Application No.374/2002 on 5.9.2002 for condonation of delay in filing the OA. The reason given for condonation of delay is that after publication of the seniority list as on 1.1.94 the applicant filed representation dated 17.11.94. The applicant has also submitted representation dated 1.8.97 and again on 16.7.99 but all in vain. The applicant lastly submitted representation dated 21.2.2002 and the respondents have rejected the same vide letter

dated 18.4.2002. The applicant has filed the present application on 7.5.2002 without any delay. It is further contended that the delay in filing the appeal is neither deliberate nor malafide and if the delay in filing the appeal is not condoned, the applicant will suffer irreparable loss since his whole service career will be affected. It is on these grounds the applicant has prayed for condonation of delay. The respondents have filed reply to this Misc. Application thereby contending that the applicant has not shown sufficient cause for condoning the delay. The respondents have categorically stated that they have not received any representation dated 1.8.97, 16.7.99 as contended by the applicant.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

4.1 At the outset, it may be stated that the present application is hopelessly time barred. The applicant is aggrieved of the seniority list schedule-D in the category of the Clerk Grade-II as on 1.1.94 whereas the present application has been filed after a lapse of 3 years. No sufficient ground for condonation of delay has been shown by the applicant. The only reason given by the applicant for condonation of delay is that he has filed repeated representations and his representation was ultimately decided on 18.4.2002. As such, the present application is within the limitation. According to us, this ground does not constitute sufficient cause for condoning the delay. It is the settled position that party should pursue their rights and remedies promptly and not sleep over their rights. If they choose to sleep over their rights and remedies for an inordinately long time, the court may well

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choose to decline to interfere in its discretionary jurisdiction under Article 226 of the Constitution of India. This is the view which has been held by the Apex Court in the case of Ex-Capt. Harish Uppal vs. Union of India and ors., 1994(1) SLJ 177 (SC). As such, as per the above legal position, repeated representations will not afford cause of action in favour of the applicant. This application filed before the Tribunal is hopelessly barred by limitation because it was filed after almost 8 years. Under these circumstances, the Tribunal and Court should be slow in disturbing the settled position in service after long years. Moreover, the applicant has not impleaded the affected parties, who will be prejudicially affected by the impugned judgment. The applicant in para 4(v) has mentioned the names of persons who have become senior to the applicant and who will be adversely affected if the present application is allowed, but still the applicant has not chosen to implead these parties as respondents in this OA. These two objections are sufficient to reject the present OA, as we do not see any sufficient reason for condoning the delay in filing the present OA.

4.2 Even on merits, the applicant is not entitled to any relief. The respondents have placed on record, Govt. of India, Deptt. of Personnel and Training OM dated 4.11.92 which lays down the principle regarding determination of seniority at the time of initial appointment. A copy of this memorandum has been placed on record as Ann.R1. Perusal of this memorandum, which made reference to the MHA OM No. 9/11/55-RPS dated 22nd December, 1959 and lays down the general principle governing the seniority of Govt. servants at the time of

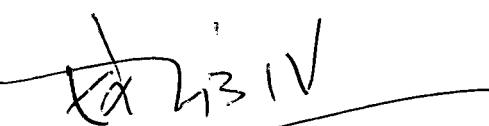
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initial appointment and stipulates that seniority has to be determined by the order of merit indicated at the time of initial appointment. This is being followed consistently. The applicant has not shown any instruction or rule whereby the person who has been initially appointed on a post, seniority has to be determined on the basis of the date of joining. In case the respondents have initially determined the seniority on the basis of joining the post contrary to the instructions issued by the Govt. in that behalf and subsequently modified that seniority list in accordance with the general principles of seniority contained in M.H.A OM dated 22.12.59 and subsequently reiterated in OM dated 4.11.92, no infirmity can be found in the seniority so determined by the order of merit indicated at the time of initial appointment. Thus, we are of the view that the seniority list Schedule-D which has been prepared on the basis of order of merit indicated by the SSC is perfectly legal and calls for no interference.

5. For the reasons stated above, the present application is devoid of merit, which is accordingly dismissed with no order as to costs.

6. Since the OA has been dismissed, the MA No.374/2002 is also disposed of accordingly.


(A.K.BHANDARI)

Member (A)


(M.L.CHAUHAN)

Member (J)