

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH. NEW DELHI

OA NO. 585/2003

This the 31<sup>st</sup> day of December. 2003

HON'BLE SH. KULDIP SINGH, MEMBER (J)  
HON'BLE SH. S.A. SINGH, MEMBER (A)

Sh. Hem Chand  
S/o Sh. Sidi Ram  
Under Secretary,  
Ministry of Human Resource Development,  
Deptt. of Secondary & Higher Education,  
Shastri Bhawan, New Delhi.

(By Advocate: Sh. Amit Anand proxy for  
Sh. Anand Singh)

Versus

1. Union of India  
through Secretary,  
Ministry of Personnel, Public Grievances  
and Pension  
Department of Personnel & Training,  
North Block, New Delhi.
2. The Director,  
Department of Personnel (CS),  
Lok Nayak Bhawan, Khan Market,  
New Delhi-110003.
3. Finance Secretary,  
Ministry of Finance & Company Affairs,  
North Block, New Delhi.

(By Advocate: Sh. R.P. Aggarwal)

ORDER

By Sh. Kuldip Singh, Member (J)

Applicant has filed this OA against respondents as he has a grievance that his representation has been rejected vide impugned order dated 11.3.2002 whereby the respondents have declined to set right his seniority in the Section Officers combined seniority list and respondents have failed to appreciate the fact that applicant was senior direct recruit Assistant and was within the zone of consideration for inclusion of his name in select list of S.O. grade for the year 1981. However, the respondents failed to include the applicant's name in the 1981 select list whereas his juniors were included in the select list of 1981.

lan

2. Facts in brief are that the applicant is presently working as Under Secretary in the Ministry of Human Resource Development, Shastri Bhawan, New Delhi and belongs to Scheduled Caste Category. Applicant joined the Central Government Service in a capacity of Direct Recruit Assistant on regular basis in the selection held through UPSC 1976 batch. Applicant further alleges that seniority of the applicant in the Assistant grade is to be maintained by the Department of Personnel in accordance with the rank given by the UPSC and applicant was assigned the rank number 227/1996 and was allocated to Finance Cadre when he joined the service.

3. Applicant further alleges that for further promotion to the next higher grade the procedure for promotion is that a select list is prepared from the eligible candidates who are within the zone of consideration and who fulfil the requisite experience for promotion. Applicant further alleges that as per Rule 13 sub rule (5) of the CCS Rules 1962 the select list for Section Officers Grade shall be prepared which can be revised from time to time as the procedure laid down in the Fourth Schedule of CCS Rules 1962.

4. According to Schedule the officers turn on Regular Temporary Establishment of the respective grades immediately before the appointment day and allotted to a cadre under rule 8 shall form the Select List for the concerned grade for that cadre on such date. Permanent officers of the Assistants grade in that cadre who have rendered not less than 8 years approved service in that grade in the order of their seniority are eligible for promotion. It is further submitted that persons selected on the results of the limited departmental competitive examinations are also to be included in order of

K

their merit and persons of two categories referred shall be included in the Select list by taking alternately one person from category (a) and one from category (b) and so on in that order.

5. It is further submitted that procedure for filling vacancies in the next higher grade is also laid down under Rule 13 of CCS Rules. It is further stated that Rule 21 enables the Ministry may transfer a cadre officer of any grade from one cadre to another. It is further stated that respondents arbitrarily ignored the rules which governs the preparation of the Select List for Section Officers Grade and made applicant junior to his junior Assistants as per G.S.R. 590.

6. It is further stated that as per rules promotions to the post of Section Officers are to be made from candidates as per their inter-se-seniority and as per their order of merit in the competitive examination. However, the persons appointed from an earlier examination are to be placed above those appointed from a later examination. There is also provision that the temporary vacancies in the Section Officers grade in any cadre shall be filled by appointment of persons included in the select list for Section Officers grade in cadre and if candidates with prescribed minimum requirements are not available in particular cadre the vacancies shall be filled from a panel of candidates furnished by the Ministry of Home Affairs (now Department of Personnel & Training) of officers serving in other cadres. It is submitted that it is the duty of the DOPT to see if in a particular cadre a candidate is not

h

getting promotion for want of vacancy than those candidates should be transferred in a cadre where vacancies are lying vacant so that their seniority should be maintained.

7. Applicant further alleges that Ministry of Home Affairs prepared a select list for Section Officer Grade for the year 1981 against seniority quota and select list was issued vide OM dated 26.3.1983. In the Select List Direct Recruit Assistants upto the year 1977 were included for being promoted to be Section Officers but it is unfortunate that the applicant who is a Direct Recruit Assistant of the year 1976 was not included in the Select List, however, his juniors of year 1976 and 1977 were included in the Select List and were being promoted as Section Officers.

