

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No. 608/2001**

% **Date of Decision: 28.01.2010**

SUBHASH CHANDRA & OTHERS PETITIONERS
Through Mr.Gyan Prakash, Advocate

Versus

UNION OF INDIA & OTHERS RESPONDENTS
Through Mr.K.R.Sachdeva, Advocate for
Respondent Nos. 1 to 3
Mr.K.Venkataraman, Advocate for
Respondent No. 9

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

MOOL CHAND GARG, J.

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1. The basic issues raised in this writ petition filed by the petitioners against the judgment dated 24.12.1999 passed by the Central Administrative Tribunal (for short "the Tribunal") in OA No. 2499/1998 are as under:-

1. Whether the private respondents who were admittedly not regularly appointed through the UPSC according to statutory rules but have been directed to be regularized as per direction and procedure laid down by Hon'ble Court or by executive order can supersede the petitioners in seniority list after 15 to 20 years. The petitioners had been appointed and subsequently promoted in accordance with statutory rules

notified under Article 309 of the Constitution of India. The petitioners are relying on the ratio in the case of Direct Recruit Class-II Engineering Officers Association and Others Vs. State of Maharashtra (1990 2 SCC 715) and M.A. Haque and Others Vs. UOI SLJ 1993(3) 65 SC.

2. Whether the benefit of Adhoc service de hor the rules granted to the private respondents from back dates can also be granted to the petitioners also.

3. Whether deemed service without actually working on the post can be taken as qualifying service for future promotions of private respondents.

4. Official Respondent No.2 have given promotions to private respondents immediately after completion of qualifying service from back date. Whether such a procedure should be adopted in the case of petitioners also, who never got promotion immediately after completion of qualifying service.

5. Whether settled seniority of petitioners should be disturbed after a lapse of 15 to 20 years specially when petitioners were not parties in the concerned Court cases although their vested rights and interest were involved.

2. Brief facts giving rise to filing of the present writ petition are :-

(i) Petitioner No.1 joined service as regular Statistical Assistant, a feeder post for Junior Field Officer (for short "JFO")/Handicrafts Promotion Officer (for short "HPO"), with respondent No.2 on 3.2.1966. Similarly, Petitioner No.2 joined as regular Investigator, another feeder post for promotion to the post of JFO/HPO with respondent No.2.

(ii) On 20.6.1972 All India Handicrafts Board (Junior Field Officer) Recruitment Rules (1 -1972) were

notified. On that basis, Petitioner No.1 was promoted as Adhoc JFO and his name appeared in the seniority list issued by Respondent No.2 in 1972.

(iii) On 17.2.1976 private respondents i.e. Respondent Nos. 5, 7 and 9 were selected as JFO. Similarly, Respondent Nos. 6 and 8 were also selected. It is the allegation of the petitioners that these selections were without following the Recruitment Rules. Respondent No.7 (Shri S.K.Jana) joined service as Adhoc JFO on 18.3.1976 and Respondent No.5 (Shri. S.K.Sehgal) joined service as Adhoc JFO on 22.3.1976 and Respondent No.6 (shri V.V.S. Suryanarayana) joined service as Adhoc JFO on 16.5.1977.

(iv) On 16.8.1978 when a regular DPC was held Petitioner No.1 was empanelled as per rules against the vacancy of JFO which arose on 16.12.1974 and Petitioner No.2 was empanelled as JFO against the vacancy which arose on 10.9.1976. However, Petitioner No.1 was promoted as JFO w.e.f. 1.9.1978 whereas Petitioner No.2 was promoted w.e.f. 30.10.1978. It has been submitted that they were not granted seniority as per the date/year of empanelment for which they were entitled.

(v) The post of JFO was re-designated as Handicrafts Promotion Officer (HPO) w.e.f. 4.6.1979.

(vi) On 7.8.1978 Petitioner NO.1 was promoted as Adhoc Assistant Director (AD) in the Carpet Scheme of Respondent No.2.

(vii) On 27.1.1987 the Central Administrative Tribunal, Chandigarh Bench decided the application filed by Respondent No. 5 being OA No.175/1986. The matter went up to the Hon'ble Supreme Court, who vide its order dated 13.9.1994 gave directions for regularization of Respondent No.5 from the back date without going into the merits of the controversy. On that basis, Respondent No.2 issued orders for regularization of Respondent No.5 as HPO from back date i.e. 22.3.1976. The petitioners were not party before the Hon'ble Supreme Court.

