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**(2012) 01 DEL CK 0191**

**In the Delhi High Court**

**Case No : Writ Petition (C) 393 of 2012**

Sh. Adil Rashid Siddiqui

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision : 20-01-2012**

**Acts Referred:**

**Citation :** (2012) 2 AD 183 : (2012) 187 DLT 189 : (2012) 2 SLJ 184

**Hon'ble Judges :** V.K. Jain, J;Badar Durrez Ahmed, J

**Bench :** Division Bench

**Advocate :** Aaditya V.K, for the Appellant; S.M. Arif, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

V.K. Jain, J.—This writ petition is directed against the order dated 02nd November, 2011, passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "the Tribunal"), dismissing the OA No. 3191/2009, filed by the petitioner.

An advertisement was issued by SSC on 26th November, 1991, to fill up the vacancies of Head Clerks, which had arisen in the year 1991. The interviews were held in the year 1995 and the result was released vide letter dated 02nd May, 1995. The applicant joined All India Radio on 15th June, 1995. A draft seniority list of Head Clerk/Accountants/Senior Storekeepers was issued by All India Radio on 18th November, 1997, wherein the name of the petitioner was shown at serial No. 56. The draft seniority list indicated the seniority as on 01st October, 1996. The list was circulated with a stipulation that the omissions/discrepancies, if any, noticed in the list be brought to the notice of the issuing office on or before 28th November, 1997. The petitioner made a representation seeking seniority with reference to the year of vacancy, i.e., 1991-92. Another seniority list was thereupon issued on 24th February, 2005 wherein the petitioner was placed at serial No. 12, between Shri Bhajan Lal and Shri R.B. Chakraborty, who were appointed in the year 1992 from surplus cell. A perusal of the covering

letter dated 24th February, 2005, whereby this list was circulated, would show that this also was only a draft seniority list and not a final list. Objections were invited while issuing this draft list as well. A number of representations were made by other employees, when the petitioner was granted seniority with reference to the year of vacancy, in the draft list issued on 24th February, 2005. The representationists also claimed upgradation of their seniority with reference to the years in which the vacancies, against which they had qualified in the departmental examination, had arisen. The matter was referred by the respondents to DoP & T, which, vide its letter dated 28th September, 2005, clarified as under:-

It is not understood on what basis seniority of Shri Siddiqui has been fixed with reference to the vacancy year of 1991 even though he joined much later in the year 1995. The Department's instructions dated 7th February, 1986 and 3rd July, 1986 on seniority clearly indicate that inter-se seniority between the promotees and Direct Recruits in a particular year shall be determined only with reference to such Direct Recruits as are available for rotation i.e. as have joined the service or post. The principle and practice of assigning seniority to Direct Recruits with reference to vacancy year was done away with by these O.Ms. Thus seniority to a Direct Recruit is to be assigned with reference to the year of joining and not with reference to vacancy year.

It was thus clarified by DoP & T that seniority had to be assigned with reference to the year of joining and not with reference to the year in which the vacancy arose. Yet one more draft seniority list was issued on 18th September, 2007 placing the petitioner at serial No. 6, between Shri S. Kajur and Shri Bhajan Lal. This draft list indicated the provisional seniority list on 1st January, 2007 and objections were called while issuing this draft seniority list.

2. Pursuant to the clarification given by DoP & T vide its letter dated 29th August, 2005, Director General of All India Radio vide letter dated 31st December, 2008, issued the following clarification with respect to seniority of Head Clerks/Assistants in AIR/Doordarshan in respect of Direct Recruits/ Departmental Examination vis-à-vis promotees:-

The Ministry of I&B in consultation with DoP & T has clarified the position which are reproduced as under:-

DoP & T's instructions dated 7th February 1986 and 3rd July 1986 on seniority clearly indicate that inter-se seniority between the promotees and Direct Recruits in a particular year shall be determined only with reference to such direct recruits as are available for rotation i.e. as have joined the service or post. The principle and practice of assigning seniority to direct recruits with reference to vacancy year was done away with by these O.Ms and thus the seniority to a direct recruit is to be assigned with reference to the year of joining and not with reference to the year of vacancy.