8. It is further stated that another list was issued on 7.7.1983 which was a supplementary list in addition of Select List for the year 1981 against seniority quota but the name of the applicant was not included in that list too. Applicant further alleges that though he was eligible to be included in the select list but was incorrectly included in the select list for the year 1982. It is further submitted that the combined seniority list has been prepared for the first time and was released on 3.12.97 and on perusal of the same applicant came to know that he was placed junior to those Assistants who were junior in the merit of competitive examination 1976 and also from Assistants who were selected later on in the year 1977.

9. Applicant has also given a comparative table of himself and those officers to whom he has been made junior in the Combined Seniority List of Section Officers Grade.



Sl. No.	Name of juniors of applicant	Assistant Grade Batch year & Rank	Year of inclusion in the Select List of Section Officers	Rank in the Combined Seniority List of Section Officer s Grade
1.	Ram Singh Kaim (SC)	249/1976	1981	3787
2.	Rameshwar Dayal (SC)	253/1976	1981	3788
3.	L.R.Rao (SC)	324/1977	1981	3792
4.	Miss Gur Pyari (SC)	337/1977	1981	Not Known
5.	Sh. R.S.Singh (SC)	345/1977	1981	3794
6.	Sh. Raj Singh (SC)	361/1977	1981	3797
7.	Sh. R.L.Tapryal (SC)	365/1977	1981	3799
	Sh. Hem Chand (SC)	227/1976	1982	3950

10. Thus, the applicant has been shown junior to those persons who were low in the merit in the year 1976 batch and also he has been shown below to 1977 batch. A representation was also submitted but the same was rejected vide impugned order. Thus, the applicant alleges that the act of the respondents is violative of fundamental rights of the applicant as he has been discriminated as his name has not been included in the list on 1981. Hence, it is prayed that respondents be directed to include the name of applicant in the Select List of Section Officers of seniority quota for the

la

year 1981 and respondents should be directed to promote the applicant w.e.f. the date his immediate juniors be promoted with all consequential benefits.

11. Respondents are contesting the OA. They filed their counter affidavit. Respondents pleaded that the Central Secretariat Service (CSS, in short) comprises of four grades while the grades of Deputy Secretary and Under Secretary are centralised whereas other two grade, namely, that of Section Officer and Assistant are decentralised in 33 cadres comprising one or more Ministry/Departments. The concerned cadre controlling authorities maintains the cadre seniority of all the Assistants in their respective cadres. DOPT also maintains a combined common seniority list known as Supplementary Common Seniority List of all the Assistants working in 33 cadres prepared on an all Secretariat basis for the purpose of promotion in accordance with Regulation 3 of the Central Secretariat Service (Preparation of Common Seniority List) Regulations, 1970. According to the said Regulation a combined seniority is to be prepared as on 1st January of every year and for this purpose the Government has to obtain information from the cadre authorities regarding the names of all such officers of the Assistant grade included in their respective cadres.

12. It is further submitted that for promotion to the grade of Section Officer a zone of promotion is specified by the DOPT and the cadre authorities are requested to send the names of eligible Assistants covered under the zone thus fixed for inclusion in the Select List. The Assistants covered under the zone and found fit by the DPC are promoted against the existing seniority quota vacancies in the respective cadres

h

and the remaining surplus/unadjusted Assistants are included in the Central Panel maintained by the DOPT in the order in which they figure in the Supplementary Common Seniority List of Assistants which is prepared as per Regulation 3 of the CSS Regulations, 1970.

13. It is further submitted that Proviso 2 of Rule 13(2) of CSS Rules, which deals with the recruitment of Section Officers and the Assistants Grade states as under:-

"Provided further that if officers within the range of seniority are not available in a cadre for promotion, the appointment shall be made from a panel, furnished by the Central Government in the Department of Personnel & Training in the Ministry of Personnel, Public Grievances and Pensions of such officers serving in the other cadres."

14. It is further stated that as per Rule 13(2) of CSS Rules the Assistants covered within the zone and found fit by the DPC to the extent of available vacancies are retained in the select list of Section Officers for that year in their respective cadres and the remaining surplus/unadjusted Assistants are included in the Central Panel maintained by the DOPT on an All Secretariate Common Seniority List known as Supplementary Common Seniority List. Such persons are kept in the Central Panel and are included in the Select List and allocated to other cadres where there is shortfall of candidates strictly as per their seniority/placement in the Central Panel.

16

15. It is further submitted that rules do not contain any ambiguity. Once an Assistant is covered within the zone of promotion he is first of all to be adjusted in his own cadre provided a vacancy is available. If an Assistant covered within the zone of consideration cannot be adjusted in his own cadre then his name is included in the Central Panel maintained by the DOPT for allocation to other cadres and such persons are then allocated to other cadres in order of their seniority on All Secretariat basis and placement of their names in the Panel. Therefore, it may so happen that while an Assistant who might be junior as per common seniority list is promoted as SO due to the availability of vacancy to retain him within his own cadre whereas a senior Assistant may not be promoted as SO due to non-availability of sufficient vacancy to retain him in his own cadre or allocation to other cadre from the Central Panel and the same has happened in the case of the applicant in the present OA.

