

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH**

O.A.NO.061/00040/2016
M.A.No.061/00457/2018

Orders pronounced on: 22.11.2018
(Orders reserved on: 25.10.2018)

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)**

MES No.510536 Naresh Sharma,

aged 41 years

S/o Sh. Bal Krishan Sharma,

Draftsman

O/o Commander Works Engineer,

Jammu, Group C.

.... Applicant

(BY: MR. R.K. SHARMA, ADVOCATE)

Versus

1. Union of India through Secretary to Government of India,
Ministry of Defence, South Block, New Delhi.
2. Director General (Personnel), Engineer-in-Chief's Branch,
Integrated HQ of MoD (Army), Kashmir House, New Delhi-
110011.
3. Chief Engineer, Northern Command, Udhampur (J&K).
4. MES No. 510436 Vivek Kumar, Technical Officer O/O Chief
Engineer, Leh Zone, Leh (J&K).

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Respondents

**(BY: MR. K.K. THAKUR, ADVOCATE FOR RESPONDENTS NO.1-3
MR. TEJWINDER SINGH HUNAL, ADVOCATE FOR R.NO.4)**

ORDER
SANJEEV KAUSHIK, MEMBER (J)

1. In view of the admitted facts on both sides, the short and crisp issue involved in this case is, if there is absence of any provision in statutory recruitment rules, then what would be the mode of fixation of inter-se seniority of direct recruits and as to whether limitation, delay and laches would come in way of the applicant to claim the relief?

2. The applicant has filed this Original Application (OA) under section 19 of the Administrative Tribunals Act, 1985, for quashing the order dated 19.10.2015 (Annexure A-1), to the extent seniority of the applicant has been fixed at Sr. No. 287B by upgrading him from Seniority No. 307 and respondent no.4 has been retained over and above him, on the basis of date of joining i.e. at Sr. No. 287; order dated 6.11.2015 (Annexure A-2) vide which respondent no.4 has been promoted as Technical Officer against 10% quota for Degree Holders and for issuance of direction to the respondents to maintain seniority in the cadre of Draftsman, on the basis of panel position, at the time of direct recruitment as Draftsman Grade II etc.

3. The bare minimum facts, which are necessary to understand the issue, are that applicant (general category) and respondent no.4 (OBC category), appeared for direct recruitment to the post of Draftsman Grade II and on being successful, were placed at Sr. No. 3 of panel and Sr. No. 21 (OBC) respectively. They joined their duties on 16.3.2005 and 14.3.2005 respectively. As per seniority list as on 1.1.2008 (Annexure A-3), the applicant was at Sr. No.4, whereas respondent no.4 was at Sr. No. 9. The post in question is governed by Military Engineer Services (Non-industrial Class III and Class IV posts) Recruitment Rules, 1970 (for short "Rules of 1970"). It is admitted position that there is no

provision in the said rules for determination of inter-se seniority of direct recruits.

4. The case of the applicant is that in the absence of any provision in the recruitment rules, the seniority is fixed on the basis of instructions issued by the Department of Personnel & Training, New Delhi, including one dated 3.7.1986 and instructions of Ministry of Defence instructions dated 1.5.2000 (Annexure A-5 and A-6 respectively). As per these instructions, the principle for fixation of seniority is as per merit in panel, and not as per date of joining the service. Violation of these instructions resulted into filing of O.A. No. 734-HR-2002 (**SATISH KUMAR ETC. VS. UOI ETC.**) which was disposed of on 7.8.2002 with a direction to the Engineer-in-Chief, Army Headquarters, Kashmir House, New Delhi, to personally look into the matter and pass appropriate orders qua seniority in the light of instructions dated 1.5.2000. Resultantly, seniority of incumbents was fixed as per merit and promotions were also made on that basis. The issue was again raked up in O.A. No. 126-PB-2009 (**GURDIAL SINGH ETC. VS. UOI ETC.**) decided on 28.9.2010 (corrected on 15.11.2010) which was also decided on similar lines including CWP No. 1158/2001 - **UNION OF INDIA & OTHERS VS. PARVEEN SINGH & OTHERS**, decided on 24.1.2001. This order was challenged in C.W.P. No.13055 of 2011 - **UNION OF INDIA & OTHERS VS. CAT & OTHERS** and upheld by Hon'ble Judicial High Court vide order dated 25.7.2011. It was held that once a mandamus has been issued by the Tribunal then it has to be taken to its logical end and the effect of the mandamus cannot be nullified by issuing another writ. Similar view was taken by this Tribunal in O.A.No.101-PB-1994 titled **MOHINDER SINGH VS. UNION OF INDIA & OTHERS**, decided on 12.9.1994 (Annexure A-10).

