

(2010) 11 DEL CK 0018

In the Delhi High Court

Case No : Writ Petition (C) 7350 of 2008

Vinod Mehta and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-11-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2010) 11 DEL CK 0018

Hon'ble Judges : Siddharth Mridul, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : A.K. Behera and Sridhar Nayak, in W.P. C 7350/2008 and Romil Pathak, for Ashwani Bhardwaj, in W.P. C 7406/2008, for the Appellant; S.M. Arif, for R-1 to R-3 in W.P. (C) 7350/2008 and for R-2 and R-3 in W.P. (C) 7406/2008, Naresh Kaushik, for R-4 in W.P. (C) 7350/2008, J.P. Sharma, for R-1 in W.P. (C) 7406/2008 and Anil Singal, for R-4 in W.P. (C) 7406/2008, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—By a common judgment and order dated 18.9.2008, OA No. 691/2007 and OA No. 1079/2007 filed by the writ Petitioners of W.P.(C) No. 7350/2008 and W.P.(C) No. 7406/2008 have been dismissed. The reasoning of the Tribunal is that Article 14 of the Constitution of India carries a positive concept and does not apply to a claim predicated on an illegality. It has been held that seniority is not a fundamental right and being a civil right, no one can claim a vested right in seniority and that if seniority has been wrongly assigned, it can be corrected at any stage. The Tribunal has relied upon two decisions passed by the Jabalpur Bench of the Tribunal and the Calcutta Bench of the Tribunal to negate the challenge raised by the Petitioners to the seniority list dated 16.4.2007 whereunder the Petitioners suffered lowering of their seniority by about 500 serial points.

2. It would be useful to note the historical facts before concentrating on the issues which arose for consideration before the Tribunal.

3. It is agreed between learned Counsel for the parties that for purposes of facts, W.P.(C) No. 7350/2008 may be referred to. There are two writ Petitioners in W.P. (C) No. 7350/2008. Petitioner No. 1 is Mr. Vinod Mehta. Petitioner No. 2 is Mr. S.C. Nayak. Petitioner No. 1 Vinod Mehta joined service under the Respondent as Transmission Executive as a direct recruit on 1.1.1976 and was promoted as Programme Executive on 16.3.1983 on regular basis. It is apparent that there existed a vacancy to the post of Programme Executive falling in the quota of promotees. Petitioner No. 2, S.C. Nayak was appointed as Transmission Executive as direct recruit on 26.12.1975 and was promoted as Programme Executive on 30.3.1983 on ad-hoc basis. He was promoted on regular basis against a vacancy to the post of Programme Executive in the promotee quota. The date of regular promotion is 23.4.1983. Petitioner of W.P.(C) No. 7406/2008 was appointed as a Transmission Executive by way of direct recruitment on 9.12.1975 and with effect from 18.4.1983 was promoted as a Programme Executive on regular basis qua a post falling in the promotee quota. Thus, by the year 1983 the 3 writ Petitioners were working as Programme Executives against regular vacancies.

4. On 1.10.1985 a seniority list of Programme Executives was finalized and notified wherein the seniority number of the two writ Petitioners of W.P.(C) No. 7350/2008 was as under:

Person	Below	Person	No.	Name	Serial	Applicant
Mehta	C.N.	Ramachandra		Srikandan	715	Vinod Nair
Sarwat	Usmani	V.	Senan	Nair	727	S.C. Nayak R

5. As more persons were promoted or were inducted by way of direct recruitment the existing seniority list needed revision and thus on 19.12.1990 the seniority list of Programme Executives was notified in which the name of Petitioner No. 1 was shown at serial No. 368 and the name of Petitioner No. 2 was similarly shown in the said seniority list at serial No. 380. The persons whose names were shown above and below the names of the Petitioners as per the seniority list dated 1.10.1985 were shown above and below the Petitioners in the list dated 19.12.1990.

6. As time passed by and persons retired or earned promotions and further induction took place, on 31.7.1992 the seniority list was revised in which the name of the Petitioner No. 1 was shown at serial No. 344 and the name of Petitioner No. 2 was shown at serial No. 355. The persons whose names were shown above and below the names of the Petitioners as per the seniority list dated 1.10.1985 were shown above and below the Petitioners in the list dated 31.7.1992.

