

(2018) 12 CAT CK 0118

In the Central Administrative Tribunal

Case No : Original Application No. 823 Of 2013, Miscellaneous Application No. 2903 Of 2016, 1782 Of 2014, 635 Of 2013

Deepak Malhotra And Ors

APPELLANT

Vs

Secretary And Ors

RESPONDENT

Date of Decision : 04-12-2018

Acts Referred:

Central Secretariat Service Rules, 2009 — Rule 12(2)(a)
Central Secretariat Service Rules, 1962 — Rule 5, 8

Citation : (2018) 12 CAT CK 0118

Hon'ble Judges : V. Ajay Kumar, J;A.K. Bishnoi, Member (A)

Bench : Division Bench

Advocate : Ajit Singh, Rajeev Kumar

Final Decision : Disposed Off

Judgement

V. Ajay Kumar, J

1. The applicants, 17 in number, and working as Assistants, filed the OA seeking the following reliefs:-

"(i) Quash the impugned Revised Common Seniority List of 2003 qua serial No.139 to 2284 which includes the persons who were promoted to the post of Assistants after OM dated 14.07.2009, from back date of 2003 and had been included in the said list due to their eligibility caused by one time exception as envisaged in clause 12(2)(a) of CCS Rules, 2009, which inclusion is illegal, arbitrary and discriminatory.

(ii) Quash the order dated 23.08.2012 promoting the Assistants to grade of Section Officer in CSS on ad hoc basis for Serial No.139 of 494 of the revised Common Seniority List of 2003 as the said list is illegal and arbitrary for serial nos.139 to 2284.

(iii) Pass any further orders or directions in favour of the applicant as this Hon'ble Tribunal may deem fit and proper in the present facts and circumstances and in

the interest of justice".

2. The service conditions of the post of Assistants in the Central Secretariat Service (in short CSS) are originally governed by the Central Secretariat Service Rules, 1962 (Annexure-E) and the relevant rules of the same read as under:-

"(6) ASSISTANTS' GRADE Fifty per cent of the regular vacancies in the Assistants' Grade in any cadre shall be filled by direct recruitment on the basis of results of a competitive examination held by the Staff Selection Commission for this purpose, from time to time and the remaining vacancies shall be filled by regular appointment of persons included in the Select List for the Assistants' Grade in that cadre.

(6A) The appointments under sub-rule (6) of the persons whose names have been included in the Select List shall be made in the order of seniority in that Select List:

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18. Seniority.-

(1) The relative seniority of members of the Service appointed to any Grade before the appointed day shall be regulated by their relative seniority as determined before that day:

Provided that, if the seniority of any such officer had not been specifically determined before that day, it shall be as determined by the *Department of Personnel and Training in the Ministry of Personnel, Public Grievances and Pensions.

(2) All permanent officers included in the initial constitution of a Grade under rule 8 shall rank senior to all persons substantively appointed to that Grade with effect from any date after the appointed day, and all temporary officers included in the initial constitution of a Grade under that rule shall rank senior to all temporary officers appointed to that Grade with effect from any date after the appointed day.

(3) Except as provided in sub-rules (4) and (6), the seniority of persons appointed to any Grade after the appointed day shall be determined in the following manner, namely".

3. Thereafter, the 1962 rules were superseded by the Central Secretariat Service Rules, 2009 and the relevant rules of the same read as under:-

"(2) ASSISTANTS' GRADE

a) Seventy Five per cent of the regular vacancies in the Assistants' Grade in the cadre units shall be filled by direct recruitment of graduates possessing computer proficiency as may be notified by the Department of Personnel and Training on the basis of results of a Competitive Examination held by the Staff Selection Commission once in a year for this purpose. Out of the remaining vacancies,

fifteen per cent shall be filled by promotion on the basis of seniority and ten percent through Limited Department Competitive Examination for Upper Division Clerks of Central Secretariat Clerical Service to be conducted by Staff Selection Commission once in a year for this purpose. As a one time exception, resultant vacancies of Assistants arising from the cadre restructuring of Central Secretariat Service in 2003 shall be filled up from Upper Division Clerks by way fifty percent through Limited Department Competitive Examination and fifty percent by seniority.

