

OA.No.170/00285/2019/CAT/BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00285/2019

DATED THIS THE 14TH DAY OF OCTOBER, 2019

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V. SANKAR, MEMBER (A)

Sri Devadass A. Kudalkar,
Aged about: 42 years,
S/o A.G. Kudalkar,
Working as Store Superintendent
At Naval Store organization,
Material Organisation,
Naval Base,
Karwar 581 308
Residing at:
Type II quarters,
P-24/05 NCH Colony,
Muduga P.O, Andalli,
Karwar 581 324
(By Advocate Shri P. Kamalesan)

..... Applicant

Vs.

1. The Secretary,
Ministry of Defence (Navy)
Integrated HQ,
Directorate of Civilian Personnel,
Sena Bhavan,
New Delhi 110 001

2. The Flag Officer,
Commanding in chief HQ
Western Naval Command,
Ballad Tear,
Navy Tiger Gate,
Naval Dock Yard,
Mumbai 400 01

3. The Flag Officer,
Commanding HQ,
Karnataka Naval Area for SO (civ) HQ,
Naval Base,
Karwar 581 308

4. The Material Superintendent (for PAO)
Material Organization,
Naval Base,
Karwar 581 308

5. Gurdev Singh,

Working as Senior Superintendent

Stores, C/o Commanding

In Chief (for CAPO) HQ,

Andaman & Nicobar Islands

Port Blair

....Respondents

(By Shri M.V. Rao, Counsel for the Respondents)

O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J))

Heard. Both sides submit that the matter seems to be covered by two Hon'ble Apex Court judgments, one in State of Haryana and Others Vs. Balwant Singh and Others reported in (1996) 9 SCC 209 which we quote:

*"APPELLANTS:
STATE OF HARYANA AND ORS.*

Vs.

*RESPONDENT:
BALWANT SINGH AND ORS.*

DATE OF JUDGMENT: 22/04/1996

*AUTHOR:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
G.B. PATTANAIK (J)*

O R D E R

1. Delay condoned.

2. Leave granted.

3. Heard learned counsel on both sides.

4. *This appeal by special leave arises from the order of the Division Bench of the High Court of Punjab & Haryana made on July 14, 1995 in writ petition No.3200/95. The admitted position is that on August 8, 1971, the Haryana Subordinate Service Selection Board advertised for selection of the candidates for Family Welfare Extension Educators and Family Planning Welfare Educators in the Health Department of the State of Haryana. On June 7, 1972, a list of 45 candidates was prepared on the basis of merit secured by them in the selection. It would appear that ad hoc appointees approached the High Court and filed W.P. No.2122/72 and obtained status quo on June 13, 1972. The writ petition came to be disposed of on November 20, 1981. Thereafter, the letters of appointment were given to the selected candidates and the candidates came to be appointed and joined duties on various dates between September 30, 1985 and December 23, 1986. The gradation of seniority was done in 1994. The seniority of respondents has been determined with effect from their dates of actual joining in 1985-86. As said earlier, the High Court allowed the writ petition and declared them to be seniors on par with those who were selected and whom letters of appointment were offered in 1972.*

5. *The question, therefore, is: whether the respondents are entitled to seniority from 7th June, 1972 as per the gradation list prepared by the Selection Board? Normally, the seniority of the candidates who are selected by the direct recruitment would be determined with reference to the merit list prepared by the Selection Board. But, unfortunately, in this case, they could not join the service due to the pendency of the writ petition. The respondents themselves have to be blamed for the laches since they did not take any action, namely, impleading themselves in the pending writ petition nor filed any independent writ petition claiming for their appointment. After the dismissal of the writ petition, letters of appointment came to be issued in 1985 and they joined the service. It is settled law that the seniority of the candidates has to be reckoned from the date on which they joined the service and started discharging the duties of the post to which they came to be appointed. In that view, since the respondents joined the service in 1985-86, seniority cannot be given with retrospective effect from the date of the selection to the candidates appointed from the list of merit prepared by the Selection Board.*

