

**(2024) 03 CAT CK 0022**

**In the Central Administrative Tribunal**

**Case No :** Original Application No. 1363 Of 2011

S.C. Singh Son Of Late Rameshwar Das, Resident Of  
Raghuver Ka Pura, Ahmadpur, District Allahabad & Others

**APPELLANT**

**Vs**

Union Of India Through Principal Secretary, Ministry Of  
Defence, Government Of India, New Delhi & Others

**RESPONDENT**

**Date of Decision :** 12-03-2024

**Acts Referred:**

Administrative Tribunals Act, 1985 — Section 19  
Constitution Of India, 1950 — Article 14, 16

**Citation :** (2024) 03 CAT CK 0022

**Hon'ble Judges :** Om Prakash VII, Member (J); Mohan Pyare, Member (A)

**Bench :** Division Bench

**Advocate :** Raj Kishore Pandey, R.A. Mishra, Rajeev Trivedi, S.C. Mishra, Anand Kumar Pandey

**Final Decision :** Allowed

## **Judgement**

Om Prakash -VII, Member (J)

1. The applicants have filed the present Original Application under section 19 of the Administrative Tribunals Act, 1985 with the following reliefs:-

"i) Quash the impugned order dated 27.07.2011 passed by respondent No.3, vide Annexure A-1 to this original application.

ii) Call for the records of the MTDs who have been provided Spl. Grade ignoring the rightful claim of the applicants including seniority list.

iii) Issue an order or direction commanding the respondents to provide Spl. Grade to the applicants from the date they became entitled for it along with other emoluments with interest.

iv) issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case.

v) Award cost of this application in favour of the applicants.

2. The brief facts of the case are that all the applicants were initially appointed as Civilian Mechanical Transport Drivers (in short CMTDs) Grade II and thereafter they were promoted to CMTD Grade I but without any rhyme and reason, they were reverted to Grade II and again they were promoted to Grade I but their juniors were placed over the applicants. It is relevant to mention here that before 1996, the seniority of CMTDs were being determined Unit wise but after the inclusion of the cadre of CMTDs in centrally controlled cadres in the year 1997, the same is determined on all India basis. On all India basis seniority list of CMTDs were prepared but it was never shown to the applicants and as such ignoring the claim of the applicants, the respondents promoted junior CMTDs to Spl. Grade. The CMTDs, who have been provided Spl. Grade, are juniors to the applicants on all aspects. It is also relevant to mention here that at the time of preparation of seniority list, neither the applicants were informed nor objections were invited from them. The authorities in their own manner prepared seniority list, which contains various anomalies as junior CMTDs have been placed higher and they have been provided Spl. Grade ignoring the rightful claim of the applicants. Aggrieved against the aforesaid anomalies, the applicants preferred various representations to respondent No. 5 and prayed for necessary correction in the seniority list. In pursuance of the representations moved by the applicants, the respondent No. 5 sent details to respondent No. 4 on 18.03.2011 for necessary action and to sort out the anomalies in the seniority list of CMTDs. Thereafter respondent No. 3, without considering the documents sent by respondent NO. 5 and without going into the records, illegally passed the impugned order dated 27.07.2011 stating therein that there is no discrepancy in promotional panel of CMTDs and rejected the representations of the applicants. The aforesaid order is assailed in this O.A.

3. We have heard learned counsel for the parties and perused the records as well as written submissions submitted by learned counsel for the applicants.

4. Learned counsel for the applicants argued that respondents promoted the applicants earlier but without rhyme and reason, they were reverted and when the services of CMTDs were centralized then the seniority list was prepared and their juniors were placed over the applicants. They were provided Spl. Grade. Learned counsel further argued that the work and conduct of the applicants has always been appreciated by the authorities concerned. It is submitted that respondent No. 5 has also recommended the case of the applicants as he was satisfied that there is anomalies in the seniority list. It is also submitted that objection has not been invited by the respondents against the proposed seniority list.

5. Learned counsel for the applicant further contended that respondents are somehow trying to cover their misdeeds and discriminatory attitude due to which the applicants were denied benefits of service against the employees junior to them. He further contended that in the list, which has been annexed as Annexure

CA-1, date of appointment of employees has not been shown. It is also contended that the various irregularity and illegality have been shown in the aforesaid list as several junior persons have been shown senior to the applicants. It is also contended that four grade structures in CMTDs cadre was introduced by the Government, benefit of that was never given to the applicants but higher grade was given to the junior employees. Learned counsel also averred that juniors to the applicants have been provided Spl. Grade from the year 1997 onwards whereas the applicants have been provided Spl. Grade w.e.f. 01.11.2006 though the applicants are entitled for Spl. Grade since year 1998.