5. The seniority list of Draftsman Grade II was issued in August, 2010 but name of applicant was not there, against which he represented on 4.10.2010. Another seniority list was issued on 23.1.2012 in which applicant was at Sr. No.307, whereas respondent no.4 was at Sr. No.285. The applicant submitted a representation on 19.3.2012, it was followed by another representation on 8.5.2015 and reminders also but to no avail. An amendment in seniority list was issued on 16.9.2015 (Annexure A-11), placing Ms. Meenakshi Verma, at Sr. No. 287A. Another seniority list was issued on 19.10.2015 (Annexure A-1), in which applicant was upgraded from Sr. No. 307 to 287B, but placing him below respondent no.4, only on the basis of his date of joining the service. This was done, as per order of Hon'ble Delhi High Court order dated 18.8.2009 in **W.P @ NO.4394 OF 2008**. The next promotion is to the post of Technical Officer and on the basis of seniority of Draftsman Grade II, Respondent No.4 was promoted as Technical Officer, vide order dated 6.11.2015 (Annexure A-2). The applicant submitted representation on 8.5.2015 (Annexure A-12) to show him senior to private respondent and it was followed by reminders from time to time. Another seniority list dated 2.2.2016 (Annexure A-16) as on 1.1.2016 was issued ignoring the principle of panel seniority. But to no avail, hence the O.A.

6. That the respondents No.1 to 3 have filed a combined reply opposing the O.A. They submit that there was no finding by this Tribunal in earlier cases, that seniority is to be fixed on the basis of position on the panel. The seniority has been issued on the basis of decision dated 27.8.2013 in case of **SUDHIR KUMAR ATREY VS. UOI ETC.** and a bunch of cases i.e. on the basis of date of joining of the candidates. They submit that the O.A. is barred by law of limitation,

delay and laches. The respondent no. 4 has also filed reply on similar lines.

7. The applicant has also filed an M.A. under section 21 (3) of Administrative Tribunals Act, 1985 for condonation of delay, if any, in filing the Original Application, to which reply has been filed by other side. The grounds mentioned in the M.A. are same as raised in the O.A. including that since applicant remained in field, so facts were not to his knowledge and it caused some delay and in any case amended seniority issued in 2015 would afford him fresh cause of action and as such delay in filing the O.A. may be condoned.

8. We have heard the learned counsel for the applicants at length and examined the material on file.

9. Learned counsel for the applicant vehemently argued that since there is a judicial pronouncement by this Bench of the Tribunal, in favour of the applicant for determination of seniority on the basis of position in the panel, which has been upheld by Hon'ble Jurisdictional High Court, so the applicant is entitled to seniority on the basis of that principle and the view taken by the Hon'ble Delhi High Court, would not be binding upon him or the private respondents in view of the jurisdictional constrains. On the other hand, the learned counsels for respondents argued with equal vehemence that the O.A. is barred by law of limitation and deserves to be dismissed, which principle has been recognized by the Hon'ble Delhi High Court in the indicated case and as such they pray for dismissal of the O.A.

10. We have considered the submissions on both sides and have gone through the material on file minutely, with the able assistance of the learned counsel for the parties.

11. It is not in dispute that this Tribunal had disposed of O.A. filed by Satish Kumar & Others (supra), with the observations that the authority would pass appropriate orders with regard to the fixation of seniority of the direct appointees in the light of the Army headquarter letter dated 1.5.2000. Similar view was taken in the case of Gurdial Singh (supra), which was based on Satish Kumar (supra) and a decision of Punjab & Haryana High Court. This decision was approved by Hon'ble Jurisdictional High Court in CWP No. 13055 of 2011 on 25.7.2011. The Court observed that decision in terms of letter dated 1.5.2000, meant that the inter se seniority was to be fixed by following the principle that those who are appointed as a result of earlier selection were to rank senior to those who are appointed as a result of subsequent selection. Resultantly, the applicants in those cases were extended the benefit of panel seniority. The Court had also held that once a mandamus has been issued by Tribunal, then it has to be taken to its logical end and its effect cannot be nullified.

