

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.974/2015

Order reserved on 12th October 2017

Order pronounced on 6th November 2017

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

1. Mr. Mahak Pal Singh
DOB 14.3.1960 (age 55 years)
s/o Shri Om Prakash Rana
r/o 11/254, Vasundhra, Ghaziabad, UP
Working as Deputy Director (Hort)
DDA Hort. Division No.II
Rama Market, Pitam Pura, Delhi
2. Mr. Ram Kumar Malik
DOB 1.1.1961 (Age 54 years)
s/o late Sh. Bhagmal Singh
r/o Bungalow No.7-C, Mall Road
Near DMRC Office, Delhi – 110 054
3. Mr. Yogender Singh
DOB 7.7.1960 (Age 54 years)
s/o Sh. Shyam Singh
r/o 16/401, Vasundhra, Ghaziabad, UP
Working as Assistant Director (Hort)
Hort. Division No. IV, CPWD
IP Bhawan, New Delhi

..Applicants

(Mr. R N Singh, Advocate)

Versus

1. Union of India
Ministry of Urban Development
Nirman Bhawan, New Delhi – 110 011
(through its Secretary)
2. The Director General
Central Public Works Department
Nirman Bhawan, New Delhi – 110 011
3. The Director (Horticulture)
Central Public Works Department
Nirman Bhawan, New Delhi – 110 011

4. Shri S P Shinkar
DOB 1.6.1958
s/o Sh. Pandit Bodhu Shinkar
working as Assistant Director (Hort)
Hort. Division, Mumbai, CPWD
Nirman Sadan Entophil thane
Nagar, Mumbai – 400037
5. Shri Dinesh Kumar
DOB 12.2.1959
s/o Sh. Dwarika Prasad Nigam
working as Assistant Director (Hort)
Hort. Division II, CPWD
I P Bhawan, New Delhi
6. Shri Sukhram Pal
DOB 1.10.1959
s/o Sh. Keer Singh
Working as Assistant Director (Hort)
Hort. Sub Division, CPWD
Nijam Palace, Hyderabad
7. Shri Ashok Kumar Sharma
DOB 20.12.1959
S/o Sh. Trilok Nath Sharma
Working as Assistant Director (Hort)
Hort. Division-VI, CPWD
I P Bhawan, New Delhi
(respondents No.4 to 7 to be served through
Respondent No.3 herein)

..Respondents

(Mrs. Harvinder Oberoi and Mr. G D Chawla, Advocates for respondent
Nos. 1 to 3 – Mr. Sewa Ram, Advocate for respondent Nos. 4 to 7)

O R D E R

Mr. K. N. Shrivastava:

Through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicants have prayed for the following main reliefs:-

“(ii) declare the Office Order No.121 of 2014 vide F.No.30/3/2014-EC V dated 19th September, 2014 (Annexure-A- Impugned) as illegal, arbitrary and discriminatory and consequently quash the same;

(iii) Declare the action of the respondents No.1 to 3 in conducting review DPC for the years 2004-05 to 2006-07 and regular DPCs for the years 2007-08 to 2010-11 for promotion to the post of Assistant Director (Hort) and revising the promotion of the applicants herein from the year 2005-06 to 2008-09 and showing the respondents No.4 to 7 herein as senior to the applicants as illegal, arbitrary and discriminatory;

(iv) Declare that the respondents No.1 to 3 cannot grant retrospective seniority and/or promotion to the private respondents No.4 to 7.

(v) Direct the respondents No.1 to 3 herein to prepare the seniority list of Assistant Director (Hort) strictly in terms of the relevant rules and instructions on the subject without granting retrospective promotion to the respondents No.4 to 7 herein.

(vi) Direct the respondents No.1 to 3 herein to restore the seniority of the applicants keeping in view their promotions orders to the post of Assistant Director (Hort) in the years 2005 and 2006.”

2. The factual matrix of the case is as under:-

2.1 The applicants joined as Sectional Officer (Horticulture) in Central Public Works Department (CPWD) in the year 1983. Applicant No.1 joined on 04.02.1983, applicant No.2 on 07.02.1983 and applicant No.3 on 08.02.1983. They were all selectees of 1982 batch of Sectional Officers. They were placed in the pay scale of ₹6500-200-10500, which was then the pay scale of Sectional Officer (Horticulture).

2.2 Private respondent Nos. 4 to 7 are also selectees of the same 1982 batch but they joined later. Respondent No.4 joined on 19.02.1983, respondent No.5 on 17.02.1983, respondent No.6 on 10.02.1983 and respondent No.7 on 19.02.1983.

2.3 A seniority list of Sectional Officer (Horticulture) as on 01.11.2001 (Annexure A-1) was published by the CPWD, in which the seniority

positions of applicant Nos. 1, 2 & 3 are at Sr. Nos. 17, 18 & 21 respectively, whereas private respondent Nos. 4 to 7 are at Sr. Nos. 26, 24, 22 & 25 respectively.

