

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

15.09.2011

OA No. 305/2008

Mr. C.B. Sharma, counsel for applicant.
Mr. Tej Prakash Sharma, counsel for respondent no. 2.
Mr. P.N. Jatti, counsel for respondent no. 3.
None present for respondent no. 1

Heard.

The O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar
(ANIL KUMAR)

MEMBER (A)

K. S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 15th day of September, 2011

CORAM:

**HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)**

Original Application No.304/2008

Brahmanand
s/o Mukhram,
r/o Plot No. 101 B, Bhagwati Nagar-II,
Kartarpura, Jaipur and
Presently working as Senior Accountant
Office of Director of Accounts (Postal),
Jaipur.

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India
through its Secretary to the Govt. of India,
Department of Posts,
Ministry of Communication and
Information Technology,
Dak Bhawan, New Delhi.
2. Director of Accounts (Postal),
Jaipur
3. Shri Chhail Behari Singh,
Senior Accountant,
Office of Director General,
Department of Posts,
Dak Bhawan, Sansad Marg,
New Delhi.

.. Respondents

(By Advocate: Shri Tej Prakash Sharma and Shri P.N.Jatti for resp.No. 2 and 3)

Original Application No.305/2008

Ghanshyam Kumar
s/o late Shri H.D.Mangal,
r/o 83/45, Chetak Marg,
Pratap Nagar, Sanganer,
Jaipur and presently working as
Assistant Accounts Officer,
Office of Director of Accounts (Postal),
Jaipur

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India
through its Secretary to the Govt. of India,
Department of Posts,
Ministry of Communication and
Information Technology,
Dak Bhawan, New Delhi.
2. Director of Accounts (Postal),
Jaipur
3. Shri Chhail Behari Singh,
Senior Accountant,
Office of Director General,
Department of Posts,
Dak Bahwan, Sansad Marg,
New Delhi.

.. Respondents

(By Advocate: Shri Tej Prakash Sharma and Shri P.N.Jatti for resp.No. 2 and 3)

Original Application No.306/2008

Satya Narain
 s/o Shri Gyarsi Ram,
 r/o 62/42, Sheopur Road,
 Pratap Nagar, Sanganer, Jaipur
 And presently working as Senior Accountant,
 Office of Director of Accounts (Postal),
 Jaipur

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India
 through its Secretary to the Govt. of India,
 Department of Posts,
 Ministry of Communication and
 Information Technology,
 Dak Bhawan, New Delhi.
2. Director of Accounts (Postal),
 Jaipur
3. Shri Chhail Behari Singh,
 Senior Accountant,
 Office of Director General,
 Department of Posts,
 Dak Bahwan, Sansad Marg,
 New Delhi.

.. Respondents

(By Advocate: Shri Tej Prakash Sharma and Shri P.N.Jatti for
 resp.No. 2 and 3)

ORDER (ORAL)

All the aforesaid OAs involving similar question of facts
 and law are being disposed of by this common order.

(14)

2. Facts of OA No.304/2008, Brahmanand vs. UOI are taken as leading case.

3. The applicant appeared in the examination to the cadre of Junior Accountant in the year 1982 conducted by the Staff Selection Commission (SSC) and was declared successful and stood at Sl.No.862. His name was recommended by the SSC vide letter dated 7.10.1983 for appointment with other candidates and he was given appointment vide letter dated 22.10.1983. Pursuant to the appointment letter, the applicant joined the post on 15.11.1983. *(Signature)*

4. Some of the candidates were recommended for appointment by the Staff Selection Commission for other departments. Respondent No.3 was recommended for Accountant General Office at the relevant time, but not offered appointment. The SSC further recommended some of the candidates including respondent No.3 vide letter dated 8.12.1983 and name of respondent No. 3 was recommended vide letter dated 26.9.1984 and was offered appointment by the respondents.

5. Respondent No.3 Shri Chhail Behari Singh was holding the post of Postal Assistant in Mathura Postal Division, when he appeared in the examination conducted by the SSC and resigned from the post on 19.9.1984 and his resignation was accepted by the Competent Authority vide memo dated *(Signature)*

19.11.1984 and after acceptance of resignation respondent No.3 was offered appointment vide letter dated 30.11.1984 and he joined the post on 30.11.1984 itself.