6. *The appeal is accordingly allowed. No costs."*

2. Therefore, Shri M.V. Rao, learned counsel for the respondents, submits that it is also covered by another judgment which create a slight

distinction in it in P Srinivas Vs. M. Radhakrishna Murthy and Others reported in 2004 SCC (L&S) 424 which we quote, wherein paragraph 11 is the crucial issue:

“APPELLANT:

P. Srinivas

Versus

RESPONDENTS:

M. Radhakrishna Murthy and Others

DATE OF JUDGMENT: 30/01/2004

BENCH:

DORAISWAMY RAJU & ARIJIT PASAYAT

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. - Leave granted.

2. Appellant questions correctness of the judgment rendered by a Division Bench of the Andhra Pradesh High Court which by the impugned judgment held that respondent no.1 was to be ranked senior to the appellant in the seniority list. The view taken by the Andhra Pradesh Administrative Tribunal at Hyderabad (for short 'the Tribunal') holding that the appellant was senior to respondent no.1 was upset.

3. Factual scenario which is also almost undisputed is as follows :

The Andhra Pradesh Service Commission (for short 'the Commission') issued an advertisement inviting application from eligible candidates to be appointed to the post of Road Transport Officer (for short 'the RTO'). Appellant and Respondent no.1 and others responded to the advertisement. On 13.5.1987 appointment order was issued to the appellant and other selected candidates including respondent no.1 after they were successful in the selection process conducted by the Commission. In the appointment order 60 days time was granted to the appellant as well as other selected candidates to join the post i.e. the selected candidate was to join the duty on or before 12.7.1987. At the relevant time, the appellant was employed with the Central Secretariat as Section Officer. Therefore, he made a request to the Government of Andhra Pradesh to extend the time as per clause 3 for

joining the duty in terms of appointment order. On 25.6.1987, the Government vide its memo dated 25.6.1987 extended the joining time and permitted the appellant to join duty on or before 31.7.1987. In reality the appellant joined on 21.7.1987. By Govt. memo no.470 dated 10.10.1991 appellant's services in the post of RTO were regularized. Seniority lists were periodically prepared and circulated on 28.3.1989, 13.5.1993 and 27.5.1996 where the appellant was shown as senior to respondent no.1. There was no challenge to the same by the 1st respondent, at any of the relevant points of time.

4. In 1997, both the appellant and respondent no.1 were promoted as Deputy Transport Commissioner and in the promoted post also, appellant was shown at Sl.No.14 as against 1st respondent shown as Sl. No.17. In the seniority list prepared on the basis of notional dates given in G.O.M.S.No.153 dated 14.8.1997 was said to have been approved and communicated by Transport Commissioner in his proceedings dated 19.6.1995 also the appellant was shown as senior to respondent no.1. Respondent no.1 approached the Tribunal only at this stage making a grievance that his representation regarding fixation of seniority was not being disposed of. By order dated 17.5.2000 in OA No. 2369 of 2000 the Tribunal directed the concerned authorities to dispose of the representation said to have been made for relief. On 26.5.2000 a combined list of RTOs was published as noticed above, where the appellant was shown as senior at Sl.No.41 to respondent no.1 shown as Sl.No.44. Subsequently on 31.5.2000 provisional seniority list of DTCs was published as indicated above. Respondent no.1 assailed the seniority lists dated 26.5.2000 and 31.5.2000 before the Tribunal in OA No. 3381 of 2000. During pendency of the matter before the Tribunal, the Government issued GOMs No.14 dated 29.1.2001 showing respondent no.1 as senior to the appellant in the seniority list. In view of this memo, respondent no.1 wanted disposal of his application before the Tribunal as infructuous, but the Tribunal refused to accept the prayer observing that there was challenge to the correctness of the same in some connected matters.