2.4 Applicant No.1 was promoted to the next grade of Assistant Director (Horticulture) vide Annexure A-2 order dated 18.10.2005, applicant No.2 was promoted to the same post vide Annexure A-3 order dated 16.03.2006 and applicant No.3 was promoted on 20.10.2006.

2.5 Private respondent Nos. 4, 5 & 6 were promoted as Assistant Director (Horticulture) vide Annexure A-4 office order No.16/2009 dated 30.01.2009 and respondent No.7 was promoted to the same post vide order dated 31.12.2010 (page 34). A seniority list of Assistant Director (Horticulture) was published on 15.06.2012 as on 01.01.2012, in which only 35 officers' name figured which included the applicants at Sr. Nos. 31, 32 & 35. However, private respondents' name did not figure in this list.

2.6 The applicants are aggrieved of impugned Annexure A order dated 19.09.2014 whereby the private respondents, based on the Departmental Promotion Committee (DPC) recommendations for promoting Sectional Officer (Horticulture) to the next grade of Assistant Director (Horticulture) for the vacancies accruing during the years 2004-05 to 2006-07 have been promoted against the vacancies for the years 2004-05, 2006-07 and 2007-08. Respondent No.4 has been promoted against the vacancy for the year 2004-05, respondent No.5 against the vacancy for the year 2005-06 and respondent No.6 against the vacancy for the year 2006-07 and respondent No.7 against the vacancy of 2007-08. In the same order, the applicants

have been promoted against the vacancy for the year 2008-09, thus the private respondents have become senior to the applicants in the grade of Assistant Director (Horticulture).

Aggrieved by this impugned order, the applicants have filed the instant O.A. seeking the reliefs as indicated in paragraph (1) *supra*.

3. The main contention of the applicant is that they had joined the post of Sectional Officer (Horticulture) earlier to the private respondents and hence they become seniors, which is evident from Annexure A-1 seniority list of Sectional Officers published by the official respondents as on 01.11.2001. The applicants have accordingly assailed the impugned Annexure A order dated 19.09.2014.

4. Pursuant to the notice issued, the respondents entered appearance and filed their separate counter replies.

5. In the reply filed on behalf of private respondent Nos. 4 to 7, following averments have been made:-

5.1 A seniority list of Sectional Officer (Horticulture) was issued on 10.01.1995 by CPWD, which was based on the respective dates of appointment on the post. The said seniority list was challenged by one Mr. K P Dubey before this Tribunal in O.A. No.780/1995, which was dismissed vide order dated 30.07.1997. Aggrieved by the order of the Tribunal, K P Dubey challenged it before the Hon'ble High Court of Delhi in CWP No.3818/1998, who was pleased to set aside the Tribunal's order vide its judgment dated 22.03.2002, reiterating that it is settled law that seniority

of directly appointed officers is to be prepared as per their rank in the merit list and not from the date of their joining the post.

5.2 Pursuant to the judgment of Hon'ble High Court, Annexure R-2 seniority list (pages 91 to 96) was published by the CPWD as on June 2003. This seniority list was challenged by applicant No.1 and others before this Tribunal in O.A. No.1781/2003, which was dismissed by the Tribunal vide order dated 31.07.2003. Thereafter, the applicant challenged the Tribunal's order before the Hon'ble High Court in CWP No.4905/2003, which was dismissed by the High Court on 04.08.2003. Thereafter, one Jitender Singh, together with present applicant No.1 and others, filed SLP No.18887/2003 challenged the High Court's judgment before the Hon'ble Supreme Court.

5.3 During the pendency of the SLP before the Apex Court, the CPWD, the official respondents, by mistake, had assumed that since the old seniority list dated 10.01.1995 has been challenged before the Apex Court and an interim order stating that any promotion, if takes place on the basis of the impugned seniority, shall be subject to final decision of the appeal, has been passed in it by the Hon'ble Apex Court in C.A. No.1274/2004 dated 23.02.2004, the promotions on the basis of the said seniority list can be effected.

5.4 The judgment of Hon'ble High Court dated 08.04.2011 passed in WP (C) No.3818/1998 has attained finality and the seniority list dated 01.07.2003 prepared in terms of the said judgment of the High Court has also attained finality. The promotions have been effected by the official

respondents vide the impugned Annexure A dated 19.09.2004 as per the seniority list dated 01.07.2003 in compliance of the *ibid* judgment of the High Court.

5.5. This O.A. is hit by the principle of *res judicata*, as the applicants have attempted to raise such issues in this O.A., which have already been settled by the *ibid* judgment dated 08.04.2011 of the High Court.

6. The official respondents in their counter reply have made the following important averments:

6.1 The applicants were parties in O.A. No.780/1995 and the order passed by the Tribunal in the said O.A. was challenged before the Hon'ble High Court in W.P. (C) No.3818/1998, which has been disposed of vide judgment dated 08.04.2011.