a) The appointment of the persons whose names have been included in the Select List shall be made in the order of seniority in that Select List. For the purpose of this rule a Select List for the Assistants' Grade shall be prepared and published annually.

b) The rules for the Competitive Examinations and Limited Departmental Competitive Examination referred above shall be determined by regulations made by the Department of Personnel and Training and the allotment of candidates from the results for these examinations to the various cadre units shall be made by that Department.

c) The procedure for preparing and revising the Select List for Section Officers Grade and Assistants Grade shall be determined by regulations made by the Department of Personnel & Training.

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16. Seniority :- (1) The relative seniority of members of the Service appointed to any Grade before the appointed day shall be regulated by their relative seniority as determined before the said date:

Provided that, if the seniority of any such officer had not been specifically determined before the said date, it shall be as determined by the Department of Personnel and Training in the Ministry of Personnel, Public Grievances and Pensions.

(2) The seniority of persons appointed to any Grade after the appointed day shall be determined as follows, namely:-

I. Senior Selection Grade, Selection Grade, Grade I and Section Officers-

The inter-se seniority of officers appointed to the Grade after the appointed day shall be regulated by the order in which their names are included in the Select List for the Grade:

II. Assistants' Grade:-

(i) Regular Officers

(a) Direct recruits shall be ranked inter-se in the order of merit reckoned on basis of final ranking obtained on the basis of marks obtained by the candidate in such of the mandatory training programme as may be prescribed by the Central

Government and the marks obtained in the examination conducted by the Staff Selection Commission in the ratio of 25.75 respectively, the recruits of an earlier examination being ranked senior to those of a later examination:

Provided that the seniority of persons recruited through the competitive examination held by the Staff Selection Commission shall be such as may be prescribed by the Central Government applicable to Central Civil Services.

(b) Persons appointed regularly to a Grade from the Select List for the Grade shall be ranked inter-se according to the order in which they are so appointed;

(c) The relative seniority of direct recruits to a Grade and persons regularly appointed to the Grade from the Select List for the Grade shall be regulated in accordance with the provisions of Regulations made in this behalf by the Department of Personnel and Training in the Ministry of Personnel, Public Grievances and Pensions".

4. In pursuance of Annexure-C and Annexure-D Notifications of Combined Graduate Level Examination, 2005, the applicants were directly recruited as Assistants and were accordingly appointed in the year 2008.

5. Respondents No.2 to 8, who were working as UDCs in the Department were promoted as Assistants, initially on ad hoc basis, but finally as regular Assistants, subsequent to the appointment of the applicants.

6. The respondents vide the impugned Annexure-A Office Memorandums dated 01.07.2012 and 02.01.2012, issued the Final Common Seniority List of Assistants of the Central Secretariat Service for the year 2003, whereunder they have included the names of the private respondents and various others, who are also identically placed like the private respondents though, admittedly, all of them were promoted as Assistants on regular basis during and after 2009, i.e., subsequent to the appointment of the applicants as Assistants. The 1st respondent placed the private respondents and other similarly placed persons enbloc below the normal vacancies without disturbing their seniority in the grade of UDC from Sl.No.139 to 2284. It is stated that the said Common Seniority List of Assistants of CSS of the year 2003 consists of incumbents promoted against normal vacancies as well as Assistants promoted due to cadre restructuring of CSS. It is further stated that Assistants who are promoted due to cadre restructuring of CSS have been placed enbloc below the normal vacancies without disturbing their seniority in the grade of UDC and till the sl. No.138, the seniority list consists of normal vacancies while from sl.no.139 to 2284, the incumbents are promoted in the vacancies that arose due to restructuring of CSS. The applicants, aggrieved by the action of the 1st respondent-Secretary, DOP&T in including the private respondents and number of others identically placed persons in the said impugned seniority list of Assistants for the year 2003, though they were actually promoted as regular Assistants subsequent to the applicants, filed the OA.

