

Central Administrative Tribunal
Principal Bench
New Delhi

RA No.291/2015 with MAs No.2800/14, 1721/14, 4221/15, 1531/16 and 1244/16
in
O.A.No.1276/2012

Order Reserved on: 14.07.2016
Order pronounced on 01.08.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri P. K. Basu, Member (A)

Shri R.P.Meena, Executive Engineer (Civil)
S/o Late Shri Har Lal Meena
Office of Chief Engineer, West Zone
Delhi. ... Petitioner

(By Advocate: Shri Raman Duggal)

Versus

1. Shri Ajay Kumar Aggarwal
S/o Shri O.P.Aggarswal
R/o B04B, Gangotri Apartment, Alaknanda
New Delhi – 110 019.
2. Shri Deepak Kumar
S/o Shri Gurubachan Singh
R/o 41, Vrindavan Apartment
I.P.Extension
Delhi.
3. The Director
Local Bodies
Delhi Secretariat
I.P.Estate
New Delhi.

4. The Commissioner
New Delhi Municipal Corporation
Civil Centre
New Delhi.

5. The Commissioner
New Delhi Municipal Corporation
Civil Centre, New Delhi.

6. The Commissioner
East Delhi Municipal Corporation
Udyog Bhawan, Patparganj
New Delhi.

7. The Director (Personnel)
North Delhi Municipal Corp.
22nd Civil Centre, Minto Road
New Delhi – 110 002.

... Respondents

(By Advocate: Shri R.K.Jain, Shri D.K.Devesh and Shri M.K.Bhardwaj)

ORDER

By V. Ajay Kumar, Member (J):

The applicant in the present Review Application, who is not a party to OA No.1276/2012, filed the RA seeking to review the order dated 30.04.2014 in OA No.1276/2012.

2. The respondents 1 and 2 in the present RA, who were directly recruited as Assistant Engineers in the year 1997 in the respondent-MCD, aggrieved by the action of the respondents in issuing a seniority list dated 18.07.2011, by placing certain promotee Assistant Engineers above the applicants, by disturbing the earlier seniority position in earlier seniority lists, filed OA No.1276/2012, against official

respondents 1 to 5 and Private Respondents 6 to 29, seeking the following relief(s):

- a) Quash and set aside the impugned seniority list dated 18.07.2011 issued vide Circular No.F.2(36)/Egg.(HQ)/2011/603/1026378 as well as impugned order dated 06.04.2011 and direct the respondents to restore the position of the applicants as it was in the seniority list dated 15.02.2005.
- b) To declare the action of the respondents in giving promotion and seniority to the Private Respondents with retrospective effect by holding review DPC of the DPC held on 09.12.1997, as illegal, arbitrary and unconstitutional and issue further directions to fix the seniority in the Grade of AE by taking into account the actual date of appointment/promotion as basis for fixing seniority.
- c) Pass the direction to delete the names of direct recruits from the seniority list who have not joined the service after selection.
- d) Pass such other and/or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

3. This Tribunal, by its detailed order dated 30.04.2014 allowed the said OA as under:

"11. Therefore, the seniority list dated 18.07.2011 is not in accordance with the rules and settled law and it has to go. We, therefore, allow this OA, quash and set aside the impugned seniority list dated 18.07.2011 as well as impugned orders dated 6.04.2011 and direct the respondents to restore the seniority position of the applicants as appeared in the seniority list dated 15.02.2005. The private respondents will not be treated as senior to the applicants but their seniority in the grade of Assistant Engineer would be fixed from the date of actual appointment/promotion. No costs."

4. Private respondent No.18 in OA No.1276/2012 filed RA No.111/2014 seeking review of the order dated 30.04.2014 in OA No.1276/2012, and the same was dismissed by an order dated 25.11.2014.

5. Thereafter, the official respondents, in compliance of the orders in the OA, after calling for objections from all the concerned, including the review applicant herein, issued a revised final seniority list of

Assistant Engineer (Civil) appointed/promoted in 1991 onwards in MCD vide Circular dated 10.03.2016.

6. The present Review Applicant, who was originally appointed as Junior Engineer and was later promoted as Assistant Engineer, like the private respondents in OA No.1276/2012, and whose seniority is also disturbed, to his disadvantage, by virtue of the order dated 30.04.2014, in OA No.1276/2012, had filed OA No.2035/2014, seeking to quash the order dated 30.04.2014 in OA No.1276/2012. This Tribunal by its order dated 17.10.2014 dismissed the said OA No.2035/2014 as not maintainable. The WP(C) No.9733/2015, filed against the said order dated 17.10.2014 in OA No.2035/2014, was disposed of by the Hon'ble High Court of Delhi on 13.10.2015, as under:

"5. We dispose of this matter on admission stage with the consent of the parties.