6.2 As per the revised seniority list prepared in accordance with the judgment of Hon'ble High Court, respondent Nos. 4 to 7 are senior to the applicants. Accordingly, vide the impugned Annexure A order dated 19.09.2014, the promotions of the applicants and private respondents have been re-determined.

6.3 The Hon'ble High Court of Delhi, in its judgment dated 08.04.2011 delivered in the review petition on directions of the Hon'ble Supreme Court, has directed that the seniority should be based on the merit at the time of selection. All the three applicants were party in this case. When the seniority of the Sectional Officer (Horticulture) was revised as per the

directions of the Tribunal, the seniority of Assistant Director (Horticulture) was also revised.

7 The Tribunal, vide interlocutory order dated 01.12.2016, directed the official respondents to place before the Tribunal the proceedings of the Interview Committee in which the marks had been awarded to all the candidates, who had participated in the selection process for the post of Sectional Officer (Horticulture). In compliance of the said directions, the official respondents filed an additional affidavit annexing therewith the marks obtained by the applicants and the private respondents during the interview for selection. Their seniority positions have also been indicated. We directed the official respondents to produce the original records containing the proceedings of interview/selection, which they did on 12.10.2017. On verification, it was found that the marks given by the Interview Committee to the applicants and the private respondents in the selection process, as recorded in the original documents, are the same that have been indicated by the official respondents in the enclosure with their additional affidavit.

8. The arguments of learned counsel for the parties were heard on 12.10.2017.

9. We have considered the arguments of learned counsel for the parties and have also perused the pleadings and records annexed thereto.

10. It is an admitted fact that the applicants as well as the private respondents were selected to the post of Sectional Officer (Horticulture) in

the same selection process. However, they joined on different dates. The official respondents prepared the seniority list of Sectional Officer (Horticulture) as on 01.11.2001 on the basis of their date of joining the post. As a result, the private respondents, who had joined later than the applicants, became juniors of the applicants, despite the fact that they had secured more marks than the applicants in the interview.

11. As mentioned earlier, the seniority list was challenged by one K P Dubey in W.P. (C) No.3818/1998. A Division Bench of Hon'ble High Court vide judgment dated 22.03.2002 held that the seniority has to be decided on the basis of merit position and not on the basis of continuous officiation. Accordingly, the Tribunal's order was set aside and the official respondents were directed to consider the case of the petitioners therein for promotion along with other eligible candidates.

12. The judgment dated 22.03.2002 of Hon'ble High Court in **K P Dubey** (supra) was challenged by one Jitender Singh, together with present applicant No.1 and others, by filing SLP No.18887/2003, which was disposed of vide order dated 20.01.2010 and the matter was remanded back to the High Court in the following terms:-

“A bare perusal of the impugned judgment shows that necessary parties were not impleaded nor heard by the High Court. The consequence of the judgment of the High Court is that those employees who had earlier been shown as senior will now become junior and vice versa.

It is a fundamental principle of natural justice that no adverse orders should be passed against anyone without hearing him. Since that principle has not been followed by the High Court in this case, we set aside the judgment of the High Court and remit the matter to the

High Court for disposing of the same after impleading all the necessary parties and by giving them a proper hearing.”

13. Hon’ble High Court, in compliance with the aforesaid directions, re-adjudicated the W.P. (C) No.3818/1998 and allowed it vide order dated 08.04.2011, the operative part of which reads thus:-

“22. Consequently, the writ petition is allowed, the order passed by the tribunal is quashed and the writ petition is disposed of giving the stamp of approval of the drawing of the seniority list on the basis of merit in the cadre of Section Officer...”

14. The judgment dated 08.04.2011 of High Court has not been challenged by anyone and thus it has attained finality. The official respondents, in compliance with the judgment dated 08.04.2011, have issued the impugned Annexure A order dated 19.09.2014 promoting respondent Nos. 4 to 7 against the vacancies for the years 2004-05, 2005-06, 2006-07 and 2007-08 respectively. The applicants have been promoted against the vacancies for the year 2008-09 in the same order. Since the impugned Annexure A order has been issued in compliance with the *ibid* directions of the High Court, we do not find any infirmity or illegality in the order

15. We would also like to observe that pursuant to the earlier judgment dated 22.03.2002 in W.P. (C) No.3818/1998 filed by one K P Dubey, the seniority list of Sectional Officer (Horticulture), as on June 2003, was recast by the official respondent and notified on 01.07.2003. This seniority list was challenged by applicant No.1 and others before this Tribunal in O.A. No.1781/2003, which was dismissed on 31.07.2003 and CWP

No.4905/2003 challenging this order of the Tribunal was also dismissed by the High Court on 04.08.2003.

16. In the conspectus of discussions in the foregoing paragraphs, we do not find any merit in this O.A. Accordingly, it is dismissed. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Raj Vir Sharma)
Member (J)

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