5. The stand of respondent no.1 before the Tribunal was that since the appellant had joined the duties after the prescribed period of 60 days indicated in the appointment order, he had to be ranked junior to respondent no.1 who had joined earlier. It was submitted that Government could not have extended the joining report and it was the Commission alone which is competent to do it. In any event, the effect of G.O.Ms. 822 dated 18.9.1967 made the position clear that if a person does not join within the stipulated time not only there was power to withdraw his selection but even if somebody had joined later, the fact that he did not join within the stipulated period of 60 days disentitled him from seniority. Tribunal did not accept this plea. It also found no substance in the plea that the date of joining would govern

seniority if the concerned employee had not joined within the time stipulated in the appointment order. It took note of the fact that Government had permitted the appellant to join by 31.1.1987, and in fact, he had joined on 21.1.1987. Referring to Rule 33(b) of the Andhra Pradesh State and Subordinate Service Rule 1962 (in short 'the Rule'), it held that the appointing authority may at the time of passing an order appointing two or more persons simultaneously to a service, fix the order of preference among them and when such order has been fixed, seniority is to be determined in accordance with it. Appellant, indisputably was placed on the basis of merit performance in inter se ranking higher than the respondent no.1. Obviously, he has to be treated necessarily as senior to the respondent no.1.

6. Respondent no.1 questioned correctness of the Tribunal's judgment by filing writ petition before the Andhra Pradesh High Court. It was contended that power of extension was available only to the Commission and not the State Government. Further the GO itself merely provided that in case a person does not join within the stipulated time, the effect was that his name is to be removed from the list of selected candidates, except in cases where the Commission considers that there are valid reasons for extending the period.

7. Relying on the prescription in GO.Ms. 822 GA (Services- A) Department dated 18.9.1967 the High Court accepted respondent no.1's stand and directed that he is to be treated as senior. It was held so since appellant did not join within the period of 60 days and thereby he lost also seniority to which he was entitled to on the basis of merit ranking.

8. Learned counsel for the appellant with reference to the order of the Government of Andhra Pradesh pointed out that the State Government itself, in his case had granted time upto 31.1.1987 and, in fact, the appellant had joined admittedly even before that date. That being so, there was no question of appellant losing his seniority fixed initially based on merit ranking. In the present case the name of the appellant was not removed from the list. He was permitted to join by grant of further time and continued as senior to respondent no.1 as shown in various seniority lists, and there was no challenge to any of them, at the appropriate point of time. Admittedly, the appellant joined in the year 1987 and after more than a decade it was not open to respondent no.1 to question the propriety of the extension of time given by the State Government enabling the appellant to join within the extended time. The 1st respondent had no infeasible right to question the extension of time granted by the State Government and at any rate to question the same, at any time according to will and pleasure. The long lapse of time and laches on his part disentitles the 1st respondent to claim any such relief at the belated stage almost after a decade.

9. Per contra learned counsel for respondent no.1 submitted that the State Government had no authority to extend joining time. It was only the Commission which has power to do so and the High Court rightly observed that the extension given to the appellant was itself bad and, therefore, the benefit of the Rules stipulated in terms of seniority of the candidates who were selected during one selection has to be reckoned in accordance with appointment in the selection was not available to be given.