(viii) The final eligibility list of Deputy Directors for promotion to the grade of Regional Director was issued on 30.10.1995. The names of private respondents except Respondent No.9 were not included while the names of Petitioner Nos. 1 and 2 was included in that list and appeared at Serial No. 8 and 9 respectively.

(ix) On 20.11.1995 the revised seniority of Respondent No.5 as HPO was issued and on that basis, the Central

Administrative Tribunal (Hyderabad) vide order dated 29.3.1996 passed in OA No. 1130/1995 directed regularization of Respondent No.6 as HPO from back date i.e. from 16.5.1997. Here also, the petitioners were not parties. Accordingly, on 27.3.1978 revised seniority of Respondent No. 6 was issued. Respondent No.6 was also promoted as Assistant Director w.e.f. 15.5.1980 vide order dated 22.4.1998.

(x) Respondent No. 7 was also regularized despite their being no court order w.e.f. 31.3.1996. Revised seniority of Respondent No.7 as HPO was issued on 13/18.5.1998. According to the respondents, seniority to respondents No. 5 to 7 was given in terms of judgment given in favour of respondent No.5. The effect of that seniority list has been reflected in the subsequent seniority list.

(xi) On 6.10.1998 Respondent No. 5 was appointed as Deputy Director from back date i.e. w.e.f. 1.5.1990.

(xii) The petitioners then filed OA No. 2494/1998 before the Central Administrative Tribunal, Delhi challenging regularization and subsequent promotion of Respondent Nos. 5, 6 and 7 from the back dates which was dismissed by the Tribunal.

(xiii) Accordingly, Respondent Nos. 6, 7 and 8 were also appointed as Deputy Directors on 30.12.1999. As stated above, Respondent No. 5 was appointed as Deputy Director on 1.5.1990 as per the order dated 6.10.1998. Respondent No. 6 was appointed as Deputy Director w.e.f. 5.9.1989 while Respondent No. 7 was appointed as Deputy Director w.e.f. 5.9.1989. Respondent No. 8 was appointed as Deputy Director w.e.f. the date he joined the post as per the order dated 30.12.1999. His claim for seniority from back date was however dismissed by the Central Administrative Tribunal. But in view of the orders dated 25.11.1999 passed by the Central Administrative Tribunal, Madras Bench in OA No. 56/1998, he was appointed as Deputy Director from the back date i.e. 19.11.1993.

(xiv) In so far as respondent No. 9 is concerned, an order was passed in his favour by the Central Administrative Tribunal in OA No. 79/90 vide order dated 28.01.1992. His, regularization, seniority and promotion was decided in terms of the said order. The order passed in that OA was challenged by the petitioner before the Hon'ble Supreme Court in SLP (Civil) No. 689/1993 which was dismissed.

(xv) The petitioner despite failing in respect with the orders passed in favour of respondent No.9 tried to challenge the seniority of respondent Nos. 5, 6, 7 & 9 again by filing OA No. 2494/98 which as stated was decided on 24.12.1999. Pursuant thereto fresh seniority list was drawn against which the petitioners gave representation in August, 2000. However, the same was not responded to. Accordingly, the petitioners filed the present writ petition against the seniority list issued on 20.7.2000.

3. It is the case of the petitioners that the order passed by the Tribunal while disposing of OA No. 2494/1998 on 24.12.1999 was contrary to the judgments of the Hon'ble Supreme Court in the case of:-

1. *Judgment of Constitution Bench of Hon'ble Supreme Court in the case Direct Recruit Class II Engineering Officers Association and Others Vs. State of Maharashtra, 1990 (2) SCC 715.*
2. *M.A. Haque and Ors. Vs. Union of India and Ors., SLJ 1993(3) 65 SC.*
3. *State of West Bengal Vs. Aghose Nath Dey, 1993 (2) JT 598.*
4. *Keshav Dev and Anr. Vs. State of U.P. and Anr. 1999 (3) SLJ 10 SC.*
5. *Dr.Anuradha Budy Vs. M.C.D., 1998 (5) SCC 293.*