6. Learned counsel for the respondents vehemently argued that initially the post of CMTDs was maintained and controlled by various units of IAF. At that time only two grades were consisted i.e. CMTD Grade II and Grade I. Thereafter vide MoD letter No. PC 1(1)/94/D (Civ.1) dated 05.12.1996, three grades were introduced. As per revised nomenclature of the posts, Civilian MTD Ordinary Grade became the basic (junior most) instead of erstwhile CMTD Grade II and instead of erstwhile grade of CMTD Grade 1, CMTD Grade II became the first promotional grade in the hierarchy. Learned counsel for the respondents further argued that in the modification of aforesaid order dated 05.12.1996, Ministry of Defence issued the letter dated 09.04.2001 according to which a new grade (Special Grade) in the pay scale of Rs.5000-8000 was introduced w.e.f. 8.11.1996 as under:-

Grade

Pay scale (Rs)

Percentage

Eligibility period for promotion

Ordinary Grade

3050-4590

30%

Basic Grade

Grade II

4000-6000

30%

9 years regular service in the Ordinary Grade

Grade I

4500-7000

35%

6 years regular service in Grade II.

Special Grade

5000-8000

5%

3 years regular service in Grade I.

In accordance with order dated 09.04.2001, four grade structures with the prescribed ratio of posts amongst the four grades had come into force w.e.f. 08.11.1996 i.e. from the date prior to the date the three grade structures introduced on 05.12.1996. Consequently, the DPCs held earlier under three grade structures were superseded. Accordingly, the Government order was implemented by convening fresh DPCs on the basis of centralized seniority lists of CMTDs as on 08.11.1996 and year-wise promotions were given in various grades.

7. Learned counsel for the respondents contended that as on 08.11.1996, all the applicants (except applicant No.1) who was CMTD Grade II were shifted to CMTD Ordinary Grade in the pre-revised pay scale of Rs. 3050-4590/- and they were given promotion to the Grade of CMTD Grade II (erstwhile MTD Grade 1) w.e.f. 08.11.1996 in the pre-revised pay scale of Rs. 4000-6000 based on the centralized seniority list. Subsequently all of them got promotion to the MTD Grade I (erstwhile MTD selection Grade) in the pre-revised pay scale of Rs. 4500-7000 w.e.f. 19.03.2004. It is also contended by the respondents that the Government of India, Ministry of Defence had again revised the above promotion scheme vide their letter dated 10.02.2006 in terms of which the effective date of introduction of the three grade structure as set out in their letter dated 05.12.1996, which was earlier rendered redundant on introduction of four grade structure w.e.f. 08.11.1996 has now been changed from 05.12.1996 to 01.08.1993. Thereafter all the earlier DPCs were reviewed. Thereafter by the approval of Departmental Promotion Committee, promotions of the applicants have been revised (antedated in each and every grade) vide letter dated 17.09.2010 as amended vide letter dated 25.11.2010.

8. We have considered the rival submission of the parties and have gone through the entire record.

9. It is an admitted fact that due to order dated 10.02.2006 date of effect of introduction of three grade structure has been changed from 05.12.1996 to 01.08.1993. Therefore, all the earlier DPCs were reviewed and revised centralized seniority list was issued. On the basis of revised centralized seniority list, promotions of applicants have been revised.

10. It is noteworthy to mention here that change of seniority entails civil consequences, thus, before making change in seniority list, the applicants should have been afforded opportunity of hearing. Failure to do so would mean violation

of principles of natural justice. It is also relevant to mention here that rescheduling of seniority list after long period is against the provisions of Article 14 and 16 of the Constitution. It is settled law that seniority of a Government employee shall be counted from the date of regular service in the grade and adhoc/casual service cannot be counted for seniority as held in the case of Krishna Kant Rawat Vs. Union of India and others reported in 2002 (3) ATJ 126, Lucknow Bench of Central Administrative Tribunal September part of 2003.