6. We grant leave to the petitioner to file a Review Petition. We find that the contentions of Mr. Sharma that the scope of Review would be limited is without any force as in the Review Petition the petitioner has to establish that he was a proper party in the earlier OA and in case the Review is allowed, all grounds which may be available to the petitioner can be urged before the Tribunal.

7. With these directions, the petition is disposed of. The respondent will not raise the plea of limitation if the Review is filed within two weeks from today. All rights and legal objections of all parties are kept open."

7. The Hon'ble High Court vide its order dated 12.02.2016 in CMA No.2848/2016 in WP(C) No.9733/2015 clarified that the non-applicants would be at liberty to raise all grounds at the time of

admission of the review petition except the ground of limitation. Accordingly, the present RA has been filed.

8. Heard, the learned counsel for both sides and perused the pleadings on record.

9. The learned counsel for the review applicant submits that in the seniority list dated 18.07.2011, which was impugned in OA No.1276/2012, the review applicant was shown at seniority No.355 and whereas the original applicant No.1 was shown at Seniority No.426. Since this Tribunal by its order dated 30.04.2014 quashed the said seniority list, the review applicant is a necessary and affected party to the OA. Hence, the order dated 30.04.2014 in OA No.1276/2012, which was passed behind his back, and without impleading him as one of the respondent to the OA, is liable to be recalled on this ground alone. The learned counsel further submits that the Hon'ble High Court while disposing of the WP(C) No.9733/2015 observed that the review applicant is only to establish that he was a proper party in the OA and since the applicant established that he is a proper party, the RA is liable to be allowed. The learned counsel also placed reliance on the decision of the Hon'ble Apex Court in **Aliji Momonji & Co v. Lalji Mavji and Others**, (1996) 5 SCC 379, and **State of Uttaranchal and Anr. v. Madan Mohan Joshi & Others**, (2008) 6 SCC 797.

10. The learned counsel appearing for the official respondents, submit that in pursuance of the order dated 30.04.2014 in OA No.1276/2012 and directions in certain other cases, review DPC of original DPC year 1997, 1998, 2002, 2006 and 2007 to the post of Assistant Engineer (Civil) has been conducted on 18.09.2015 and 22.09.2015 and consequent upon the recommendations of the said review DPC, and with the approval of Commissioner/North DMC, a revised provisional seniority list of Assistant Engineer (Civil) has been issued on 21.12.2015 and after considering all the objections received thereto, a revised final seniority list of Assistant Engineers (Civil) appointed and promoted in 1991 and onwards in MCD, was issued vide Circular dated 10.03.2016.

11. The learned counsel appearing for the original applicants in OA No.1276/2012 would, inter alia, contend as under:

- a) The present RA is liable to be dismissed on the sole ground of non-joinder of necessary parties. In OA No.1276/2012, there were 29 respondents (including 5 official respondents), but the present review application which was filed with only seven respondents is not maintainable.
- b) RA No.111/2014 filed by one of the private respondent in OA No.1276/2012 was dismissed on 25.11.2014 and there cannot be any second review against the same order.

- c) In compliance to the orders dated 30.04.2014 in OA No.1276/2012, the respondents issued a provisional seniority list of Assistant Engineers and after calling for objections, including from the review applicant, issued a revised final seniority list on 10.03.2016. Hence, the review applicant got the opportunity to submit his case and if he is still aggrieved with the revised final seniority list dated 10.03.2016, he has to question the said revised final seniority list but cannot maintain the present RA.
- d) The OA No.1276/2012 was filed by duly making 24 Assistant Engineers, who are identically placed like the applicant, as party respondents, and they have affectively contested the OA and also filed review and hence the interest of the review applicant herein was duly represented and considered by the Tribunal while deciding the OA No.1276/2012. Therefore, non-joinder of the review applicant in OA No.1276/2012, does not prejudice his rights. Reliance was placed on **A.Janardhana v. Union of India & Others**, AIR 1983 SC 769.