7. Heard Shri Ajit Singh, the learned counsel for the applicants and Shri Rajeev Kumar, the learned counsel for the respondent No.1 and perused the pleadings on record.

8. Shri Rajeev Kumar, the learned counsel appearing for the Ist respondent while drawing our attention to the 1962 Rules and the 2009 Rules and accordingly submits that, they have included the names of the private respondents and others in the seniority list of Assistants for the year 2003 in terms of the said rules, and hence there is no illegality or irregularity in the impugned seniority list. He further placed reliance on the judgment of the Hon'ble High Court in W.P. (C) No.209/2013 and batch in Shri Ravinder Kumar Jha and Others Vs. Union of India and Others dated 21.01.2015 whereunder the Hon'ble High Court set aside the decision of a Coordinate Bench of this Tribunal in OA No.248/2012 in Pankaj Kumar Mishra and Others Vs. The Secretary, Ministry of Personnel, Public Grievances and Pensions and Others. He also submits that the Civil Appeal No.7404/2018 filed against the orders of the Hon'ble High Court of Delhi was also disposed of by affirming the decision of the Hon'ble High Court.

9. A perusal of the relief claimed by the applicants in the instant OA clearly indicates that though they are seeking quashing of the impugned common seniority list of Assistants of the year 2003, qua sl.No.139 to 2284 but have not sought for any relief for themselves. They neither sought for a direction for inclusion of their names in the said seniority list nor in any manner sought for any consequential direction for themselves. As per the settled principles of law, no OA is maintainable before this Tribunal unless the applicant seeks some relief/ consequential relief for himself in the said OA.

10. Further, in Pankaj Kumar Mishra (supra), the applicants therein sought for a declaration that the action of the official respondents therein in giving retrospective promotion and seniority with effect from 2003 onwards to juniors of the applicants therein by holding DPC and examination in 2011 as illegal and arbitrary. When this Tribunal, allowed the said OA, the Hon'ble High Court while setting aside the orders of this Tribunal, observed as under:-

"36. There can be no doubt that retrospective seniority cannot be given to a promotee (or a direct recruit) so as to affect the seniority rights of an existing member of a cadre. The question here is whether retrospective seniority was accorded to the Petitioners in the manner that is impermissible. If the applicants were promoted as UDCs for the period 2004-2007 according to their turn, after clearing the LDCE test, in respect of the 25% quota provided under the Rules and if the petitioners were given retrospective promotion on the basis of the restructuring report accepted by the Union Cabinet, there is no doubt that such action would be legally vulnerable. However, in the present instance, certain other features are peculiar to this case. They are:

(1) The Union Cabinet approval led to increase in cadre strength of UDCs: the cadre was increased by 2151 posts;

(2) The cadre strength increase was followed up by an amendment to the CSCS Rules, on 08-11-2010.

(3) The amendment was given retrospective effect, as evident from the following amended Rule 5:

"5. Authorized sanctioned strength :-

(1) The authorized sanctioned strength of the two grades of the service in each cadre as on the 3rd October 2003, shall be as specified in the Second Schedule.

(2) After the 3 October, 2003, the authorized sanctioned strength of the two grades in each cadre shall be such as may be determined by the Central Government from time to time.";

(4) The applicant/respondent did not challenge the amended rule, or the retrospectivity given to it. The CAT also completely overlooked this material aspect.

(5) The cadre strength, indicated in the Second Schedule to the amended rules - of the UDCs- was 5377. This too went unnoticed by the CAT, which erroneously assumed the figure to be 2300.

(6) In the case of Assistants' cadre, the 2151 posts were filled (by the UDCs) by recourse to the power of relaxation, through an extended panel dated 14-05-2009. The relaxation was indicated in the reply to the query of the said Sushil Kumar, (query no. 8) where it was indicated by the Central Government that "...2151 vacancies in Assistant Grade were filled up through Seniority Quota of the Select List of Assistant of CSS for the year 2003 (extended) by relaxing the provisions of Rule 12(2) (a) of the CSS Rules, 2009, by the competent authority..."

