

25.9

LIBRARY

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA**

O. A. No. 350/1339/2016

PARTICULARTS OF THE APPLICANT:

Amit Ghosh son of Laxmi Narayan Ghosh working as Lower Division Clerk (LDC) in the office of Doordarshan Kendra, Doordarshan, Bhawan, Kolkata 700095 and residing at 51/A, M. C. Garden Road, Dum Dum, Kolkata 700 030.

.... APPLICANT

V E R S U S -

- I. Union of India, through the Secretary, Ministry of Information and Broadcasting, shastri Bhawan, New Delhi.
- II. The Director General, All India Radio, S-II, Akashvani Bhawan, Parliament Street, New Delhi 110001
- III. Head of Office, All India Radio, Eden Gardens, Kolkata 700 001.
- IV. Timir Karmakar, Upper Division Clerk (UDC), O/O Executive Engineer (Electrical), Civil Construction Wing Golf Green, Doordarshan Bhawan, 5th Floor, Kolkata 700 095
- V. Sukanta Nandi, Upper Division Clerk (UDC), engineering Stores, O/O, Doordarshan, Gold Green, Kolkata 700 095.


..... RESPONDENTS



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

O.A/350/1339/2016

Date of Order: 25.09.2019

Coram: Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Mr. N. Neihisial, Administrative Member

Amit Ghosh

---Applicant

Versus

Union of India & Ors.

---Respondents

For the Applicant (s): Mr. A.Chakraborty, Ms. P.Mondal, Counsel

For the Respondent(s): Mr. S.K.Ghosh, Counsel

ORDER (ORAL)

Per: Mr. N. Neihisial, Administrative Member:

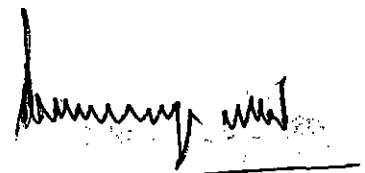
Heard Mr. A.Chakraborty, Ld. Counsel for the applicant, and Mr. S.K.Ghosh, Ld. Counsel for the respondents, and perused the materials placed on record.

2. The applicant has filed this O.A. under Section 19 of the Administrative Tribunal Act, 1985 seeking the following reliefs:

"Speaking Order No. Kol-1(24)/2015-S-Court Case/7188 dated 29.10.2015 issued by the Dy. Director General (P)-I/C cannot be sustained in the eye of law and same may be quashed."

3. The grounds put forth by the applicant for the aforesaid claim is as under:

Sudden change of seniority after a long year, which was fixed on the basis of date of joining and as per Recruitment Rules governing the field, without any rhyme or reason is absolutely arbitrary.



The Recruitment Rules has statutory force and the authorities are not competent to make any change by an executive instruction.

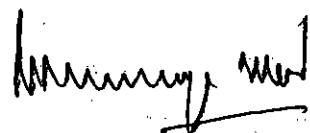
As per AIR Manual, which has statutory effect and which governs the service condition of the applicant as well as private Respondent Nos. 4 and 5, date of joining will be the criteria for determining inter se seniority.

Under the AIR Manual, various duties were delegated to the Director General, AIR, which included power to determine appointment and seniority among the Clerk Gr. II officers and the seniority of the applicant being determined on the basis of the said power vested in the Director General, the impugned action cannot be sustained, the same being contrary to such determination and is, therefore, liable to be set aside.

The applicant was appointed in the year 1990 and his inter se seniority was determined therefrom on the basis of date of joining, which was maintained for all these years and, as such, changing his seniority position making him junior to the private respondent nos. 4 and 5 is unlawful and violative of principle of natural justice.

Official respondents failed to consider him at the time of promotion from LDC to UDC though he was eligible for promotion at that point of time on the wrong and arbitrary interpretation that he was junior to private respondents 4 and 5.

Applicant was appointed in the January, 1990 and in the seniority he was senior but suddenly in the year 2011 seniority list of Clerk Grade-II was recast and the applicant was placed below the private respondents.



4. The respondent authorities submitted their reply on 07.07.2017 wherein they have brought out the brief facts of the case as under:

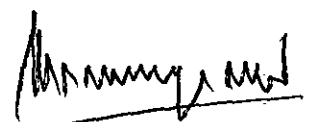
Applicant initially submitted his application on 20.04.2011 for revision of his seniority as per date of joining notwithstanding knowing the provision vide DOPT O.M dated 3.7.1986 wherein it is clearly mentioned "2.1 The relative seniority of all direct recruits is determined by the order of merit in which they are selected for such appointment on the recommendation of the UPSC or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection". His representation was replied to vide office letter dated 09.05.2011.

The revised seniority list was published following the DOPT's guidelines and circulated to all the concerned officers and the same was acknowledged by the applicant on 14.03.2002 but he did not raise any objection at that moment.

The applicant again submitted his representation to Director General, AIR, new Delhi, which was disposed of on 03.06.2015 elaborating the rule position on the issue of seniority.

OA No. 1093/2015 filed by the applicant was disposed of by this Tribunal and pursuant to the direction of the Tribunal, applicant was given personal hearing by the respondents and was served with the merit list of applicant as well as private respondents but the applicant neither raised any objection nor challenged the said merit list.

5. Denying the contention of the applicant that he was stagnating, respondents have further brought out the fact that the applicant had been given



promotion to UDC vide order No. Kol-1(7)/2015-S(Zonal)/4642-4662 dated 29.06.2015, which he had refused.

6. We have gone through the speaking order No. Kol-1(24)/2015-S(Court Case)/7188 dated 29.10.2015 (Annexure-A/5) of the respondent authorities, which was issued in compliance to the earlier order of this Tribunal in O.A.No. 1093/2015. We find that the speaking order issued is very comprehensive, well reasoned and objective. Among others, at para 5 of the speaking order, they have brought out that the applicant did not object to the revised seniority list at that time although he had acknowledged the revised seniority list circulated to all officers on 14.03.2002. They have also brought out that the seniority rectified by them has been as per norms as fixed by the instructions of the DOP&T, which is applicable to all Central Govt. Departments. Accordingly, there is no merit in the O.A.

7. Keeping in view the above, we found that the O.A. is devoid of merit and is not sustainable particularly in view of the fact that the applicant has not challenged in the O.A. the previous rectified seniority, which was notified by the respondent authorities and was acknowledged by the applicant on 14.03.2002.

8. The O.A. is hereby dismissed. No costs.

(N. Neihwal)
Member (A)

(Manjula Das)
Member (J)