6. A seniority list to the cadre of Junior Accounts was issued on 4.12.1985. In this seniority list, the applicant has been assigned seniority at Sl.No.100 and respondent No.3 at SL.No.114. Respondent No.2 further issued seniority list of Senior Accountant in the year 1992 in which name of the applicant is shown at SL.No.165 whereas name of respondent No.3 does not find place, as respondent No.3 was allowed cadre of Senior Accountant w.e.f. 1.1.1996. Further seniority list of Senior Accountant was issued on 31.12.2007 and in that list, the applicant was allowed seniority at Sl.No.95 and respondent No.3 at Sl.No.118.

7. The controversy arose when after a lapse of about 20 years, respondent No.3 represented before the respondents for assignment of seniority in the cadre of Junior Accountant on the ground that he stands in merit over the applicant in the examination of 1982 conducted by the SSC ignoring the fact that respondent No.3 joined the post after the applicant and also passed the confirmatory examination after the applicant. On receipt of representation, respondent No.2 issued show-cause notice dated 18.3.2008 to the applicant stating therein that respondent No.3 represented for assignment of seniority



on the basis of rank obtained by him in the examination and proposed to lower down the seniority of the applicant from SI.No.100 to SI.No.117. Against the show-cause notice, the applicant represented before the respondents on 10.4.2008 but the same has been rejected vide impugned order dated 6.8.2008 (Ann.A/1 in all the OAs).

8. Aggrieved and dis-satisfied with the rejection of representation, the applicants preferred this OA seeking writ, order of direction directing the respondents not to assign seniority to respondent No.3 over and above the applicant by quashing letter dated 6.8.2008 with the show-cause notice dated 18.3.2008 (Ann.A/12) with all consequential benefits.

9. The main challenge to the show-cause notice is on the ground that the applicant was promoted from Junior Accountant to Senior Accountant w.e.f. 1.4.1987 and also assigned due seniority and further allowed next higher scale under ACP scheme and at this stage seniority of the initial cadre cannot be changed when the applicant find place in the seniority list of higher cadre.

10. It is also submitted by the learned counsel appearing for the applicant that at the relevant time the general principles for determining seniority in the Central services were applicable as issued vide OM dated 22.12.1959, which provides assignment of seniority to direct recruits as under:



"4. Direct recruits- Notwithstanding the provisions of para 3 above the relative seniority of all direct recruits shall be determined by the order of merit in which they are selected for such appointment on the recommendations of the UPSC or other selecting authority persons appointed as result of an earlier selection being senior to those appointed as a result of a subsequent selection:

Provided that where persons recruited initially on temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment seniority shall follow the order of confirmation and not the original order of merit."

After referring OM dated 22.12.1959, the learned counsel for the applicant submitted that the applicant has been rightly allowed seniority to the cadre of Junior Accountant and thereafter in the cadre of Senior Accountant and further submits that at this belated stage, after a lapse of 20 years, the respondents cannot change seniority and placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of Malcom Lawrence Cecil D'Souza vs. Union of India and others, reported at 1976 SCC (L&S) 115 wherein the Hon'ble Supreme Court held that seniority list cannot be changed after a lapse of 14 or 15 year and subsequent seniority lists reflecting the seniority already determined do not afford a fresh right. It is essential that anyone who feels aggrieved with an administrative decision affecting one's



seniority should act with due diligence and promptitude and not sleep over the matter. Raking up old matters after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matter should be given a quietus after lapse of some time.

11. Per contra, the learned counsel appearing for the respondents referred the circular dated 13.3.1985 which deals with determination of seniority of persons appointed/promoted as Junior Accountants and more particularly referred to clause 6(l) which provides principles for fixing inter-se seniority of direct recruits/promotees on the basis of the order of merit in which they are selected for appointment by the selecting authority. Where persons recruited initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment their seniority shall follow the order of confirmation and not the original order of merit and after referring the aforesaid circular submits that relative seniority of all direct recruits will be determined in the order of merit in which they are selected for such appointment on the recommendations of the selecting authority. However, where persons recruited initially on temporary basis are confirmed subsequently in an order different from the order of



merit indicated at the time of their appointment will follow the order of confirmation and not original order of merit. Accordingly, seniority of persons appointed to a cadre will be determined on the basis of their rank position in the examination irrespective of their date of joining the office. It is further submitted that the direct recruit Junior Accountants are required to pass confirmatory examination within the permissible chances for determining the eligibility for confirmation in the cadre. Those who do not pass the examination within the stipulated chances will lose their seniority to those who pass the examination within the permissible chances. Thus, the applicant cannot claim seniority over respondent No.3 on the ground that he has passed the confirmatory examination earlier to respondent No.3 as the date of confirmation (substantive appointment) of both the applicant and respondent No.3 in the cadre is same, i.e. 27.3.1989.