(7) Although the 2151vacancies arose in 2009, the effect of the retrospective rule was that they were deemed to have arisen w.e.f 03-10-2003.

(8) The DoPT had indicated the mode of filling these vacancies in the light of the new development, after extensive consultations - and obtaining the approval of the concerned Union Minister, by Office Memorandum dated 03-05-2012.

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(9) The applicant/respondents' plea of their unjustified loss of seniority was based on the assumption that all vacancies which had been filled during the period 2005-2009 (in the LDCE quota for UDCs) were regular. The argument therefore was that subsequent vacancies which became available in 2009 could not be filled with retrospective effect.

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(10) The respondent/applicants' claim of being prejudiced hinged entirely on the fact that the common seniority list was - in their reckoning finalized on 24th June

2011. The developments which took place in the meanwhile, i.e approval of the Committee report, assimilation of 2151 vacancies after their inclusion in the cadre strength, through an amendment, creation of those posts w.e.f 03-10-2003, in effect inject fluidity to the entire process. Therefore, even though the common seniority was declared as "final" in June 2011, it could not be said that the applicant/respondents' rights had acquired a settled character. This meant that the process of assimilation (of the 2151 UDC posts and their filling up) could have - and did- potentially result in the review of that seniority list. These peculiar features meant that the Central Government's eventual decision in promoting the present Petitioners, with effect from the date the vacancies arose in 2003, on the basis of their eligibility- since they were entitled to be considered for UDC cadre that year, was not a "retrospective promotion". It was the filling up of vacancies which were created with effect from a date prior in point of time, and effectuating that decision (i.e. post creation with effect from a past date- the decision being unchallenged even still date) by filling the posts from those eligible to be considered at that relevant time. No exception can be taken to this course, additionally because the OM of 03-05-2012 indicated a fair method of filling the posts, i.e. in accordance with rules, after accommodating those LDCE candidates who could not be promoted for want of vacancies in 2003, and conducting review DPC for SQ promotees on the one hand and a special LDCE for those who could not avail that benefit for the intervening period.

37. There is yet another dimension to the controversy. The decisions relied on by CAT and the applicants, to say that retrospective assignment of seniority is arbitrary, dealt with cases where the two sources of recruitment were by promotion and direct recruitment. In the present case, the CSCS Rules applicable to the cadre of UDCs exclusively required - at the relevant time, appointment only by promotion. Of this source (promotion) 75% was to be seniority based (SQ) whereas the rest (25%) was to be on the basis of a limited departmental examination (LDCE). For SQ, the minimum eligibility prescribed was 8 years' service in the grade of LDC; for LDCE quota, the candidate could compete if she or he had completed 5 years in the feeder cadre (LDC). Concededly, the petitioners were senior to the applicants in the LDC quota and were eligible to be considered for the UDC cadre in the seniority quota. However, they could not be considered, because there were no vacancies then. Even the applicants were promoted to the LDCE vacancies subsequently. In these circumstances, when the sources of recruitment were the same, i.e. promotion, the only difference being the method of promotion (seniority and limited departmental exam) the claim of being adversely affected made by the applicants could not have been of the same order as in the case of retrospectively promoted or regularized promotees, who may not enter the cadre regularly".

11. The Hon'ble Apex Court affirmed the orders of the Hon'ble High Court, though liberty was granted to the applicants in the OA to submit representations on certain other aspects.

12. Though the issue involved in Pankaj Kumar Mishra (supra) was mainly granting retrospective promotions to UDCs but the same was done under the same set of facts and in respect of the same set of rules and in the same manner. The said action was upheld upto the Hon'ble Apex Court. For parity of reasons and in view of the categorical observations of the Hon'ble High Court, the impugned orders in the instant OA are also liable to be upheld.

13. In the circumstances and for the aforesaid reasons, the OA is dismissed. All the pending MAs also stand disposed of. No costs.