7. The list was revised on 4.5.1995 in which the name of Petitioner No. 1 was shown at serial No. 303 and that of Petitioner No. 2 was shown at the serial No. 313. The persons whose names were shown above and below the names of the Petitioners as per the seniority list dated 1.10.1985 were shown above and below the Petitioners in the list dated 4.5.1995.

8. The list was further revised on 1.1.1998 wherein the name of the Petitioner No. 1 was shown at serial No. 128 and that of Petitioner No. 2 was shown at serial No. 138. The persons whose names were shown above and below the names of the Petitioners as per the seniority list dated 1.10.1985 were shown above and below the Petitioners in the list dated 1.1.1998.

9. On 3.4.2003 the list was further updated in which the name of Petitioner No. 1 was shown at serial No. 135 and that of Petitioner No. 2 was shown at serial No. 145. The persons whose names were shown above and below the names of the Petitioners as per the seniority list dated 1.10.1985 were shown above and below the Petitioners in the list dated 3.4.2003.

10. On 16.7.2004 the list was further revised in which the name of the Petitioner No. 1 was shown at serial No. 135 and that of Petitioner No. 2 was shown at serial No. 145. The persons whose names were shown above and below the names of the Petitioners as per the seniority list dated 1.10.1985 were shown above and below the Petitioners in the list dated 16.7.2004.

11. Relevant would it be to note that the seniority of the Petitioners has been assigned since 1983 and duly reflected in the seniority lists issued till the year 2004. The same was never challenged. The seniority lists were never questioned.

12. It is pertinent to note that the private Respondents of W.P.(C) No. 7350/2008 i.e. Respondent No. 5, Pramod Mehta and Respondent No. 6, R.K. Nagpal joined service as Programme Executives by way of direct recruitment on 24.6.1988 and 31.5.1988 respectively. It is also pertinent to note that since their appointment, the seniority list dated 9.12.1990, 31.7.1992, 4.5.1995, 1.8.1998, 3.4.2003 and 16.7.2004 were notified and to the preceding draft seniority lists inviting objections, none were filed and the two never questioned the seniority lists issued from time to time. It is also relevant to note that both of them were shown way below the writ Petitioners in the seniority position.

13. On 13.1.1999 the writ Petitioners of W.P.(C) No. 7350/2008 were promoted as Assistant Station Director (Programme Officer JTS) on ad-hoc basis. The Petitioners joined the said post on 14.1.1999 and 28.1.1999 respectively.

14. It so happened that on 5.3.1986 one Sh. V.L.N. Rao had filed a writ petition before the Central Administrative Tribunal at Allahabad which was transferred to the Jabalpur Bench of the Tribunal. He questioned therein the eligibility list indicating the All India Seniority ranking of Transmission Executives as on 31.12.1981, a date by which the writ Petitioners were in service as Transmission Executives. He questioned the seniority position assigned to him which probably

ignored certain ad-hoc period when he had worked as a Transmission Executive at Vishakhapatnam and Pondicherry. He pleaded that his name was required to be shown much above serial No. 363.

15. Confronted with the situation that Sh. V.L.N. Rao was entitled to reckon service rendered on ad-hoc basis in the various zones and the persons likely to be affected by the decision, who by then had earned promotions to the post of Programme Executive, the petition filed by Sh. V.L.N. Rao was disposed of with the following directions:

The revised "Eligibility List" indicating the position as on 31.12.1982 may be updated subsequently in the list of the same principles.

It is further directed that further promotion to the post of Programme Executives subject to vacancies may be made on the basis of the revised All India "Eligibility List" of Transmission Executives. A special DPC may be convened for the purpose to consider the case of Petitioner Sh. V.L.N. Rao and other officers similarly placed who would have become entitled to promotion on the basis of the revised "Eligibility List". However, no officer who has been already promoted as Programme Executive on the basis of the earlier "Eligibility List" like Sh. Vinod Mehta, Sh. M.H. Siddiqui shall be adversely affected or reverted. The special DPC should consider the case of officers like the Petitioner and other similarly placed entitled to promotion as a result of the revised "Eligibility List" as if the DPC had met that that time when they became eligible for consideration on the basis of their records of performance which would have been available at that time, and not take into consideration any subsequent material. If the DPC clears them for promotion, they should be given notional promotion respectively from the dates their immediate Juniors were promoted as Programme Executives already, and their seniority in the cadre of Programme Executives determined accordingly, and their pay fixed by grant of increments with reference to the notional dates however not be entitled to arrears of pay emoluments in the higher post of Programme Executive until they actually assume the chare of posts of Programmes Executives, for the earlier period for which they have not actually worked as Programmes Executives, on the principles of "No work, No Pay".