10. We find that the GO.Ms. 822 dated 18.9.1967 issued by the Government of Andhra Pradesh was dealing with the question of fixing the time limit for the candidates selected by the Commission to join when they were to be appointed by direct recruitment. Taking the factual position as prevailing then, it was indicated that the time limit to be normally 60 days. It was further stipulated therein that in case they did not join within stipulated time, their names could be removed from list of selected candidates. Service Commission was enabled to extend and give further time for joining before deleting the name of the candidate concerned from the select list for not joining in time. The power of extending time given to the Commission under the G.O. was not in relation to any statutory prescription, and cannot be also said to be in derogation of the powers of the State Government as the ultimate repository of all Executive power. On the other hand, the Government itself provided that the time could be extended if the Commission considered it necessary. This was merely an enabling power conferred by the Government only and the G.O. cannot be construed to be self destructive of the power of the Government, in the absence of any statutory rules as such, in this regard. The Commission appears to have been enabled to grant time to effectively monitor the operation of the main list as well as the waiting list (in order of merit) without any undue lapse of time, in case the selected candidates did not join within the indicated time period. It was an executive decision of the Government. When the Government itself extended the time, in case of the petitioner, on the basis of the reasonableness of the request it cannot be said that in the absence of any order passed by the Commission extending the time, the extension granted by the Government was without authority in law.

11. It can be also looked at from another angle. The appellant was granted extension upto 31.7.1987 to join. It was open to the Service Commission or Government at that stage to direct removal of his name from the list of selected candidates. Neither the Commission nor the Government thought it appropriate to do so. On the other hand, the Government extended the joining period and the appellant joined the post. In several periodical seniority lists thereafter the appellant's name was placed higher than respondent no.1. For more than a decade, respondent no.1 did not question that position. After a very long period it was not

open to respondent no.1 to turn around and say that the extension of time to the appellant was not in accordance with law. It is undisputed that both the appellant and respondent no.1 were selected in the same selection and the appellant was more meritorious in terms of marks secured by him in the selection process and ranked above the 1st respondent and the inter se ranking and consequent inter se seniority cannot be disturbed and rights flowing from such ranking cannot be denied merely because there was some delay in joining-all the more so when such delay was only of 8 days and also on account of getting relieved from the Central Government, for reasons beyond his control, which only seems to have weighed with the State Government to accord extension of time also. The High Court seems to have lost sight of the fact that it was not a case where reasons were absent in the order of the Government extending the joining time. On the contrary, the order itself indicates the reasons why the appellant had sought for extension. The Government taking note of the factual position highlighted therein had granted extension. High Court has erroneously held that no reasons were indicated.

12. In the above background, the inevitable conclusion is that the appellant was to be placed higher in the seniority list than respondent no.1 in terms of the inter se merit ranking assigned by the Service Commission. The Tribunal was right in its view, while the High Court could not be held to be so. We set aside the judgment of the High Court and restore that of the Tribunal so far as the appellant is concerned.

13. The appeal is allowed but in the circumstances without any order as to costs.”

3. We, therefore, proceeded to hear further and elicited from both the parties that the contesting respondent was 2nd in the merit list and the applicant was only 18th in the merit list. Shri P. Kamalesan, learned counsel for the applicant, submits that the contesting respondent joined duty after six months and this is an unreasonable delay and therefore his right for primary consideration in the matter of seniority should not be allowed. But it appears that there was some internal issues in the office and appointment letter was sent late to him. For no fault of his, he cannot be prejudiced. Therefore, we

hold that in equity and under law now extant, since the contesting respondent had come and joined on his being informed, it cannot be said that there is any lacunae on his part. Therefore, going by the Hon'ble Apex Court judgement, the merit he had acquired already by the positioning in the list cannot be set aside.

4. Therefore, the OA lacks merit. The OA is dismissed. No order as to costs.

(C.V. SANKAR)

MEMBER (A)

(DR.K.B.SURESH)

MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/00285/2019

Annexure A1: Copy of the draft seniority list vide letter dated 29.06.2016

Annexure A2: Copy of the Hon'ble CAT, Bangalore order dated 23.10.2018

Annexure A3: Copy of the draft seniority list vide letter dated 26.06.2018

Annexure A4: Copy of the letter dated 31.12.2018

Annexure A5: Copy of the representation of the applicant

Annexures referred in reply statement

OA.No.170/00285/2019/CAT/BANGALORE

Annexure R1: Copy of the Swamy's compilation of seniority and promotion

Annexure R2: Copy of the communication dated 25.03.2019

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