12. On behalf of private respondent No.3 it is stated that respondent No.3 and the applicant passed the competitive examination held by SSC in the same year. Respondent No.3 secured higher rank than the applicant in the examination, though he has passed confirmatory examination subsequent to the applicant but within the permissible chances. The date of confirmation of both respondent No.3 and the applicant is



same i.e. 27.3.1986. As such the seniority is required to be fixed in the order of his rank position in the examination held by SSC in terms of DOPT OM dated 3.7.1986.

13. Respondent No.3 also filed certain documents through MA No.249/2011. The MA was allowed and the documents annexed with the MA were taken on record. The letter dated 18.9.2006 issued by the Under Secretary, Staff Selection Commission intimates the zonal rank/all India rank numbers of persons who passed the examination in which respondent No.3 is shown at zonal rank no.25 and letter dated 10.7.2007 is, regarding revision of position in the gradation list as per rank position of SSC in the case of respondent No.3 stating that relative seniority of all the officials who have qualified the exam in the same batch may be refixed according to their rank/merit as conveyed by the SSC. In the light of these letters, the respondents have issued show-cause notice to the applicant and on receipt of representation by the applicants, the same has been rejected vide order dated 6.8.2008 (Ann.A/1 in all the OAs). The Director Accounts (Postal) while deciding representation observed as under:

"The case of Shri Brahmanand along with his above representation was forwarded to the Postal Directorate for consideration and clarification in this regard. It has been directed by the Department of Postal (PA Wing), New Delhi vide letter No.4(1)



/2006/PA Admn. I/244 dated 1.7.2008 that provisions of DO P&Ts OM dated 7.6.1986 are for fixation of relative seniority of persons appointed to a cadre through different mode of recruitment i.e. direct recruit and promotees. Similarly, the orders contained in OM dated 6.6.1978 are regarding fixation of seniority of persons who have been issued Offer of Appointment and take a long time to join the Department. Thereby, these provisions are not applicable in the case of Shri Brahmanand.

14. The respondents also referred to Chapter-39 of Swamy's-
Establishment and Administration, relating to confirmation (the
procedure effective from 1st April, 1988). According to this,
seniority of a person regularly appointed to a post according
to rule would be determined by the order of merit indicated at
the time of initial appointment and not according to the date
of confirmation.

15. Having heard the rival submissions of the respective
parties and upon careful perusal of the material available on
record as well as the relevant rules, regulations and the
judgments relied upon by the respective parties, it is not
disputed that the selection for the cadre of Junior Accountant
was conducted in the year 1982 and after conducting the
selection names of successful candidates were
recommended for appointment, and in the case of applicant



recommendation was made vide letter dated 7.10.1983 and was offered appointment vide letter dated 22.10.1983. Although respondent No.3 appeared in the same examination held in the year 1982 but he was recommended for appointment to the cadre of Junior Accountant on 26.9.1984 i.e. after the applicant. Leaving aside the submissions advance on behalf of the applicant that respondent No.3 was holding the post of Postal Assistant in Mathura Postal Division and resigned from the post on 19.9.1984 and could join as Junior Accountant only on 30.11.1984, it is also not in dispute that the earlier seniority list was issued on 4.12.1985 wherein applicant's name find place at Sl.No.100 whereas name of respondent No.3 appears at Sl.No.117 and considering the same seniority, the applicant was subsequently promoted to the post of Senior Accountant w.e.f. 1.4.1987 vide order dated 6.11.1987 and further respondent No.2 issued seniority list of Senior Accountant in the year 1992 in which name of the applicant find mention at Sl.No.165 whereas name of respondent No.3 does not find place and also in the seniority list of Senior Accountant as on 31.12.2007 the applicant is at SL.No.95 and respondent No.3 is at Sl.No.118 and respondent No.3 only promoted as Senior Accountant w.e.f. 1.1.1996. Further, it is also not disputed that respondent No.3 represented for assignment of seniority in the initial cadre of



Junior Accountant on the basis of merit position in the examination and upon receipt of representation respondent No.2 issued show-cause notice Ann.A/12 for lowering down the applicant, in the seniority and representations filed by affected persons were rejected.

