

**(2012) 05 DEL CK 0034**  
**In the Delhi High Court**  
**Case No : Writ Petition (C) 2783 of 2012**

Sunil Dutt

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision :** 11-05-2012

**Acts Referred:**

**Citation :** (2012) 05 DEL CK 0034

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

**Bench :** Division Bench

**Advocate :** Sumant Bhardwaj with Mr J. K. Kaushik, for the Appellant; Sunil Kumar for the Respondent Nos. 1-3 and Mr H.S. Dahiya for the Respondent No. 12, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Badar Durrez Ahmed, J.

CAV 487/2012

The learned counsel for the caveator/ respondent No. 12 is present.

The caveat stands discharged.

WP(C) 2783/2012 & CM 6010/2012

1. This writ petition is directed against the order dated 28.02.2012 passed in MA 3488/2011 in OA No. 1021/2010. The petitioner had sought execution of the order dated 25.01.2011 passed in OA 1021/2010 by way of the said miscellaneous application being MA 3488/2011. The learned counsel for the petitioner before this Court submits that although liberty has been granted by the Tribunal by virtue of the impugned order to seek redressal by way of appropriate proceedings on the original side, he cannot do so because the law does not permit him to do so inasmuch as, according to him, he would be filing the Original Application on the same set of facts and the same circumstances, which is not permissible in law. We may say straightaway that we do not agree

with this contention of the learned counsel for the petitioner because the order dated 25.11.2011 while disposing of the Original Application No. 1021/2010 clearly stipulated certain directions. It is consequent to those directions that a seniority list has been recast and if the petitioner is aggrieved by the manner in which the seniority list has been recast, it does not mean that he would be agitating the same cause before the Tribunal if another Original Application is filed.

2. To elucidate, it would be necessary to note the exact direction given by the Tribunal in the order dated 25.01.2011. The operative portion of the said order reads as under:

9. In the facts and circumstances of the cases and for the reasons stated above. The application is allowed in terms of clause (iii) of the Relief clause referred to above. The impugned seniority list is quashed and set aside qua the private respondents. The respondent -CBI is directed to recast the seniority in these cases in accordance with the OM dated 27th March, 2001, as elucidated above and also having regard to this Tribunal order in the case of D.N. Sharma referred to above, after applying due process as per the applicable rules. We clarify that we have not gone into the merits of fixation of seniority in individual cases and leave it open to be determined by the CBI as per the available records in respect of the individuals concerned.

10. The OA is accordingly allowed in above terms. No orders as to cost.

3. This order was accepted by the petitioner as he was not aggrieved by the same. However, the respondent No.12 in the said Original Application was aggrieved by the said order and had filed a writ petition before this Court being WP(C) 7973/2011. This Court, upon hearing the said respondent No.12, who was the petitioner in the said writ petition, disposed of the said writ petition by an order dated 14.11.2011 in, inter alia, the following manner:

6. We do not understand why necessity to file the present petition challenging the order has arisen. As mentioned above, the Tribunal has very categorically directed that the seniority list is to be recast in accordance with OM dated 27th March, 2011. The Petitioner is also claiming benefit of said OM dated 27th March, 2011. The Tribunal had not gone into the merits of the fixation of seniority at all. If after the aforesaid judgment of the Tribunal, seniority is wrongly recast, as contended by the Petitioner, the appropriate course of action for the Petitioner is to challenge the fresh seniority/individual's seniority by approaching the Tribunal in the first instance.

A plain reading of the above extracted portion from the said decision of this Court in WP(C) 7973/2011 makes it absolutely clear that even this Court was of the view that if anybody had any grievance with regard to the manner in which the seniority list was recast, it would be open to him to challenge the recast seniority list by approaching the Tribunal in the first instance. In other words, if a person, such as the petitioner, had a grievance with regard to recasting of the

seniority list, pursuant to the directions given by the Tribunal on 25.01.2011, the proper remedy would lie not in filing an execution application but in filing a fresh Original Application challenging the manner in which the seniority list was recast.

4. We may also note that pursuant to the order dated 25.01.2011 in the OA 1021/2010, the official respondents had prepared a tentative seniority list which was circulated and objections were invited. The petitioner did not have any grievance with regard to that tentative seniority list. However, after the objections from some others had been considered by the official respondents, a final "recast" seniority list was notified. While notifying the same, the earlier tentative seniority list was withdrawn.

5. The grievance of the petitioner is that while doing so, they have merely modified the list insofar as D. N. Sharma is concerned but otherwise, in respect of others including the petitioner, the original list, which had been set aside by the Tribunal, has been maintained. Therefore, according to the petitioner, the official respondents had actually not complied with the order of the Tribunal dated 25.01.2011 by not recasting the seniority list in toto.

6. When the petitioner filed the said miscellaneous application, the Tribunal by virtue of the impugned order, dismissed the same in the following manner:

5. It is seen that the respondent - CBI tentatively recast the seniority and circulated it vide their letter dated 9.9.2011 inviting objections, if any, thereto from the concerned officers. Upon receipt of objections from the concerned officers, the respondent - CBI considered the matter afresh and modified the earlier seniority list only in respect of Shri D.N. Sharma while in regard to others, the earlier seniority list has been kept intact. While doing so, they have passed a detailed speaking order, vide their office communication dated 8.12.2011, inter alia, stating the reasons for their decision and accordingly, maintained that they have followed the Tribunal's order as well as the provisions contained in OM dated 27.3.2001 in true letter and spirit while assigning seniority to the absorbees.

6. Admittedly, this Tribunal in its order dated 25.1.2011 did not go into the merits of fixation of seniority of individual cases and left it to be determined by the CBI as per the available records in respect of individual concerned. The CBI was directed to recast seniority through due process as well as applicable rules. While doing so, CBI was directed to keep in mind the provisions of OM dated 27.3.2001 as well as this Tribunal order thereon in the case of D.N. Sharma (supra). Once CBI so recast the seniority, maintaining it to be in conformity with the OM dated 27.3.2001 read with this Tribunal's order in the case of D.N. Sharma (supra), the orders dated 25.1.2011 in OA No.1021/2010 stands duly complied with. If anyone is aggrieved with its correctness, it will be open to him to seek redressal in respect thereof in appropriate proceedings on the original side. The same cannot be adjudicated in execution proceedings, particularly when the order in question has already been duly executed as well as having

regard to the fact that the order whose execution is being sought has not been based upon consideration/adjudication the merits of fixation of seniority in individual cases.

7. It is abundantly clear from the above, that the Tribunal, in the first instance, had not at all gone into the merits of the fixation of seniority in individual cases and left it to be determined by the CBI as per the available records in respect of the individual concerned. If the petitioner is aggrieved by the recasting of the seniority list which has ultimately been done by the CBI, it is open to him to challenge the same in a fresh original proceeding by filing an Original Application. This is so because it constitutes a fresh cause of action. Once the Tribunal has itself given the liberty to the petitioner to do so, we see no reason as to why the petitioner ought to have filed the present writ petition instead of approaching the Tribunal by way of a fresh Original Application. The argument of the learned counsel for the petitioner that he cannot, in law, file an Original Application, is not tenable inasmuch as he now has a fresh cause of action, after the recasting of the seniority list which, according to him, has not been done in terms of the OM dated 27.03.2001 and following the principles of D. N. Sharma. There is no merit in this writ petition. The same is dismissed.