4. In *M.A. Haque's case (Supra)* it has been held:-

8. Since the private respondents are admittedly not regularly appointed through the UPSC according to the rules but have been directed to be regularized by following the procedure laid down by this Court, it is obvious that they are not appointed to their posts according to the rules. Under no circumstances, therefore, they fall within the scope of guideline (A) laid down in Direct Recruit Class Engineering Officer's Association's case (supra). In fact, they do not fall under guideline (B) given therein either, since their regularization is not in accordance with the rules but as consequence of special procedure laid down by this Court. The expression "in accordance with the rules" or "according to rules" used in the said guidelines (A) and (B) means the rules of recruitment are not the special procedure laid down by this Court. The petitioner applicants thus fall in an altogether different category not covered under any of the guidelines given in Direct Recruit Call II Engineering Officers' Association's case (supra). We have, therefore, to evolve a procedure for fixing their seniority. That procedure cannot be in violation of the guidelines laid down in Direct Recruit Class II Engineering Officers' Association's case (supra). Secondly, the seniority given to the petitioner applicants will have to be below the seniority of the outside; directly recruited through the UPSC as well as below that of the directly recruit erstwhile adhoc Medical Officers. This is not and cannot be disputed on behalf of the petitioner applicants."

5. It has been submitted that since the private respondents were not initially appointed as per the statutory rules i.e. selection by UPSC but

were regularized later in terms of the order of the Hon'ble Supreme Court they have to be placed below the petitioners as per the statutory Rules in terms of the law laid down by the Hon'ble Supreme Court. In view of the aforesaid, it is submitted that since Respondent No.2 has acted against the law laid down by issuing impugned seniority list of the HPO and other higher posts, the impugned amended list and the latest eligible list of July, 2000 and the promotion based upon this is liable to be struck down. The writ petition was also amended subsequently by the petitioners without permission of the Court but later on it was taken on record.

6. The respondents have opposed the writ petition filed by the petitioners and separate replies have been filed by Respondent No. 5 as well as the official respondents. Reply has also been filed by respondent No. 9 to which a rejoinder has also been filed by the petitioner.

7. A perusal of the reply filed by the respondents goes to show that the issues raised by the petitioner are no more res integra inasmuch as the petitioner is trying to assail the seniority fixed in this matter by Respondent No.2 based upon the regularization of some of the respondents under the orders of the Apex Court and consequent seniority drawn from time to time. It is apparent that respondent No.5 was regularized and promoted in accordance with the directions given by the Apex Court in Civil Appeal No. 3009/1989. Seniority was given to respondents 6 & 7 on that basis. Respondent No.9 has been promoted in terms of direction given by the Hon'ble Supreme Court in

SLP (Civil) bearing No. 689/1993. In this case earlier the matter was taken up before the Madras Bench of Central Administrative Tribunal in OA No. 79/1990 to which petitioner no.1 was also a party as respondent no.11. The said OA was dismissed against the interest of the petitioner.

8. The factum of his going to the Apex Court in case of respondent No.9 was not so mentioned by the petitioner no.1 in this writ petition but he has admitted this fact in the rejoinder filed to the counter affidavit of respondent No.9.

9. It is only after his petition before the Central Administrative Tribunal was dismissed twice, he has filed the present writ petition obviously to reiterate his submissions which stands concluded under the orders passed by the Apex Court. The orders passed in M.A. Haque's case to which a reference has been made by the petitioner no.1 have also been discussed and considered by the Tribunal in the case of Ramamurthy which matter had gone up to Supreme Court and, therefore, even that judgment is of no help to the case of petitioner no.1.

10. In the impugned order challenged after about one year of the said decision before us, the Tribunal has taken into consideration all these aspects of the matter. Reference has also been made by the Tribunal to a judgment of the Apex Court in the case of *S.K. Sehgal Vs UOI (Civil Appeal No. 3009/89)*. The relevant paragraph of the aforesaid judgment in the case of S.K. Sehgal as quoted in the impugned judgment is reproduced hereunder :

“the appellant shall be treated as a regular substantive holder of the post of HPO in Marketing and Service Extension Center, Ministry of Textiles. We make it clear that the total service of the appellant shall be taken into consideration for all purposes, including post retiral benefits”

11. After quoting the aforesaid, the Tribunal also held:

“The order was passed on 13.9.1994. In the light of this order, we are unable to agree with the contentions of the learned counsel for the applicants that the total service of the applicant would be considered only for retiral benefits but not for purposes of promotion and seniority. As Respondent 5 has been directed to be regularized as HPO w.e.f. 18.3.1976 i.e. the date from which he has been continuously holding that post, the respondents had to comply with this order of the Apex Court and consider him for further promotions as AD(H) and DD(H) by holding review DPCs in accordance with law. The order dated 20.4.1995 passed by the respondents in respect of Respondent 5 in pursuance of the Supreme Court order dated 13.9.1994 has been marked to all the concerned officers in the Office of Development Commissioner (Handicrafts)- Respondent No.2, the subsequent order passed on 6.11.1995 in respect of the same officer has also been similarly marked and we have no reason, therefore, to reject the contention of the respondents that this OA is highly belated.”

