
(2021) 02 CAT CK 0003

In the Central Administrative Tribunal

Case No : Original Application No. 4016 Of 2016

Sudhir Gangahar & Others

APPELLANT

Vs

Ministry Of Information & Broadcasting

RESPONDENT

Date of Decision : 03-02-2021

Acts Referred:

Constitution Of India, 1950 — Article 16, 16(4A)

Citation : (2021) 02 CAT CK 0003

Hon'ble Judges : L. Narasimha Reddy, J;Aradhana Johri, Member (A)

Bench : Division Bench

Advocate : Apurb Lal, Dr. K. S. Chauhan, D.S. Mahendru, K.M. Singh

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J

1. The applicants and respondents 5 to 11 were appointed as Cameraman Grade-II in Prasar Bharati in 1986 & 1986. The respondents 5 to 11 were

shown as juniors to the applicants. The next promotion is to the post of Cameraman Grade-I. On account of implementation of reservation in

promotion, the respondents 5 to 11 were promoted to that post on 16.11.2004. The applicants, however, were promoted on their turn, in the year 2012.

The grievance of the applicants is that the administration did not apply the catch up rule, once they were promoted to the post of Cameraman Grade-I.

It is stated that in the seniority list published in the year 2013, they were shown as juniors to respondents 5 to 11, and soon thereafter a representation

was made on 30.05.2013. It is stated that without taking the representation into account, once again a seniority list was published on 01.11.2016

repeating the same state of affairs.

2. This OA is filed challenging the action of the respondents with a prayer to quash the seniority list dated 1.11.2016 and to direct the respondents to

issue a revised seniority list in view of the judgment in *S. Paneer Selvam and ors. Vs. Government of Tamilnadu and Others* (2008) 17 SCC 190. The

official respondents filed a counter affidavit opposing the OA.

3. Earlier, the OA was allowed through judgment dated 21.11.2017. However, respondents 5 to 11 who were not parties to the OA at that time, filed a

writ petition No.2297/2018 before the Hon'ble High Court of Delhi challenging the order passed by this Tribunal in the OA. The writ petition was

allowed on the sole ground that the affected parties were not before the Tribunal when the OA was decided. Accordingly, the matter was remanded.

After remand, the respondents 5 to 11 got them impleaded and filed their counter affidavit. Their plea is that in view of the amendment in Article 16 of

the Constitution of India, the employees who get promotion on the basis of reservation in promotion, would be entitled for the consequential seniority

also and that no exception can be taken to the impugned seniority list.

4. We heard Shri Apurb Lal, learned counsel for the applicants and Dr. K. S. Chauhan for Shri Ajit Kumar Ekka, learned counsel for the respondents.

5. The relevant dates are not in dispute. In the post of Cameraman Grade-II, the applicants are seniors to respondents 5 to 11. However, the latter

were promoted in the year 2004 to the post of Cameraman Grade-I on the basis of reservation in promotion. The applicants were promoted only in the

year 2012 to that very post. In the seniority list published in the year 2013 for the post of Cameraman Grade-I, the respondents 5 to 11 were shown as

seniors to the applicants. Immediately, a representation was made on 30.05.2013. Another seniority list was published on 01.11.2016 without any

amendment. Therefore, the applicants have filed this OA.

6. The only question that arises for consideration is as to whether the applicants are entitled for the benefit of catch up rule. The Hon'ble Supreme

Court in *Paneer Selvam's case* (supra), dealt with this issue extensively. In para 35 of the judgment, their Lordships held as under:-

“35. In the absence of any provision for consequential seniority in the rules, the “catch up rule” will be applicable and the roster-point reserved

category promotees cannot count their seniority in the promoted category from the date of their promotion and the senior general candidates if later

reach the promotional level, general candidates will regain their seniority. The Division Bench appears to have proceeded on an erroneous footing that

Article 16 (4A) of the Constitution of India automatically gives the consequential seniority in addition to accelerated promotion to the roster-point

promotees and the judgment of the Division Bench cannot be sustained.â??

7. The respondents, on the other hand, placed reliance upon the judgment of Hon?ble Supreme Court in *Sudhakar Baburao Nangnue vs. Noreshwar*

Raghunathrao Shende & Ors., Civil Appeal Nos.2468-2470 of 2019 @SLP (Civil) Nos.8769-8771 of 2018. In this judgment it does not appear that the

judgment of the Hon?ble Supreme Court in *Paneer Selvam* (supra) was either treated as not laying the correct provision or distinguished, though

reference to it was made.

8. It is no doubt true that Article 16 of the Constitution of India was amended providing for extension of the benefit of â??consequential seniority?

wherever the benefit of reservation in promotion is extended. However, it is only an enabling provision. Much would depend upon whether the

concerned department or agency has incorporated the principle of â??consequential seniority? in the relevant rules. This could have been either by

amending the relevant recruitment rules or by issuing a separate circular, which has the force of law. In the instant case, neither the rule was

amended, nor any separate proceedings were issued extending the benefit of consequential seniority. The result is that the ratio of the judgment of the

Hon?ble Supreme Court in *Paneer Selvam* covers the benefits of the case.

9. The OM dated 21.01.2020 only advisory in nature to the concerned departments, and by itself does not have the effect of modifying the relevant rules.

10. We, therefore, allow the OA and direct the respondents to modify the seniority list dated 01.11.2016 assigning the seniority to the Cameraman

Grade-I on the basis of their seniority in the post of Cameraman Grade-II. This shall be done within a period of four weeks from the date of receipt of

a copy of this order. There shall be no order as to costs.