

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ [W.P. (C) 7137 OF 2003]

% RESERVED ON: 14.07.2011
PRONOUNCED ON: 12.8.2011

A.K. BOSE AND ANR.

. . . PETITIONERS

Through: Mr. N.D. Kaushik, Advocate with
Mr. Arun Bhardwaj, Advocate.

VERSUS

UNION OF INDIA & ANR.

. . .RESPONDENTS

Through: Ms. Maninder Acharya, Advocate

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE M.L. MEHTA

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. Vide impugned orders dated 17th September, 1999, the Central Administrative Tribunal has decided two O.As (O.A. 1051/1994 and O.A. 709/94) in which common grievance pertaining to the disputes of seniority was raised by the applicants. In O.A. 1051/1994 one Sh. A.K. Chaturvedi was the applicant who had impleaded 11 respondents. Respondent no.1

was Union of India and respondents no. 2 to 11 were the private parties whose seniority was challenged. Other O.A. was filed by Sh. K.S. Chhatwal against the same very respondents. Both of them had challenged the validity of seniority list issued by the Union of India vide memorandum dated 21st January, 1991 revising the earlier final seniority list issued vide memorandum dated 27th February, 1989. Vide the revised seniority list the seniority possession of these two applicants was brought down from Sl. No. 84 to 93 in the case of A.K. Chaturvedi in O.A. 1051/1992 and Sl. No. 82 to 89 in the case of K.S. Chhatwal in O.A. 709/1994 respectively.

2. The Tribunal accepted their prayer, as a result impugned seniority list dated 21st January, 1991 was quashed and earlier seniority list dated 27th February, 1989 was restored. The petitioners in this petition were the respondents who naturally felt aggrieved by the aforesaid orders of the Tribunal.

3. The factual matrix need not be stated in detail having regard to the narrow scope of controversy that needs to be decided in this writ petition. The petitioners no. 2 & 3 were working as Assistants at the relevant time. Next promotion in the cadre is to the post of Section Officer which is governed by

Research and Analysis Wing (Recruitments, Cadre and Service) Rules, 1975. As per these Rules, 60% posts are to be filled up by promotion on the basis of seniority-cum-fitness and 40% by Limited Departmental Competitive Examination (LDCE). It is not in dispute that as Assistants both the respondents no.2 and 3 were senior to the petitioners.

4. Since the vacancies of Section Officer under both categories were available, process for promotion under two categories was started almost simultaneously. For promotion under 60% quota (based on seniority cum fitness) DPC was held on 2nd and 3rd July, 1986. For filling up the post by LDCE, test as per the Rules was conducted on 12th May, 1986. Those who passed the test were interviewed on 9th July, 1987. Merit list on the basis of test and interview was prepared on 14th July, 1986 and the list was approved on 1st August, 1986. In this manner, the selection process through LDCE was completed on 1st August, 1986. Insofar as promotion on the basis of seniority- cum-fitness is concerned, nothing more than DPC was required which was held on 2nd and 3rd July, 1986, as pointed out above. Since both the process had been completed almost contemporaneously, the promotion orders were issued on the same day.

5. Insofar as respondents no. 2 & 3 are concerned, they were considered in the promotion quota of 60% under the criteria seniority-cum- fitness. Insofar as petitioners are concerned, they appeared in LDCE quota. Both the petitioners and the respondents no. 2 and 3 were found qualified in their respective channels.

6. In the promotion orders issued the respondent no.2 and 3 were shown above the petitioners. Thereafter, seniority listed dated 27th February, 1989 was prepared wherein these two respondents were placed senior to the petitioners herein; for that matter, those persons promoted consequent upon the recommendation of DPC held on 14th July, 1986 and senior as Assistant were shown as senior to those promoted under 40% quota on the basis of LDCE, who were otherwise junior as Assistant. In the said seniority list the respondent no.2 was at rank 84 whereas the respondent no.3 at rank 96 respectively. The petitioners no. 1 and 2 were placed at sl. No. 94 and 96 respectively.

7. Some representations were, however, filed against the aforesaid seniority list. These representations were rejected vide memorandum dated 4th July, 1989 passed by the respondent no.1

However thereafter another revised seniority list 21st January, 21st January, 1991 was issued disturbing the list position contained in earlier list dated 27th February, 1989. The position of respondent no.2 was downgraded from rank 84 to 93 and R-3 82 to 89. The petitioners, on the other hand, were up graded to the rank of 75 and 80 respectively. Before issuing the revised seniority list, no notice was issued to the respondents no.2 & 3. It was in these circumstances, the two respondents, filed the O.A.

8. Admittedly, there are no specific rules fixing the seniority among the promotees under seniority-cum-fitness quota and those who get promotion under LDCE. In the absence of any such rules, when common order of promotions were issued, naturally the seniority in the feeder cadre i.e. Assistant had to be maintained. As pointed out above, respondents no. 2 & 3 were senior to the petitioners as Assistants. Even otherwise, if one goes by the chronology of selection, the DPC for the respondent was held on 2nd and 3rd July, 1986 whereas DPC for the petitioners was held on 9th July, 1986 and the merit list of those candidates who qualified in the said quota was prepared on 14th July, 1987 and minutes of the said DPC were approved on 1st August, 1986. On this basis also, the respondents no. 2 and 3 were to be treated as

senior vide memorandum dated 19th January, 1988 issued by the Government provides for the same.

9. The contention of the petitioners herein before the Tribunal was that seniority of Section Officers from both the quota had to be drawn on 1:1 basis. We do not find force in this contention which is rightly rejected by the Tribunal on the ground that promotion orders for both the categories had been issued on the same dated i.e. 14th August, 1986. The ratio of 1:1 as claimed by the petitioners is not supported by any rules or any other discernable criteria. On this ground alone, we are of the opinion that the petition filed by the petitioner needs to be dismissed as we do not find any illegality or impropriety in the order passed by the Tribunal though the Tribunal has given many other justifications.

10. We thus, dismiss this writ petition. However, there shall be no order as to costs.

(A.K. SIKRI)
JUDGE

(M.L. MEHTA)
JUDGE

AUGUST 12,2011
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