16. Needless to state that the direction issued by the Tribunal was not to revert persons who were promoted as Programme Executives. Direction issued was that ad-hoc service rendered in various zones by Sh. V.L.N. Rao be reckoned to re-fix his seniority as Transmission Executive and review DPC be held. If promoted, notional retrospective promotion as Programme Executive be effected but pay to be paid only from the date he assume responsibilities of the higher post. It may be noted that there were no other claimants before the Tribunal, but yet directions were issued that similarly placed persons were given similar benefit.

17. Likewise, a few applicants had approached the Calcutta High Court questioning the eligibility list dated 31.12.1981, which was transferred to the Tribunal and was disposed of with a direction that the decision of the Jabalpur

Bench be implemented qua said persons. Some other persons approached the Calcutta Bench of the Tribunal directly vide OA No. 671/1987 in which directions were issued that qua the applicants before the Tribunal directions issued by the Bench at Jabalpur be implemented.

18. It is not in dispute that qua those who claimed parity with Sh. V.L.N. Rao, corrective action was taken. The seniority list of Transmission Executives was re-drawn and eligibility list was re-worked out and promotions effected to the post of Programme Executives. Relevant would it be to note that the said dispute pertained to persons working as Transmission Executives for the reason seniority position to said post was in dispute. The issue had no concern with the seniority list to the post of Programme Executives, of course the promotee officers would have unsettled the position qua direct recruited officers to the post of Programme Executives.

19. That sometime in April 2005, Respondent No. 5 and 6 in W.P.(C) No. 7350/2008 filed OA No. 789/2005 before the Central Administrative Tribunal praying that promotion order dated 16.3.1983 and 23.4.1983 of the Petitioners and the seniority list dated 16.7.2004 be quashed. The plea was predicated that seniority be assigned by rotating the vacancies to the post of Programme Executives in the ratio 3 : 2. They questioned the seniority assigned to the writ Petitioners to the post of Transmission Executives as also as Programme Executives.

They raised issues of officers being promoted in excess of their quota. Relief sought was as under:

- (i) to quash and set aside the orders dated 28.8.1987, 16.3.1983, 28.11.1988, 16.7.2004 and 23.4.1983 with all consequential benefits.
- (ii) to direct the Respondents to prepare seniority list of PEX with due reference of their vacancies in their respective quota from 1984 by quashing.
- (iii) To direct the Respondents to give due seniority to seniority list dated 16.7.2004. The applicants from the date of availability of vacancies in their quota.
- (iv) To pass such other and further orders which their lordships of this Hon'ble Tribunal deem fit and proper in the existing facts and circumstances of the case.

20. It may be noted that even before all private Respondents whose seniority was likely to be affected by the decision in the OA filed by Respondents 5 and 6 could be served, on 2.6.2005, dealing with MA No. 1067/2005 in which prayer made was to restrain the department from making promotions with reference to the seniority list dated 16.7.2004, the Tribunal noted that the department was re-examining the issue and that on 25.4.2005 the Ministry of Information and Broadcasting had written to the Director General AIR to re-consider the matter and thus an interim order was passed that while making further promotions the department would give due weightage to the letter dated 25.4.2005. Thereafter, consideration of the issue was deferred and in between the department issued a

draft seniority list of Programme Executives on 10.11.2006 in which the seniority position of the writ Petitioners was lowered considerably. They and many more filed objections in the month of December 2006.

21. Petitioner Vinod Mehta on being served entered appearance through a counsel on 3.1.2007 and filed a reply by 11.1.2007 on which date the matter was adjourned to 29.1.2007. In between, the applicants before the Tribunal withdrew the Original Application filed by them on 19.1.2007. Since the matter was noted listed on 29.1.2007, Sh. Vinod Mehta filed MA No. 504/2007 drawing grievance to the fact that a stale claim was propounded by the applicants before the Tribunal and that before he could be served certain observations prejudicial to the interest of all those whose seniority position stood settled and undisturbed since 1985 came to be made in the various interim orders passed, the Original Application could not be withdrawn without notice to him. He laid a grievance that taking aid of the observations in the interim orders the department was unsettling a settled legal position by revising the seniority list of Programme Executives.