12. On the other hand, the Hon'ble Delhi High Court also considered the issue of seniority and rejected the claim on the principle that settled position cannot be unsettled by filing a case at any point of time. In other words, the claim was dismissed on the ground of limitation, delay and laches. The Delhi High Court has not gone on merit of the claim raised by the applicants therein.

13. The learned counsel for the applicant placed reliance on a decision of Hon'ble Punjab and Haryana High Court in CWP No.23600 of 2015 titled **UNION OF INDIA & ANOTHER VS. JATINDER PAL & OTHERS**, decided on 17.9.2018. The Hon'ble High Court, while carrying out judicial review of an order passed by this Tribunal, has crystallized the issue relating to determination of seniority of individuals belonging to

same panel in order of seniority and placement in the panel. The observations of the Hon'ble High Court are reproduced as under:-

"[2] The facts are not in dispute. The private-respondents were appointed on erstwhile posts of Superintendents (B&R) Grade-II on 29.05.1983 after having been selected through an open competition for direct recruitment. Regardless of their placement in merit list, it appears that appointment letters were issued randomly and as a result thereof, some candidates lower in merit joined earlier than the private-respondents, i.e., before 07.05.1988. The seniority was sought to be fixed on the basis of dates of joining, hence the private-respondents agitated the matter and claimed that *inter-se* seniority of direct recruits be fixed on the basis of merit in the selection list. As the department did not acceded to their request, they approached Central Administrative Tribunal by way of OA No.734/HR of 2002 which was allowed with the direction as contained in the order dated 07.08.2002. The said order was given effect and the private respondents were assigned seniority as per their merit in the selection list.

[3] It further appears that some other employees also filed OA before the Central Administrative Tribunal and in compliance to the purported directions issued therein, the seniority position of private respondents was also adversely altered. In other words, they were again assigned seniority on the basis of date of joining instead of their placement in the merit list of direct recruitment. This action has been annulled by the Tribunal qua the private-respondents vide impugned order.

[4] Having heard learned counsel for the petitioners, we do not find any ground to interfere with the impugned order. We say so for the reasons that firstly, it is well settled that seniority of direct recruits of same batch has to be determined on the basis of their *inter-se* merit in the selection list, unless the Rules provide otherwise. No such provision of rules has been referred to by the petitioners. Secondly, it is illogical to assign the seniority on the basis of date of joining amongst the direct recruits. A candidate at number-1 in the merit list can be posted at a faraway place where he can reach after 2/3 days, whereas a candidate lower in merit can be posted to the nearest place. In this way, the later candidate will obviously join earlier than the candidate higher in merit. Thirdly, the seniority position of private respondents has been decided by the Tribunal and the principle of *resjudicata* is fully attracted to the facts and circumstances of the case. Fourthly, the writ petition suffers from delay and laches as the order passed in January 2017 is sought to be challenged after 1½ years. Be that as it may, since we do not find any ground on merits, the writ petition stands dismissed as such."

14. A perusal of the observations by our own Jurisdictional High Court, in the aforementioned case, makes it clear that the issue stands settled in favour of the applicant. Hon'ble High Court has settled that seniority of direct recruits of same batch has to be determined on the basis of their *inter-se* merit in the selection list, unless the Rules provide otherwise, as is the case in hand. Even in this case, no provision of rules has been shown by respondents which may permit them to determine seniority on the basis of date of joining. The Hon'ble High

Court has clearly held that it is illogical to assign the seniority on the basis of date of joining amongst the direct recruits and for this reason given is that a candidate at Sr. No. 1 in the merit list can be posted at a faraway place where he can reach after 2-3 days, and on the other hand, another candidate lower in merit can be posted to the nearest place and the later candidate will obviously be able to join earlier than the candidate higher in merit. Moreover, the instructions issued by Army Headquarters, E-in-C's Branch, New Delhi on 1.5.2000 also make the position clear, that seniority may be fixed as per the merit position at the time of selection for appointment and there is no question of linking it with the date of joining his senior. In these circumstances, it can be said that the action of the respondents in fixing seniority on the basis of the date of joining is per se illegal and the seniority has to be determined on the basis of merit position in the panel, unless there are any rules or instructions to the contrary.

