

(2019) 02 CAT CK 0180
In the Central Administrative Tribunal
Case No : Original Application No. 591 Of 2013

Ram Dayal, Aged	Vs	APPELLANT
Union Of India		RESPONDENT

Date of Decision : 19-02-2019

Acts Referred:

Citation : (2019) 02 CAT CK 0180

Hon'ble Judges : L. Narasimha Reddy, J; Mohd. Jamshed, J

Bench : Division Bench

Advocate : S.N. Kaul, R.V. Sinha

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J

1. The applicant and respondent Nos. 4-8 were selected to the post of Engineering Equipment Mechanic (EMC) in the Army Based Workshop, Meerut in the year 1998.

2. The applicant made a representation on 16. 07.2012 stating that his seniority has been fixed contrary to the prescribed procedure and that his seniority may be restored to be in conformity with the order of merit fixed at the time of selection. The respondents replied on 09.10.2012 stating that the appointments were made way back in the year 1999 and the question of seniority cannot be considered at this length of time. On an application submitted by the application under the Right to Information Act, a copy of seniority list was also furnished.

3. This OA is filed with a prayer to quash the seniority list circulated on 15.11.2012 and to direct the respondents to fix the seniority of the applicant on the basis of the relative merit, and to extend consequential benefits such as allowing him the grade pay of Rs.2,800 in accordance with the orders dated 14.06.2010 issued by the Govt. of India.

4. The applicant contends that the selecting authority released the list of 7

candidates in which he figured at Sl. No.2 and instead of fixing the seniority in accordance with the merit list, the respondents have shown him at the bottom of the list of seven candidates. Reliance is placed upon the Office Memorandum dated 04.11.1992 issued by the Govt. in which it was directed that the seniority shall be detached from the date of confirmation of the officer and it shall be determined in accordance with the merit of the regularly appointed candidates.

5. The respondents filed a counter affidavit opposing the OA. An objection is raised as to limitation. It is also stated that though the applicant and respondent Nos. 4 to 8 were selected at a time, the orders of their appointment were issued on different dates, depending on the availability of the verification of antecedents, and in the process the applicant was issued order of appointment on 10.04.1999, whereas remaining six were issued orders of appointment between 02.12.1998 and 08.03.1999. Various other contentions are also urged.

6. On an earlier occasion, the OA was dismissed on 12. 11.2014, on the ground of limitation. RA No.223/2014 was also dismissed on 07.01.2015. Aggrieved by that, the applicant filed Writ Petition No.4125/2015 before the Hon'ble Delhi High Court. The Writ Petition was allowed on 20.10.2016 by observing that the OA ought to have been decided on merits instead of dismissing it on the grounds of limitation. Accordingly, the matter was remanded.

7. We heard Shri S.N. Kaul, learned counsel for the applicant and Shri R.V. Sinha, learned counsel for the respondents at length.

8. Before the OM dated 04.11.1992 was issued, the fixation of seniority of candidates selected in a batch, depended upon the dates of declaration of their probation. However, in the light of the judgment of the

Hon'ble Supreme Court on the issue, an OM was issued on 04.11.1992. The seniority was totally delinked from the date of confirmation or the declaration of probation in service. Para 3 thereof reads as under:-

"3. The general principle of seniority mentioned above has been examined in the light of the judicial pronouncement referred to above and it has been decided that seniority may be delinked from confirmation as per the directive of the Supreme Court in Para 47 (A) of its judgment, dated 2-5-1990. Accordingly, in modification of the General Principle 3, proviso to General Principle 4 and proviso to General Principle 5(i) contained in O.M. No.9/11/55-RPS, dated the 22nd December, 1959 and Para 2, 3 of OM, dated the 3 rd July, 1986, it has been decided that seniority of a person regularly appointed to a post according to rule would be determined by the order of merit indicated at the time of initial appointment and not according to the date of confirmation."

9. Coming to the present issue, the applicant and respondent Nos. 4 to 8 were selected at a time. However, the orders of their appointment were issued on different dates. That, in turn, was reflected in their seniority. This is evident from the following table:-

Merit Sl. No

Name

Date of order of appointment

Place in B the Seniority List

01.

Rahul Rana

11.03.1999

113

02.

Ram Dayal

10.04.1999

114

03.

Yash Pal Singh

02.12.1998

108

04.

Sanjeev

Sharma

08.03.1999

112

05.

Omesh Tyagi

01.01.1999

111

06.

Riaz Ahmed

Khan

28.12.1998

109

07.

Girish Kumar

28.12.1998

110

10. In case the assignment of seniority as above was on the basis of the dates of declaration of probation, a clear illegality would have emerged in contravention of the Office Memorandum dated 04.11.1992. However, in the counter affidavit the respondents have stated that the seniority was fixed on the basis of the date of issuance of order of appointment and that the date of confirmation of probation was totally disregarded.

11. It, therefore, becomes clear that the seniority was fixed on the basis of the date of order of appointment, irrespective of date of joining or date on which the probation was declared. The applicant is not able to show us any provision of law or a binding precedent which is to the effect that irrespective of the date of appointment, the seniority must be fixed purely on the basis of the merit assigned by the selecting agency.

12. In a given case, though a person is assigned meritorious place in the select list, the delay in the process of verification of antecedents may have resulted in issuance of order of appointment at a belated stage, compared to the others in the select list. No employee can claim seniority with effect from a date earlier to the one on which he was appointed. The only exception is in the context of determining the inter se seniority, between direct recruits and promotees.

13. It is not as if the merit assigned by the selecting agency has no role to play. It would certainly determine the seniority in case all the candidates shown in the merit list are issued orders of appointment on the same date. That however, is not the case here. For the seven candidates in the merit list, the order of appointment was spread over four months. Seniority was assigned based on the dates of orders of appointment.

14. We do not find any merit in the OA. The same is accordingly dismissed. There shall be no order as to costs.