

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

OA No.41/2011

Order Reserved on: 23.09.2016.

Pronounced on: 07.10.2016.

**Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)**

1. Shri Abhay Ram
MRD Department
Safdarjung Hospital, New Delhi
2. Sh. Deen Dayal
LDC
Burns and Plastic Deptt.
S.J. Hospital, New Delhi
3. Narayan Prasad
R/o House No.80/14, Sector-1
Pushp Vihar, Saket
New Delhi. Applicants

(By Advocate: Shri Anil Singhal)

Versus

1. Union of India
Through Its Secretary Health & Welfare
Nirman Bhawan,
New Delhi
2. The Medical Superintendent
Safdarjung Hospital
New Delhi. Respondents

(By Advocate: Shri U. Srivastava)

O R D E R

Hon'ble Shri K.N.Shrivastava, Member (A):

This Original Application (OA) has been filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985, praying for the following main reliefs in the OA:

- “(A) Direct the respondents to quash and set aside the seniority list dated 14-7-2007 and 27-8-2007 to the extent that position of the applicants may be corrected for the post of LDC
- (B) Further direct the respondents to place the applicants at appropriate position in the seniority list dated 6-11-2007 & 27-11-2007 issued by the respondents.
- (C) Direct the respondents to fix the seniority of the applicants from the date of their initial appointment in the respondents' department.
- (D) Direct the respondents to promote the applicants in accordance with rules at least from the date when their juniors have been promoted if not earlier with consequential benefits including arrears of pay and also further promotion to the next higher promotion.”

2. The brief facts of this case are as under:

2.1 The applicants were initially appointed as Lower Division Clerks (LDCs) at Safdarjung Hospital (SJH) on ad-hoc basis. The applicant no.1 was appointed on 30.09.1980, applicant no.2 on 10.03.1979 and applicant no.3 on 04.04.1978. On 12.12.1982 the Staff Selection Commission (SSC) conducted an examination for SJH employees for the purpose of regularizing their appointments. In all, 17 candidates participated, including these three applicants. The applicant nos.1 and 2 cleared the examination and consequently SJH vide Annexure A-7 order

dated 03.12.1985 regularized the appointments of applicant nos.1 and 2 with effect from 30.09.1980 and 10.03.1979 respectively, i.e., from the date(s) when they were appointed on ad-hoc basis. The applicant no.3 could not be regularized as he has not cleared the typing test.

2.2 The SJH was pleased to exempt applicant no.3 from passing the typing test vide Annexure A-8 order dated 15.04.1986. The SJH vide Annexure A-9 order dated 19.05.1986 regularized the ad-hoc appointments of these three applicants superseding the Annexure A-7 order dated 03.12.1985. The SJH published seniority list of LDCs as on 01.06.1987 (Annexure A-10). The name of applicant no.1 finds place at serial no.123 and that of applicant no.2 at serial no.121 and that of applicant no.3 at serial no.126.

2.3 The SJH acting on the advice of Director General Health Services (DGHS) for which the DGHS had consultation with DoP&T, cancelled the Annexure A-9 order of regularization of the appointments of these applicants and put them again on ad-hoc basis. The said order also states that the resultant vacancies were being reported to the SSC for sponsoring candidates for regular appointments as LDCs. It also states that all these ad-hoc appointments of applicants as LDCs will

be terminated as and when the nominees from the SSC report for duty.

2.4 Aggrieved by the Annexure A-1 order, the applicant and other affected persons came to this Tribunal and filed an OA, challenging the Annexure A-11 order. The Tribunal dismissed the said OA vide order dated 04.09.1985. The applicants went in Civil Appeal No.98/1997 before the Hon'ble Supreme Court, challenging the *ibid* order of the Tribunal, who was pleased to allow the said Civil Appeal and set aside the Tribunal's order vide order dated 27.03.1991. The operative part of the order of the Hon'ble Supreme Court reads as under:

"We are also aware of the decision of this Court that there cannot be any claim for regularisation for having worked for a number of years if the regularisation was not in accordance with the rules. That is not so here. As noted above in the present case appointments were made in accordance with the Rules which appointments have continued for a number of years and cannot be treated as ad hoc or fortuitous.