“9..... even on merits we find no substance in the contentions raised by the applicants that the respondents could not have revised the seniority lists or issued the

promotion orders of Respondents 5-7 in terms of the judicial pronouncements they have obtained in their favour. In the case of Respondent No. 7, S.K. Jana, although he might not have litigated earlier, it is settled law that Respondents cannot deny the benefit to him as he is similarly situated as the other two private respondents. The contention of the applicants that the order of the Supreme Court dated 13.9.1994 has not given any specific directions regarding seniority and, therefore, there was no need to revise the seniority list begs the question because the Apex Court itself had directed that the appellant shall be treated as a regular substantive holder of the post from the date he was continuously holding the post and the total service of the appellant should be taken into consideration for all purposes. That being so he would be entitled to claim his seniority as HPO w.e.f. 22.3.1976, that is the date from which he was holding the post on adhoc basis as stated in the order dated 20.4.1995 with all benefits which flows from that order. In the circumstances of the case, we find no infirmity in the orders passed by the respondents promoting the private respondents 5-7 in accordance with the review DPCs held by them and in pursuance of the orders of the Supreme Court and the Tribunal passed in their favour. The judgment of the Supreme Court in M.A. Haque's case (supra) does not appear to be relevant in the facts and circumstances of this case.

12. In so far as respondent No.9 is concerned, it would be appropriate to take note of the preliminary submissions made by the said

respondent in his counter affidavit available at page 228, which is reproduced for the sake of reference:-

Preliminary Objections:

- i) The answering respondent was not a Respondent in O.A. No.2494/1998, filed by the present petitioners before the Hon'ble CAT, Principal Bench, New Delhi, whose judgment and order dated 24.12.1999 has been sought to be assailed in the present writ petition. This, therefore, appears to be a misjoinder. Hence it is prayed at the outset that the name of the respondent No.9 may kindly be deleted.
- ii) Moreover, the writ petition challenges the seniority of respondent No.9 and others vis-à-vis the petitioners. The seniority/promotions given to the respondent No.9 became finally settled as early as in 1993 in pursuance of implementation of orders dated 28.01.1992 in O.A. No.79/1990 (S. Ramamoorthy Vs. Union of India & Others) of CAT, Madras Bench and order dated 3.8.1993 of the Hon'ble Supreme Court in the Special Leave Petitions 698/1993 and I.A./93. The said S.L.Ps. filed by the present petitioners and one another and respondents No.1 and 2 herein were dismissed by the Hon'ble Supreme Court on 3.8.1993 and the order dated 28.1.1992 of the Hon'ble CAT, Madras become final and binding on petitioners. Hence, the petitioners are precluded from challenging the earlier final orders of Hon'ble CAT and Hon'ble Supreme Court and petition is barred by principles of constructive res judicata. ON this count alone the present petition deserves to be dismissed with extra ordinary costs especially as the petitioners are seeking to achieve indirectly what they could not achieve directly years before.
- iii) Further the petitioners are seeking to add the period of their adhoc service to count towards their seniority which plea had never been taken by them either as respondents in O.A. No.79/1990 or as appellant in S.L.P. 698/1993. As such they are precluded from agitating or raising the said new pleas in the present writ petition on the principle of constructive res judicata.

- iv) In the judgment and order dated 25th November, 1999 in O.A. No.56/1998 (S. Ramamoorthy Vs. Union of India & Ors.) the Hon'ble CAT, Madras has also reiterated that the principle of res judicata will equally apply to the respondents in O.A. No.56/1998, and others who were parties in O.A. No.79/1990 and who may like to reagitate the issues decided in O.A. No.79/1990 and reiterated the legitimate benefits/orders issued in 1993 after implementation of Supreme Court order dated 3.8.1993.
- v) The seniority in the Grade of Deputy Director (H) of respondent No.9 with effect from 19.11.1993 and the petitioners with effect from 6.5.1994 was determined in the final seniority list dated 16.5.1995 issued after judicial orders and without any objection from the present writ petitioners. The writ petitioners are again correctly shown as juniors to respondent No.9 in the impugned seniority list dated 20.07.2000. Hence the petitioners are stopped from challenging the seniority in this writ petition and the writ petition against the respondent No.9 is against all canons of law and natural justice.