22. MA No. 504/2007 was disposed of vide order dated 5.4.2007 observing that the department would proceed untrammelled by any observations made by the Tribunal in any interim order.

23. Thereafter, the department notified, ignoring the objections filed by the Petitioners and others that settled lists could not be unsettled, by notifying a revised seniority list dated 16.4.2007. Needless to state the Petitioners were brought down in the seniority position by about rank 500.

24. Two Original Applications being OA No. 691/2007 and OA No. 1079/2007 filed by the Petitioners were dismissed by the Tribunal, reasons have been briefly noted by us in para 1 above.

25. From a perusal of the facts it is to be noted that when the seniority list dated 1.10.1985 was promulgated, the applicants before the Tribunal had not been recruited as Programme Executives and thus it cannot be held against them by urging that they slept over the seniority list dated 1.10.1985. But, when the said list was revised on 19.12.1990, they were well in service and were in a position to question the seniority position assigned to them or to the writ Petitioners. They did not do so. Thereafter, when the seniority list was revised on 31.7.1992 and 4.5.1995, they raised no objections. They kept quiet till the year 2005 when they questioned the said 3 lists as also the latest revised seniority list issued on 16.7.2004. It may be noted that the seniority position of the Petitioners was assigned with reference to the same date and at the same place in all the seniority lists with the exception that as and when persons above them retired or were promoted, the seniority position went up.

26. It was thus the duty of the Tribunal to have discussed the impact of the seniority list having remained unchallenged for years together, in fact for 28 years before it was challenged.

27. Delay defeats equity is a principle recognized by law. Acquiescence and estoppel are principles recognized by law. A wrong which has stood for years together and upon which people have founded their actions has been recognized as incapable of being corrected after years. Only where so gross is the injustice caused and so fundamentally illegal is a wrong do Courts ignore delay in resorting to judicial remedies. It is in the interest of society that grievances should be aired within the shortest possible time and sorted out within the shortest possible time. This is the reason why law of limitation has been recognized as an essential part of every justice administration system.

28. Ignoring aforesaid principles of law, the Tribunal has even ignored the fact that its jurisdiction was circumscribed by limitation prescribed being one year to approach the Tribunal from the date the cause of action accrued. By filing OA No. 789/2005 in April 2005 it was too late in the day for the applicants before the Tribunal to question the seniority position which had stood since the year 1985. The promotion orders issued on various dates i.e. 16.3.1983, 23.4.1983, 28.8.1987 and 28.11.1988 could not be questioned as challenge thereto was highly belated. In so far the seniority list dated 16.7.2004 was a reflection of the seniority list dated 1.10.1985, it was immune to challenge. It may be noted that a first drawing up of a seniority list is entirely different vis-?-vis revision in the seniority list. A revised seniority list updates the existing seniority list by exclusion those who have been promoted or have superannuated, resigned or died and new recruits find a place in the seniority list. Revised seniority list can be questioned only by those whose names first enter in the seniority list and that too not by questioning events in the distance passed.

29. Thus, there is no need for us to go into the validity of the reasoning given by the Tribunal for the impugned order and suffice would it be to record that the seniority list dated 16.4.2007 was the result of OA No. 789/2005, which was withdrawn but at a time when observations had already been made by the Tribunal in various interim orders and the Government had been goaded to re-look and unsettle the settled position. We find that the seniority list dated 16.4.2007 unsettles the seniority position assigned to the Petitioners way back in the year 1985, which seniority position was successively reflected in the seniority lists issued on 19.12.1990, 31.7.1992 and 4.5.1995, all of which were never questioned. Thus, the belated seniority list dated 16.4.2007 which has unsettled the settled seniority list which remained firm for 22 years needs to be quashed on said ground alone.

30. The writ petitions are allowed. Impugned order dated 18.9.2008 passed by the Tribunal is set aside. OA No. 691/2007 and OA No. 1079/2007 filed by the Petitioners are allowed. The seniority list dated 16.4.2007 is quashed. The Respondents are directed to implement the revised seniority list notified on 16.7.2004.

31. No costs.