"6. That it is also settled law that seniority of a Government employee shall be counted from the date of regular service in the grade and adhoc/casual service cannot be counted for seniority as held in the case of Krishna Kan Rawat Vs. Union of India and Others reported in 2002(3) ATJ 126, Lucknow Bench of Central Administrative Tribunal September Part of 2003. Besides, the Hon'ble Supreme Court in the case of Neki Ram and others Vs. Ama Raamgodaru and others reported in 2002(2) S.C. Service Law Judgments 303 has also held that adhoc services cannot be counted for seniority and promotion."

11. If the settled seniority would be made to unsettled, therefore, unsettling the settled seniority position at the long period of time, that too without notice to the applicants, is wholly illegal and arbitrary. We are supported in this regard by various decisions of the Apex Court as hereinafter mentioned.

(i) H.S. Vankani v. State of Gujarat, (2010) 4 SCC 301, wherein the Apex Court has held as under:-

"38. Seniority is a civil right which has an important and vital role to play in one's service career. Future promotion of a government servant depends either on strict seniority or on the basis of seniority-cum-merit or merit-cum-seniority, etc. Seniority once settled is decisive in the upward march in one's chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It instills confidence, spreads harmony and commands respect among colleagues which is a paramount factor for good and sound administration. If the settled seniority at the instance of one's junior in service is unsettled, it may generate bitterness, resentment, hostility among the government servants and the enthusiasm to do quality work might be lost. Such a situation may drive the parties to approach the administration for resolution of that acrimonious and poignant situation, which may consume a lot of time and energy. The decision either way may drive the parties to litigative wilderness to the advantage of legal professionals both private and government, driving the parties to acute penury. It is well known that the salary they earn, may not match the litigation expenses and professional fees and may at times drive the parties to other sources of money-making, including corruption. Public money is also being spent by the Government to defend their otherwise untenable stand. Further, it also consumes a lot of judicial time from the lowest court to the highest resulting in constant bitterness among the parties at the cost of sound administration affecting public interest.

39. Courts are repeating the ratio that the seniority once settled, shall not be unsettled but the men in power often violate that ratio for extraneous reasons, which, at times calls for departmental action. Legal principles have been reiterated by this Court in *Union of India v. S.K. Goel*, *T.R. Kapoor v. State of Haryana* and *Bimlesh Tanwar v. State of Haryana*”.

(ii) In *K.R. Mudgal v. R.P. Singh*, (1986) 4 SCC 531 the Apex Court has held as under:-

“9. We may also refer here to the weighty observations made by a Constitution Bench of this Court in *Malcom Lawrence Cecil D’Souza v. Union of India* which are as follows:

“Although security of service cannot be used as a shield against administrative action for lapses of a public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one’s position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time.”

(iii). In *B.S. Bajwa v. State of Punjab*, (1998) 2 SCC 523 the Apex Court has observed:

“It is well settled that in service matters the question of seniority should not be reopened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable”.

(iv). In *Basanti Prasad v. Bihar School Examination Board*, (2009) 6 SCC 791, it has been held:

“22. We do not think it necessary to burden this judgment with reference to various decisions of this Court, where it has been emphasised time and again, that, where there is inordinate and unexplained delay and third-party rights are created in the intervening period, the High Court would decline to interfere. However, if the delay is properly explained, and if the third-party rights are not going to be affected, the High Court may entertain the petition and consider the case of the aggrieved person on merit”.

12. Hon’ble Apex Court in the case of *B.S. Bajwa vs. State of Punjab* 1998 (2) SCC-523, has held that “It is well settled that in service matters the question of seniority should not be reopened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justified.” The prayer for re-settling well settled seniority after a long delay is also not reasonable in view of the law laid down by the Hon’ble Supreme Court in

the case of P.S.N. Rao vs. State of Orissa & Others 2002 (5) SC-172 wherein, it has been held that "Any interference in the matter at such a belated stage would have resulted in disturbing chain of settled positions and would have created confusion and complication in the cadre." The delay in claiming promotion is further disallowed by Hon'ble Supreme Court in the case of Ghulam Rasool Lone Vs. State of Jammu & Kashmir & Another reported in (2009) 15 SCC-321.

13. Considering the facts and circumstances of the case and in the light of observations made by the Hon'ble Apex Court in its decisions, the O.A. is allowed. The impugned order dated 27.07.2011 is quashed and set aside. The matter is remitted back to the competent authority amongst the respondents to reconsider the case afresh comparing the record of the applicant with the record of those persons who have been promoted and were junior to the applicants. This exercise shall be completed within a period of three months from the date of receipt of a certified copy of the order. No order as to costs. All associated MAs are disposed of.