12. In **Aliji Momonji & Co.** (supra), the appellant-Lessee laid the Suit for perpetual injunction against the Municipal Corporation of Bombay, restraining from demolishing a portion of the Building. The Corporation had issued notice for demolition of the said Building on the ground that the appellant had made unauthorized structures. The

contesting respondents 2 to 6 sought to come on record under Order I Rule 10 CPC contending that they have direct interest in the property and the motion taken out by the respondents was ordered by the Courts below. The Hon'ble Apex Court while considering the contention of the appellant that the contesting respondents have only commercial interest in the property but the real question is whether the appellant had made construction of the Building sought to be demolished by the Municipal Corporation and, therefore, whether the Land Lords-Respondents are necessary or proper party, observed that "*the controversy is no longer res-integra. It is settled law by catena of decisions of this Court that where the presence of the respondents is necessary for complete and effectual adjudication of the dispute, though no relief is sought, he is a proper party. Necessary party is one without whose presence no effective and complete adjudication of the dispute could be made and no relief granted,*" and further observed that "*the only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party.*" Accordingly, it upheld the orders of the Courts below in allowing the impleadment petitions of the Land Lords-Respondents.

13. In **Madan Mohan Joshi** (supra), inter-se seniority amongst the Teachers of Kumaon University is in question. In the seniority list

issued by the University, the 1st Respondent was placed at Sl. No.137 whereas Mrs. Savita (Mohan) Dhondyal was placed at Sl. No.102. The Writ Petition questioning the said seniority was allowed without impleading the said Savita (Mohan) Dhondyal & Others as party respondents. On appeal, the Hon'ble Apex Court observed as under:

"16. The High Court, in its impugned judgment, proceeded on the basis as to what would constitute a substantive appointment. The decisions of this Court, whereupon strong reliance has been placed by the High Court in arriving at its conclusion may not be of much significance but what is significant is that in the writ petition even Savita (Mohan) Dhondyal and others who lose their seniority in the event writ petition was to be allowed, were not impleaded as parties. They, in our opinion, should have been impleaded as parties in the writ application. Savita (Mohan) Dhondyal and others, if the writ petition is allowed, would suffer civil consequences. Inter se seniority may not be a fundamental right, but is a civil right. (See *State of U.P. v. Dinkar Sinha (2007) 10 SCC 548 : (2008) 1 SCC (L&S) 38 : (2007) 7 Scale 8*). The respective rights of seniority of the parties, thus, required determination in their presence.

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18. Reliance placed on A. Janardhana¹ by Mr Garg, in our opinion, is misplaced. Therein, no relief was claimed against any individual. The only relief which was claimed therein was against the Union of India. The question which was raised therein was a question of interpretation. It was in the aforementioned situation, this Court held that all the employees were not required to be impleaded as a party. In that case, the case of direct recruits has not gone unrepresented. It was stated: (SCC pp. 625-26, para 36)

"In this case, the appellant does not claim seniority over any particular individual in the background of any particular fact controverted by that person against whom the claim is made. The contention is that criteria adopted by the Union Government in drawing up the impugned seniority list are invalid and illegal and the relief is claimed against the Union Government restraining it from upsetting or quashing the already drawn up valid list and for quashing the impugned seniority list. Thus, the relief is claimed against the Union Government and not against any particular individual. In this background, we consider it unnecessary to have all direct recruits to be impleaded as respondents."

Accordingly, the Apex Court disposed of the appeal by setting aside the Judgement of the High Court and by remitting the matter to it with

direction to implead Savita (Mohan) Dhondyal and Others, and thereafter to consider the matter afresh.

14. In **A. Janardhana** (supra), the appellant filed a WP questioning the validity and legality of the revised seniority list and as a consequence to cancel the panel of promotions drawn up in respect of 102 officers. With regard to the rival contentions pertaining to the non-joinder of necessary and affected parties, it was observed as under:

"35. At this stage, we must briefly deal with some technical contentions of minor importance.