DoP & T has further clarified that when appointments against unfilled vacancies

are made in subsequent year or years either by direct recruitments or promotions, the person so appointed shall not get seniority of earlier year (viz. year of vacancy/panel or year in which recruitment process is initiated) but should get the seniority of any year in which they are appointed on substantive basis.

3. Pursuant to the aforesaid clarification, a revised seniority list in respect of Head Clerks/Assistants in Delhi Zone as on 01st January, 2008 and 01st January, 2009 was issued by the Station Director under whom the petitioner was working, placing him at serial No. 8 and giving him seniority w.e.f. 15th June, 1995, when he was appointed as a Head Clerk and he was placed between M.L. Sharma and Shri Ramendra Dutt who were appointed on 26th April, 1995 and 29th September, 1995. It is the revised seniority list which the petitioner challenged before the Central Administrative Tribunal.

4. Initially, the OA was dismissed vide judgment dated 30th September, 2010. The petitioner filed WP(C) No. 303/2011, challenging the order passed by the Tribunal. This Court vide order dated 17th January, 2011, noticing that some of the contentions of the petitioner had not been dealt with by the Tribunal, remanded the matter back to the Tribunal to re-decide it after dealing with all the pleas urged by the petitioner. The OA was again dismissed, vide impugned order dated 02nd November, 2011.

5. During the course of arguments, we specifically asked the learned counsel for the petitioner to show to us any rule, whereby he may be entitled to seniority with reference to the year in which the vacancy against which he was appointed, had arisen. The learned counsel for the petitioner, however, could not show any such rule to us and had, in fact, to concede that there was no rule, entitling the petitioner to seniority with reference to the date in which the vacancy against which he was appointed has arisen. The contention of the learned counsel for the petitioner before us was that the seniority fixed vide seniority list dated 24th February, 2005 could not have been changed by the respondents to the disadvantage to the petitioner and in any case, it could not have been done without giving show-cause notice and opportunity of hearing to the petitioner. We have examined seniority lists issued on 18th November, 1997, 24th February, 2005 and 18th September, 2007. None of these lists, indicating the seniority of Head Clerks, is a final list. All of them have been termed as "provisional list" and have been circulated with a clear stipulation that objections could be filed, against the placements shown in the lists. If, after considering the objections, the respondents decided to change the placement of the petitioner and give him seniority w.e.f. the date of his appointment, no show-cause notice was required to be given to him. The very purpose of using a draft seniority list is to give an opportunity to those whose names find mention in the list, to make representations, if any, in respect of their placement in the list. It is only after considering the objections received against the placements shown in the draft seniority list, that a final list can be drawn up and issued by the Department.

Since no show-cause notice is required to be given to an employee before revising his placement shown in the draft seniority list, it cannot be said that the respondents violated the principles of natural justice by changing the placement of the petitioner, while issuing the list, whereby he was given seniority w.e.f. the date of joining the service. It is correct that initially the Department had agreed to give seniority to the petitioner with reference to the year in which the vacancy against which he was appointed, had arisen, but, since the list issued by the Department, giving him seniority with reference to the year in which the vacancy had arisen, was only a draft list and DoP & T had later clarified the correct position of law that an employee has to be given seniority w.e.f. the date of appointment and not with reference to the year in which the vacancy against which he was appointed had arisen, nothing in law prevented the respondents from revising the tentative seniority initially assigned to the petitioner and they were not required to give any show-cause notice to the petitioner before changing his placement. In fact, even the seniority list giving seniority to the petitioner w.e.f. the date of his appointment was only a provisional list, inviting objections from those who had any grievance against their placement in that list, which, in turn, clearly indicates that the Department was acting in a fair and reasonable manner giving full opportunity to everyone, including the petitioner to make representation against placement shown in that list.