Accordingly, the appeal is allowed, impugned order dated August 4, 1995 of the Tribunal is set aside and OA filed by the appellants is allowed to the extent that the office order dated March 17, 1991 is set aside."

2.5 The SJH published a tentative revised seniority list of LDCs as on 01.06.1987 vide Annexure A-2 notification dated 14.07.2007 and thereafter the final revised seniority list on 27.08.2007 (Annexure A-1) as on 01.06.1987. The seniority positions of four officials namely Shri Parmanand Gaur, Smt. Veena Luthra, Shri S.P. Gaur and Smt. Geeta Sabharwal were altered in the final seniority list. Their positions in the

Annexure A-2 tentative seniority list at serial Nos.68,69,70 & 71 were altered to serial Nos.115, 116, 117 and 119 respectively in the Annexure A-1 final revised seniority list. These four officials and one more challenged the same in OA No.951/2002 before this Tribunal, which was disposed of by the Tribunal vide order dated 20.08.2004. The relevant part of the Tribunal's order is extracted below:

“40. In our considered view the issue of seniority was not before the Apex Court and nothing precludes us from going into the aspect of seniority in the present OA. The ratio of Apex Court was to set aside the order whereby the selection process was found de hors the rules and to intact the appointments already made regularisation some time has nothing to do with the seniority as the observations of the Apex Court in the light of precedents as a peculiar case despite partly allowing the SLP has an effect as a ratio decidendi which is inferred from the reading of the entire order that the intention was to accord legality to the appointments of applicants which were according to the Rules.

41. As this finding of appointments of applicants in accordance with rules is no more res integra and has attained finality as a binding principle on us even if an obiter dicta the seniority is to be determined by the respondents in accordance with the settled principles of law.

42. In a recent decision the Apex Court in Santosh Kumar v. State of A.P., (2003) 5 SCC 511, held that:

“Once the services of the respondent and other promotees were regularized it cannot be contended that their initial appointment was only on ad hoc basis and not according to the Rules and made as a stopgap arrangement.”

43. Accordingly, for the foregoing reasons, we dispose of the OA with a direction to the respondents to re-consider seniority of applicants as LDCs in the light of our observations made above, within a period of three months from the date of receipt of a copy of this order. In case of grant of seniority from the dates of initial appointments applicants shall be entitled to all consequential benefits.”

2.6 The *ibid* order of the Tribunal was challenged in a Writ Petition before the Hon'ble High Court of Delhi, which was dismissed.

2.7 The SJH implemented the order of the Tribunal dated 20.08.2004 in OA No.951/2002 only in respect of the above mentioned officials who were applicants in the said OA and accordingly they were granted seniority. The applicants who were also similarly affected by Annexure A-1 seniority list were not given the benefit of the Tribunal's order dated 20.08.2004 on the pretext that they were not applicants in the OA-951/2002 and that the order of the Tribunal has been implemented only in respect of applicants in that OA, as is evident from the SJH letter dated 02.11.2008 (page 93 of the paper-book).

2.8 The applicants' claim in this OA is that they were identically placed as applicants in OA-951/2002 and the benefit of the Tribunal's order dated 20.08.2004 ought to have been extended to them as well. They have filed the instant OA accordingly.

3. Pursuant to the notices issued, the respondents entered their appearance and filed their reply. With the completion of the pleadings, the case was taken up for hearing the arguments of the parties on 23.09.2016. Shri Anil Singal, learned counsel for the applicants and Shri U. Srivastava, learned counsel for the respondents argued the case.