36. It was contended that those members who have scored a march over the appellant in 1974 seniority list having not been impleaded as respondents, no relief can be given to the appellant. In the writ petition filed in the High Court, there were in all 418 respondents. Amongst them, first two were Union of India and Engineer-in-Chief, Army Headquarters, and the rest presumably must be those shown senior to the appellant. By an order made by the High Court, the names of respondent 3 to 418 were deleted since notices could not be served on them on account of the difficulty in ascertaining their present addresses on their transfers subsequent to the filing of these petitions. However, it clearly appears that some direct recruits led by Mr. Chitkara appeared through counsel Shri Murlidhar Rao and had made the submissions on behalf of the direct recruits. Further an application was made to this Court by 9 direct recruits led by Shri T. Sudhakar for being impleaded as parties, which application was granted and Mr. P. R. Mridul, learned senior counsel appeared for them. Therefore, the case of direct recruits has not gone unrepresented and the contention can be negated on this short ground. However, there is a more cogent reason why we would not countenance this contention. In this case, appellant does not claim seniority over any particular individual in the background of any particular fact controverted by that person against whom the claim is made. The contention is that criteria adopted by the Union Government in drawing up the impugned seniority list are invalid and illegal and the relief is claimed against the Union Government restraining it from upsetting or quashing the already drawn up valid list and for quashing the impugned seniority list. Thus the relief is claimed against the Union Government and not against any particular individual. In this background, we consider it unnecessary to have all direct recruits to be impleaded as respondents. We may in this connection refer to *General Manager, South Central Rly., Secundrabad v. A. V. R. Sidhanti* (1974) 3 SCR 207 at p. 212: (AIR 1974 SC 1755 at P. 1759). Repelling a contention on behalf of the appellant that the writ petitioners did not implead about 120 employees who were likely to be affected by the

decision in the case, this Court observed that the respondents (original petitioners) are impeaching the validity of those policy decisions on the ground of their being violative of Arts. 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating to seniority of government servants is assailed. In such proceedings, the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the Court. Approaching the matter from this angle, it may be noticed that relief is sought only against the Union of India and the concerned Ministry and not against any individual nor any seniority is claimed by anyone individual against another particular individual and, therefore, even if technically the direct recruits were not before the Court, the petition is not likely to fail on that ground. The contention of the respondents for this additional reason must also be negated."

15. In the background of the aforementioned facts and the precedents on which the learned counsel for the parties placed reliance in support of their respective contentions, we are of the view that the facts in **A. Janardhana** (supra) are more relevant to the facts of the present RA. Since in **Madan Mohan Joshi** (supra), not even a single affected party was made as respondents, and the High Court while deciding the Writ Petition had no occasion to consider the contentions of any of the private parties whose rights were affected adversely by virtue of the orders in the Writ Petition. However, in **A. Janardhana** (supra), the Hon'ble Apex Court noticing that 9 direct recruits got impleaded and contested the Writ Petition, observed that the case of direct recruits has not gone unrepresented and accordingly negated the contention that the order under appeal was bad for non-joinder of some other direct recruits.

16. In the present case also, the persons identically placed like the review applicant, i.e., promotee Assistant Engineers, whose seniority was disturbed to their disadvantage by virtue of the orders in the OA,

were made as party respondents to the OA and that they have contested the same on merits and the OA was allowed after considering their contentions also.

17. It is also useful to note the decision of the Hon'ble Apex Court in **Prabhod Verma v. State of UP & Others**, (1984) 4 SCC 251 [which was referred in **Madan Mohan Joshi** at para 17], and the same is as under:

"17. A three-Judge Bench of this Court in *Prabodh Verma v. State of U.P. (1984) 4 SCC 251 : 1984 SCC (L&S) 704 : AIR 1985 SC 167*) stated the law as under: (SCC pp. 273-74, para 28)

"28. ... A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties.""

18. As observed in **Prabhod Verma** (supra), since some of the persons similarly situated were parties in the OA, and the rights identical to that of the review applicant were canvassed by them in the OA, we do not find any reason to interfere with the order dated 30.04.2014 in OA No.1276/2012 on the ground of non-joinder of the review applicant in the OA.

19. Further, the order dated 30.04.2014 in OA No.1276/2012, was already upheld by this Tribunal in RA No.111/2014 in its order dated 25.11.2014.

20. This Tribunal, while disposing of the OA No.1276/2012 by its order dated 30.04.2014, in fact considered the aspect of non-joinder of all the affected parties and in terms of the settled position of law, observed as under:

"10. As regards not impleading those as parties who may be affected by the order of this Tribunal, we are of the view that it is not necessary for the applicants to make all of them as parties as 25 persons who have superseded them have been made a party to this OA."

21. Yet, there is another reason for negating the prayer of the review applicant is that the orders of this Tribunal dated 30.04.2014, as upheld by order dated 25.11.2014 were already implemented after calling for objections from the review applicant and others, by way of final seniority list dated 10.03.2016. If the review applicant is aggrieved by his seniority position in the said seniority list, dated 10.03.2016, he is at liberty to question the same by raising all the grounds available to him, in accordance with law.

22. In the circumstances and for the aforesaid reasons, we do not find any merit in the RA, and accordingly the same is dismissed. MAs, if any, pending, stands disposed of accordingly. No costs.

(P. K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)