6. As stated earlier, the petitioner has not brought to our notice any such rule, whereby he may be given seniority with reference to the date in which the vacancy against which he was appointed had arisen. The principle laid down by the Supreme Court in this regard in *Pawan Pratap Singh and Others Vs. Reevan Singh and Others*, is that in the absence of any rule to the contrary seniority cannot relate back to a period prior to the date of the incumbent's birth in the service/cadre. The legal position, after taking into consideration earlier decisions in *Ram Janam Singh Vs. State of Uttar Pradesh* and another, *Uttaranchal Forest Rangers' Assn. (Direct Recruit) v. State of U.P. (2006) 10 SCC 346*, *State of Bihar and others Vs. Sri Akhouri Sachindra Nath and others*, , was summarized as under:

(i) The effective date of selection has to be understood in the context of the service rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.

(ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from the different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

(iii) Ordinarily, notional seniority may not be granted from the back date and if it

is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.

(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been born in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the mean time.

In an earlier decision in *Suraj Parkash Gupta and Others Vs. State of Jammu & Kashmir Others*, , Supreme Court considered the plea of ante-dating the date of recruitment on the ground that the vacancy against which the appointment was made had arisen long ago and *inter alia* held as under:

(4) Whether the direct recruits could claim a retrospective date of recruitment from the date on which the post in direct recruitment was available, even though the direct recruit was not appointed by that date and was appointed long thereafter?

This Court answered the question in the following terms: Point 4:

Direct recruits cannot claim appointment from date of vacancy in quota before their selection.

We have next to refer to one other contention raised by the Respondent-direct recruits. They claimed that the direct recruitment appointment can be ante-dated from the date of occurrence of a vacancy in the direct recruitment quota, even if on that date the said person was not directly recruited. It was submitted that if the promotees occupied the quota belonging to direct recruits they had to be pushed down, whenever direct recruitment was made. Once they were so pushed down, even if the direct recruit came later, he should be put in the direct recruit slot from the date on which such a slot was available under the direct recruitment quota.

This contention, in our view, cannot be accepted. The reason as to why this argument is wrong is that in service jurisprudence, a direct recruit can claim seniority only from the date of his regular appointment. He cannot claim seniority from a date when he was not borne in the service. This principle is well settled. In *N.K. Chauhan v. State of Gujarat*, Krishna Iyer, J. stated:

Later direct recruit cannot claim deemed dates of appointment for seniority with effect from the time when direct recruitment vacancy arose. Seniority will depend upon length of service. Again, in *A. Janardhana v. Union of India*, it was held that a later direct recruit cannot claim seniority from a date before his birth in the service or when he was in school or college. Similarly it was pointed out in *A.N. Pathak v. Secretary to the Government* that slots cannot be kept reserved for the direct recruits for retrospective appointments.

7. The learned counsel for the petitioner in support of his contention that the petitioner is entitled to seniority with reference to the year of vacancy placed reliance on clause IV of the letter of appointment of the petitioner, which, *inter alia*, stipulated that "the seniority of the candidates should be fixed on the basis of the ranks of the candidates in the examination and not on the basis of their date of appointment". In our opinion, the reliance on the aforesaid clause in the appointment letter is wholly misplaced. What the aforesaid stipulation in the appointment letter means is that the seniority of those who were selected along with the petitioner would be determined with reference to their merit and not with reference to the date of their joining. To illustrate, if five persons are selected together and the person at serial No. 1 joins after the person at serial No. 2 in the merit list, the person at serial No. 1 in the merit list, would be placed above the person at serial No. 2 irrespective of the date on which he joins. But, it does not mean that they would get seniority with reference to the year in which the vacancies against which they were appointed had arisen. We pointedly asked the learned counsel for the petitioner as to whether any person lower to the petitioner in the order of merit was placed above the petitioner in the impugned seniority list. The learned counsel for the petitioner frankly conceded that no person placed below the petitioner in the order of merit was given seniority above the petitioner in the impugned seniority list.

For the reasons given hereinabove, we find no merit in the writ petition and the same is hereby dismissed, without any order as to costs.