15. In view of the aforesaid discussion, we have no doubt in our mind in answering the poser No.1 in the manner, that the seniority in the cadre of the applicant of direct recruits was to be fixed on the basis of merit position in the panel, as no rule or instructions issued by competent authority, has been shown which may permit them to determine seniority on the basis of date of joining.

16. Now we proceed to consider the second issue as to whether, the applicant can be granted any benefit, in view of the law of limitation, delay and laches. It is not in dispute that the applicant and private respondents had joined their duties in March, 2005. The first seniority list was issued on 24.11.2008 (Annexure A-3) in which applicant was shown as senior to the applicant. It is pleading of the applicant himself that second seniority was issued in August, 2010, in which his name

was not mentioned, so he submitted a representation against the same on 4.10.2010. Another seniority list was issued on 23.1.2012 and applicant filed a representation on 19.3.2012. In that list, applicant was shown below private respondent no.4. Then applicant remained posted in field and then after more than 3 years, submitted a representation on 8.5.2015 for inclusion of his name. Again seniority list was issued on 19.10.2015 in which he was shown junior to private respondent. The applicant kept on making representations and filed O.A. on 1st August, 2016. So, the cause of action arose to the applicant in 2010 itself from which time he has been making repeated representations for determination of seniority. A seniority list in some other connection in 2015, would not revive a cause of action which arose to the applicant in 2010. Secondly, repeated representations do not extend the period of limitation. Moreover, on the basis of this settled seniority, private respondent no. 4 has also been promoted as Technical Officer vide order dated 6.11.2015. The perusal of the M.A. for condonation of delay, does not disclose any good grounds made out for condonation of delay in filing the Original Application. The issue is no longer res-integra and has been settled that inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that belief. This is more so in service matters where vacancies are required to be filled promptly. In this regard we can make reference to the following decisions:-

(a) **BHOOP SINGH V. UNION OF INDIA ETC.**, (1992) 3 SCC 136;

- (b) **UNION OF INDIA & OTHERS VS. M.K.SARKAR**
2009 AIR (SCW) 761,
- (c) **D.C.S. NEGI VS. U.O.I. & OTHERS**, SLP (Civil) No. 7956 of 2011 CC No. 3709/2011 decided on 11.3.2011
- (d) **KARNATAKA POWER CORPN. LTD THROUGH ITS CHAIRMAN & MANAGING DIRECTOR & ANR VS. K. THANGAPPAN AND ANR**, (2006) 4 SCC 322
- (e) **STATE OF M.P. V. NANDALAL JAISWAL**, (1986) 4 SCC 566
- (f) **STATE OF MAHARASHTRA V DIGAMBAR**, (1995) 4 SCC 683
- (g) **CHENNAI METROPOLITAN WATER SUPPLY AND SEWERAGE BOARD & ORS. VS. T.T. MURALI BABU** (2014) 4 SCC 108

17. The Courts have held that the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant — a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis”.

18. The very aim and intention of establishment of Tribunals is to deliver speedy justice to the aggrieved persons and to ensure this, even

limitation period provided for is only 1 year from the date of cause of action and if an appeal is filed or representation is made, then it get extended to further 6 months. In this case it is apparent that the cause of action had arisen in 2010 and O.A. was filed only in 2016, much beyond the period of limitation and by that time respondent no.4, after enjoying seniority for such a long time, was also promoted to further higher post, based on such seniority. The applicant has been remiss in this case. If he had grievance, which he did have, as is apparent from the representations filed since 2010 itself, but he should have approached this Tribunal in time and should not have allowed the things to settle down. Considering all this, we are of the firm opinion that second poser has to be answered in the manner, that even though the O.A. has merit, but it deserves to be dismissed on the ground of being barred by law of limitation.

19. In the wake of aforesaid discussion, M.A. for condonation of delay is dismissed and, therefore, the O.A. being barred by law of limitation, delay and laches is also dismissed.

20. The parties are left to bear their own costs.

(AJANTA DAYALAN)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

PLACE : CHANDIGARH.
DATED: NOVEMBER 22, 2018

HC*