

(2001) 02 AP CK 0088

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16984 of 1999

K.R. Raghavan Nair

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 14-02-2001

Acts Referred:

Constitution of India, 1950 — Article 162, 226, 309, 32

Citation : (2001) 2 ALD 503 : (2001) 2 ALT 442

Hon'ble Judges : S.B. Sinha, C.J;S.R. Nayak, J

Bench : Division Bench

Advocate : Mr. Sarasani Satyam Reddy, for the Appellant; Mr. L. Narasimha Reddy, SC for Central Government and Mr. Nuty Ram Mohan Rao, for the Respondent

Judgement

S.B. Sinha, CJ

1. This petition is directed against the judgment dated 23-7-1999 passed by the Central Administrative Tribunal in OA No.883 of 1998 whereby and whereunder the application filed by the respondent No.3 herein questioning the seniority of the petitioner was allowed.

2. Before considering the rival submissions, it is necessary to consider the fact of the matter.

3. The petitioner as also the unofficial respondent were appointed as Lower Division Clerks. They were promoted as Upper Division Clerks. The rule governing the said promotion provides for filling up of 50% of the vacancies on the basis of the competitive examination limited to the Lower Division Clerks and the rest on the basis of seniority-cum-fitness.

4. The petitioner herein opted for the first mode of promotion and was regularly promoted as Senior Division Clerk on 24-8-1976. The unofficial respondent was however promoted on the basis of seniority on the same date viz., 24-8-1976. The petitioner was placed at serial No.1 whereas the unofficial respondent was

placed at serial No.2. They were appointed substantively to the posts with effect from the same date on 13-11-1981 and in order of merit, the petitioner was placed at serial No.5 whereas the unofficial respondent was placed at serial No.6.

5. The unofficial respondent did not lodge any protest about his seniority. Only on 16-1-1994, he made his first representation claiming seniority over the petitioner and it was rejected. Yet again, the made another representation only on 7-2-1997. The said representation was rejected by the second respondent on 4-3-1998. He tiled the Original Application before the Tribunal which was marked as OA No.883 of 1998 and it was disposed of at the stage of admission with a direction to make a detailed representation. The detailed representation made by the unofficial respondent was also rejected on 7-7-1998.

6. The learned Tribunal inter alia held that as the third respondent was promoted on seniority-cum-suitability basis whereas the petitioner was promoted on the basis of passing of examination, the former ranks higher to the petitioner herein in the cadre of UDCs and thus, he would rank senior to him. The learned Counsel appearing on behalf of the petitioner inter alia submitted that having regard to the fact that the third respondent herein did not make any protest for a long time, the learned Tribunal erred in passing the impugned order.

7. Mr. Nooty Ramamohan Rao, learned Counsel appearing for the unofficial respondent on the other hand submitted that no rule governing the seniority of the persons similarly situated having been issued in terms of Article 309 of the Constitution of India nor any executive instructions having been issued in terms of Article 162 thereof and therefore, the seniority in the lower cadre should prevail. Strong reliance has been placed in Central Provident Fund Commissioner v. N. Ravindran .

8. Although there cannot be any dispute with regard to the aforementioned proposition of law, the question which arises for consideration in this petition is as to whether the learned Tribunal exercised its jurisdiction rightly having regard to the fact that the third respondent herein did not question the seniority position for a long time. It is now a well settled principle of law that only because a person is entitled to some relief, he would automatically be granted the same without taking into consideration of other relevant factors, for example, delay and laches on his part.

9. Seniority is a civil right. Seniority between the parties has been determined as far back as in the year 1976. It is a well settled principles of law that the seniority list should not be permitted to be disturbed after a long time. Seniority once settled having regard to the positions of the parties which had been respectively enjoyed by them for a long time, should not normally be directed to be unsettled. In the instant case, the learned Tribunal did not address itself to the aforementioned vital question at all. In the instant case, the delay in making the protest defeats equity. It is not a case where no cause of action had arisen to file a writ petition before 1998.

10. In *Prafulla Kumar Swain v. Prakash Chandra Misra* 1993 Suppl. (3) 181, the law has been laid down in the following terms:

"Now comes the proverbial last straw on the camel's back.

There have been laches on the part of the direct recruits in seeking the remedy. When the list was published in 1985 nothing prevented them to approach earlier. This is the point to be put against them.

That this position was known to the direct recruit (*Prakash Chandra Mishra*) is clear from paragraph 18 of his petition before the Tribunal, it reads thus:

18. Therefore, placement of respondents 42 to 94 as per Civil List corrected up to 1982 published in the year 1985 by the State Government who are promotees from amongst the Forest Rangers in Subordinate Service to Class II Service as Assistant Conservator of Forests in the year 1980 when this applicant was undergoing training at Burnihat, Assam, is patently illegal and an act without jurisdiction by the State Government of Orissa..

We do not want to unsettle settled matters which will lead to several complications".

11. Yet again in *V. Bhaskar Rao and others Vs. State of Andhra Pradesh and others*, , it was held:

"Mr. Madhava Reddy then contended that the petitioners were appointed in the year 1981 and since then the year 1988 twelve seniority lists have been published showing the petitioners below respondents 4 to 16. At no point of time they challenged the seniority lists in the Court. Even when the writ petitions filed by Chalpathi and others were pending they did not intervene before the High Court. The petitioners, according to Mr. Madhava Reddy, are guilty of gross delay and laches and as such are not entitled to get relief by way of this petition under Article 32 of the Constitution of India.

We see considerable force in both the contentions raised by Mr. Madhava Reddy. We are, however, of the view that it would be in the larger interest of the Service to dispose of this petition on merits."

12. Applying the views expressed AIR 1976 214 (SC) , the Apex Court in *S.B. Dogra Vs. State of Himachal Pradesh and Others*, , held that the Tribunal ought not to have disturbed the seniority after a long lapse of time when respondent had not challenged it before the same was finalised in 1979 and observed as under:

"..... Amist should have challenged Dogra's placement in the seniority list which was circulated in March, 1977 inviting objections before it was finalised. If he had no objection then it is obvious that he challenged it in 1983 only because his name was dropped from the Select List of 1982. In the circumstances, the Tribunal should have been slow in interfering with the seniority which was holding the field for the last several years."

13. In *P. Vidyasagar v. Managing Director, APSSC Ltd.* 1996 (4) ALD 861, one of us (S.R. Nayak, J.) dealing with the seniority of Seed Officers in the establishment of the A.P. State Seeds Corporation Limited, observed:

"It is well settled position in law that while assigning ranks in the seniority list of personnel working in a cadre, the span of service put into by individual personnel is the relevant criteria. Admittedly, the petitioners were appointed as Seed Officers on 26-11-1984 whereas the respondents 2 to 7 were appointed on 23-1-1985 and the remaining respondents 8 to 15 on 31-12-1985. In other words keeping in mind the span of service put in the position of Seed Officer it should be held that the respondents 2 to 15 are juniors to the petitioners. In that view of the matter the first respondent ought to have assigned the ranks to the petitioners in the seniority list above the ranks assigned to the respondents 2 to 15."

14. As the learned Tribunal did not consider this vital matter, we are of the opinion that the impugned order cannot be sustained on the aforementioned ground alone. Hence, the impugned order is set aside and the writ petition is allowed. However in the circumstances of the case, there will be no order as to costs.