16. It is further pointed out that as per the Select List (Seniority Quota) of Section Officers Grade for the year 1981 issued by the DOPT there is no person junior to the applicant in his cadre nor any person junior to the applicant from the Panel prepared by DOPT has been so included in the said Select List. Those persons junior to the applicant as quoted by him in this OA were included in the said Select List as they had got promotion because there were sufficient vacancies in their respective cadres to accommodate the applicant in his cadre, his name was not included in the 1981 Select List. His turn came in 1982, when his name was included in the 1982 Select List for Section Officers Grade. Therefore, the claim of the applicant that he should be appointed to the post of Section

h



Officer on a regular basis from a retrospective date with consequential benefits of pay and allowances, seniority etc., has no merits. Thus, it is prayed that OA be dismissed.

17. Rejoinder to this counter affidavit was also filed wherein applicant admit that there are 4 grades in CSS service and cadre of Under Secretary and Deputy Secretary have a centralised cadre whereas Assistants are concerned there are 33 cadres. However, it is submitted that DOPT used to send requisitions to the UPSC for selection of candidates for appointment against such vacancies and the UPSC used to assign the seniority as per the rank obtained by the seniority in the selection process. On receipt of a list of selected candidates DOPT allocates a particular number of such candidates to different cadre authorities. It is submitted that placement of service of such Assistants under different cadres will not lessen the responsibility of DOPT in respect of regulating and supervising the service conditions and career progression of the Assistants and officers in the grades of Section Officers, Under Secretary and Deputy Secretary that is why under the direction of the Hon'ble Supreme Court DOPT is required to maintain common seniority list.

18. It is further stated that since there were considerable disparities in the promotion in different cadres, so it was the DOPT who were to prescribe the zone for promotion in the decentralised cadres. This inconvenience has to be avoided that is why various instructions have also been issued. Since injustice has been done to the applicant, so the same is required to be allowed.

k

[ 10 ]

19. We have heard the learned counsel for the parties and gone through the record.

20. Learned counsel for respondents had taken a plea of limitation. Counsel for respondents pointed out that by filing present application the applicant is challenging the Select List of 1981 and wants that his name should be included in the Select List of 1981. Whereas he has preferred a representation on 1.11.99, 30.8.2000 and reminder to the representation on 21.1.2002. Thus, the OA is highly belated as time barred, so the same should be rejected in limine.

21. On the contrary, counsel for applicant submitted that he came to know only in the year 1997 when Combined Seniority List was published. Therefore he made a representation immediately thereafter, so his OA should be heard on merits. Counsel for respondents has referred to a judgment delivered in OA-2050/2002 and OA-497/2003 dated 6.11.2003 wherein also a similar issue had been raised by the applicants. Applicant in that case also was directly recruited as Assistant in the year 1976 on the basis of Select List on 1981, same is the case of the applicant. Applicant therein also has challenged the Select List for the year 1981 as his name was not found in the Select List for the year 1981 and his name was included in the list of 1982 only. Same is the case of the applicant. Applicant made a representation much late in the year 2000 and the Court observed as under:-

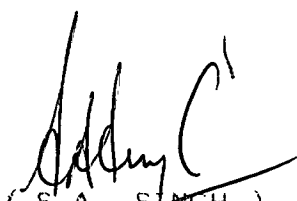
"Herein the applicant seeks seniority from 1981. If he had chosen to represent in the year 2000 only and allowed the period of limitation to lapse, it is too late in the day to rake up such a plea because the representation could only be decided when made. The belated representation in the facts will not extend the period of limitation."

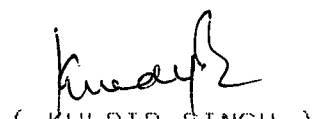
h

22. In the concluding paragraph, Court had given the following directions:

"The net result of the aforesaid would that the applications, namely OA-2050/2002 and OA-497/2003 are barred by time. There is even no application for condonation of delay. Resultantly both the applications, on this short ground must fail."

23. Thus, I find that the case of the applicant is covered by all force by the decision rendered by this Tribunal in the above said OA. Since in this case also applicant has challenged the Select List of 1981 and he wants that his name should be included in the Select List of 1981 and he claims that he came to know only when the Combined Seniority List was circulated on 3.12.1997 and he made representation in the year 1999 itself that is after passing a period of 2 years, so the representation itself was a belated one. That also does not help the applicant to bring the case within time and moreover after 1981 lot of promotions have taken place, so we cannot allow the position already settled to be unsettled. Thus, we are also of the view that the OA must fail on the ground of limitation itself. Accordingly OA is dismissed.

  
( S.A. SINGH )  
Member (A)

  
( KULDIP SINGH )  
Member (J)

sd