4. Shri Anil Singal, learned counsel for the applicants, besides highlighting the grounds raised in the OA and giving sequential details of the case, submitted as under:

- i) The applicants together with Mrs. Geeta Sabharwal, Mr. P.N. Gaur, Mr. S.P. Gaur, Mrs. Veena Makhija and Mrs. Veena Luthra were the petitioners before the Hon'ble Supreme Court in Civil Appeal No.98/1997, which was allowed and thus the benefit accruing from the judgment of the Hon'ble Supreme Court is equally applicable to all the petitioners therein.
- ii) The order dated 20.08.2004 of the Tribunal in OA-951/2002, in which the applicants, namely, Mrs. Geeta Sabharwal, Mr. P.N. Gaur, Mr. S.P. Gaur, Mrs. Veena Makhija and Mrs. Veena Luthra, had basically relied upon the *ibid* judgment of the Hon'ble Supreme Court and had requested the respondents to re-consider the seniority of the applicants therein in terms of the judgment.
- iii) Although the applicants in the instant OA were not applicants in OA-951/2002, but the rationale of the order of the Tribunal dated 20.08.2004 equally applies to them. It is so because the applicants in the instant OA along with applicants in OA-951/2002 were petitioners before the Hon'ble Supreme Court in Civil Appeal No.98/1997 and that the judgment of the Hon'ble Supreme Court in the said Civil Appeal is the

foundation of the Tribunal's order dated 20.08.2004 in OA-951/2002.

Concluding his arguments, Shri Singal submitted that the prayers made in the OA may be allowed and all consequential benefits may be granted to the applicants.

5. Per contra, learned counsel for the respondents submitted that the qualifications prescribed for LDCs was matriculate or equivalent with a speed of 30 w.p.m. in typewriting. These applicants were appointed as LDCs on ad-hoc basis. The respondents have taken a correct decision that the order dated 20.08.2004 in OA-951/2002 is applicable to the applicants therein. Since the applicants in the instant OA were not applicants in OA-951/2002, as such the benefit of the order dated 20.08.2004 cannot be extended to them.

5.1 The learned counsel for the respondents further argued that this OA has been filed much belatedly and is barred by limitation. In support of it, the learned counsel relied upon a judgment of the Hon'ble Supreme Court in the case of **State of Karnataka and others v. S.M. Kotrayya and others**, [(1996) 6 SCC 267] in which it has been held that "*the mere fact that the applicants filed the belated application immediately after coming to know that in similar claims relief had been granted by the*

Tribunal, is not a proper explanation to justify condonation of delay.”

6. Replying to the argument of the learned counsel for the respondents, the learned counsel of the applicants denied that the OA suffers with limitation. In this regard he placed reliance on **Union of India and Others v. Shantiranjan Sarkar**, [(2009) 3 SCC 90] in which it has been held that “*delay in filing Original Application should not have been a bar against granting of an equitable relief.*”

7. We have considered the arguments of the learned counsel for the parties. We are in full agreement with the learned counsel of the applicants that the benefit of Tribunal’s order dated 20.08.2004 in OA-951/2002 is also applicable to the present applicants. From the records, it is abundantly clear that the Hon’ble Supreme Court in its Annexure A-12 judgment in Civil Appeal No.98/1997 had held that the petitioners therein have been appointed in accordance with the rules and those appointments had continued for a number of years and they cannot be treated as ad-hoc or fortuitous. On the strength of the said judgment of the Hon’ble Supreme Court, this Tribunal vide order dated 20.08.2004 in OA-951/2002 had made certain observations with regard to fixation of seniority of the applicants therein, in the seniority list of LDCs of SJH. The

observations/principles laid down by the Tribunal in the said order are equally applicable to these applicants for the simple reason that these applicants were also co-petitioners before the Hon'ble Supreme Court in the said Civil Appeal. The decision of the respondents to implement the Tribunal's order dated 20.08.2004 restrictively for the four applicants in OA-951/2002 is flawed. Such a decision unnecessarily gives room for avoidable litigation, which the authorities concerned should endeavour to eschew.

8. In view of the discussions in the pre-paragraphs, we direct the respondents to extend the benefit of the Tribunal's order dated 20.08.2004 in OA-951/2002 to the applicants in the present OA as well. The seniority position of these applicants should be accordingly fixed in the seniority list and they shall be granted all consequential benefits. The OA is allowed.

9. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Raj Vir Sharma)
Member (J)

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