13. On merits, this respondent also stated in reply to para 1.1. that:-

It is incorrect to say that the petitioners were not made parties in the Court cases filed by the respondent No.9. On the contrary the petitioner were parties to the O.A. No.79/1990 filed by the respondent No.9 in Hon'ble CAT, Madras. It is only because of they being the parties to the said O.A., they filed an S.L.P. No.698/1993, challenging the order dated 28.1.1992 of O.A. No.79/1990, and their S.L.P. was dismissed on 3.8.1993 after confirmation of Tribunal Order. It is incorrect to say that the seniority of Deputy Director (H) was revised against the law laid down by the Hon'ble Supreme Court. The initial appointment of respondent No.9 as Junior Field Officer, with effect from 23.4.1976 was as per the provisions and the U.P.S.C. (Exemption from Consultation Regulations, 1958 specified in the Recruitment Rules, 1972 referred by petitioners in Annexure P-4 (page 57-60) and hence the subsequent regularization with effect from 23.4.1976 in the post held by him and the seniority/promotions granted to respondent No.9 in 1993 were as per Rules and after

recommendation of review DPS/UPSC. It is again incorrect to say that the Hon'ble CAT, New Delhi in its order dated 24.12.1999 in O.A. 2494/1998, gave wrong interpretation of order dated 13.9.1994 of Hon'ble Supreme Court in Sehgal's case. The Hon'ble CAT correctly upheld its implementation.

14. The memo of parties with respect to OA No. 79/90 filed in the Central Administrative Tribunal, Madras Bench is available on record at page 261 goes to show that Subhash Chandra, Petitioner No.1 herein was one of the respondents as his name appeared in the list of respondents as respondent No. 11.

15. As stated above, the petitioner no.1 who was respondent No.11 in that case admittedly filed an SLP against this order which was dismissed. The said order is available at page 286 of the paper book, wherein it has been held :-

We are not inclined to interfere with the order of the Tribunal. It is open for the Union of India to make whatever comments it likes to the UPSC in the matter of work and conduct of the applicant during the period concerned including the alleged failure of Mr. Ramamoorthy in the year 1979. The Special Leave petition is dismissed.

16. The factum of filing of this SLP stands admitted by the petitioner no.1 in his rejoinder. The relevant portion of the said admission is at page 366 and reads as under:-

The petitioner would respectfully submit that they have challenged the seniority of private respondents including respondent No.9 on the basis of ratio decided by Hon'ble Supreme Court in M.A. Haque's case (1990) 2 SCC 715 : (1993) 3 SCC 213 which is based on the judgment of Constitution Bench of Hon'ble Supreme Court in Direct Recruit's case (1990) 2 SCC 715. The issues raised by

the petitioner are fully applicable to the alleged illegal seniority of respondent No.9 vide impugned order dated 20 July 2000 and fully valid in the eyes of law. The petitioner never wanted any case of seniority to be decided without impleading all the necessary parties. They have, therefore, impleaded respondent No.9 as a necessary party.

17. Thus, it will be seen that the efforts are made by the petitioners to reiterate the issues which have been settled by the Apex Court. Even if it is presumed for the sake of reference that the orders passed by the Apex Court is not in consonance with the orders passed by the said Court earlier or by any constitutional court, this Court cannot sit in an appeal against the order passed by the Apex Court. It is for the said court to correct itself whenever an appropriate opportunity is brought before that Court. Hence we do not find any infirmity in the orders passed by the Tribunal inasmuch as the seniority fixed by Respondent No. 2 is in accordance with the directions of the Apex Court in the case of *S.K.Sehgal (supra)* as well as in the case of Respondent No.9. The other respondents have got consequential benefits, some of whom have also approached the different benches of the Tribunal.

18. Taking all these facts into consideration, we find that the order impugned before us of the Tribunal dated 24.12.1999 does not suffer from any infirmity as those orders are in accordance with the directions given by the Apex Court which cannot be interfered with by us sitting in the High Court while exercising our powers under Article 226 of the Constitution of India. Accordingly, the writ petition is dismissed with

no orders as to costs, taking into consideration that petitioner No.1 is a senior citizen.

MOOL CHAND GARG, J.

JANUARY 28, 2010

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ANIL KUMAR, J.