16. Further, the seniority list of Junior Accountants on the basis of confirmation on the post of Junior Accountant was issued on 4.12.1985 and the same has not been challenged by respondent No.3 at the relevant time. Even when the further seniority list of Senior Accounts was issued in the year 1992, respondent No.3 was shown junior than the applicant but the same has not been challenged. Not only the seniority list of Junior Accountants published in the year 1985 and seniority list of 1992 for Senior Accountants, the further seniority list issued for Senior Accountants in the year 2007 was not challenged by respondent No.3. After a lapse of more than 20 years, the respondent No.3 represented for assignment of seniority in the initial cadre of Junior Accountant on the basis of the merit position in the examination.

17. We have carefully gone through the judgment rendered by the Hon'ble Supreme Court in the case of Malcom Lawrence Cecil D'Souza (supra) wherein the Hon'ble Supreme Court observed as under:-



"8. The matter can be looked at from another angle. The seniority of petitioner qua respondents Nos. 4 to 26 was determined as long ago as 1956 in accordance with 1952 rules. The said seniority was reiterated in the seniority list issued in 1958. The present writ petition was filed in 1971. The petitioner, in our opinion, cannot be allowed to challenge the seniority list after lapse of so many years. The fact that a seniority list was issued in 1971 in pursuance of the decision of this Court in Karnik's case would not clothe the petitioner with a fresh right to challenge the fixation of his seniority qua respondent No. 4 to 26 as the seniority list of 1971 merely reflected the seniority of the petitioner qua those respondents as already determined in 1956. Satisfactory service conditions postulate that there should be no sense of uncertainty amongst public servants because of stale claims made after lapse of 14 to 15 years. It is essential that anyone who feels aggrieved with an administrative decision affecting one's seniority should act with due diligence and promptitude and not sleep over the matter. No satisfactory explanation has been furnished by the petitioner before us for the inordinate delay in approaching the Court. It is no doubt true that he made a representation against the seniority list issued in 1956 and 1958 but that representation was rejected in 1961. No cogent ground has been shown as to why the petitioner became quiescent and took no diligent steps of obtain redress.

9. Although security of service cannot be used as a shield against administrative action for lapse of a public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. It is difficult no doubt to guarantee such security in all its carried aspect, it should at least be possible to ensure that matters like one's position in the seniority list after having been settled for one should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Raking up old matter like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time."



Further, we have also gone through the judgment of the Hon'ble Supreme Court in the case of B.S.Bajwa and Anr. Vs. State of Punjab and Ors., reported at 1998 (1) ATJ 544 wherein the Hon'ble Supreme Court observed that in service matters the questions of seniority should not be reopened in such situation after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable.

Hence, as per the ratio decided by the Hon'ble Supreme Court, the seniority list cannot be changed after a lapse of long time.

18. Further, we are not impressed with the submissions advanced on behalf of the respondents regarding assigning of seniority to respondent No.3 in the cadre of Junior Accountant and they are not at all able to satisfy this Tribunal as to how, at such a belated stage, they became wise to correct the mistake committed in the year 1985. Even otherwise, where persons recruited initially on temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment, their seniority shall follow the order of confirmation and not the original order of merit.

19. Consequently, the aforesaid OAs are allowed and we are of the view that the show-cause notice dated 18.3.2008 (Ann.A/12 in OA No.304/2008 and A/14 in other two OAs) is not



only contrary to the factual aspect, but also contrary to the ratio decided by the Hon'ble Supreme Court in the cases of Malcom Lawrence Cecil D-Souza and B.S.Bajwa (supra), therefore, the same deserve to be quashed and set-aside and accordingly we quash and set-aside the show-cause notice dated 18.3.2008 alongwith the order dated 6.8.2008 (Ann.A/1) by which the representations of the applicants were rejected.

20. All the OAs stand disposed of in terms of above observations with no order as to costs. //

(ANIL KUMAR)
Admv. Member

(JUSTICE K.S.RATHORE)
Judl. Member

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