

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C)(CAT) No.02/2023

The Union of India & another

..... Petitioner(s).

V E R S U S

Sri Partho Pratim Bhadra & others

.....Respondent(s).

For Petitioner(s)	: Mr. Biswanath Majumder, CGC.
For Respondent(s)	: Mr. P.K. Biswas, Sr. Advocate, Mr. P. Biswas, Advocate, Mr. R. Nath, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

Order

08/01/2024

Heard Mr. Biswanath Majumder, learned Central Government Counsel appearing for the petitioners/Union of India and Mr. P.K. Biswas, learned senior counsel assisted by Mr. R. Nath, learned counsel appearing for the respondent/Union Public Service Commission.

2. The Union of India is aggrieved by the order dated 28.03.2023 passed by the learned Central Administrative Tribunal, Guwahati Bench in Original Application No.041/0236/2018 whereby the impugned seniority list dated 13.07.2017 has been quashed and the respondent No.2, the Registrar General of India, 2/A Man Singh Road, New Delhi-110011, has been directed to restore the seniority position of the applicant by placing him above respondents No.3 to 15 in the new seniority list of Assistant Director of Census Operations (Technical) as on 01.04.2016

3. The facts lie in a very narrow compass. For recruitment to the post of Statistical Investigator Grade-I, selection process was initiated in December, 2005. In the recruitment exercise, applicant and other succeeded. In the merit list, applicant was shown at Sl. No.12 above the private respondents. While the private respondents were issued appointment letter and joined between March to September, 2007 as per the categorical statements made at paragraph-5 of the counter affidavit of the respondents before learned CAT in the instant O.A., the appointment letter of the applicant was issued only on 17.12.2007 by respondent No.2 where to he joined on the post of Statistical Investigator Grade-I on 04.01.2008. In the seniority list published by the department dated 01.01.2009 applicant was shown at Sl. No.81 while respondents No.3 to 15, the private respondents, were shown junior to him. A promotional exercise was conducted to the post of Assistant Director of Census Operations in 2015 against the vacancies of 2008-09 to 2012-13. As per the respondent-department, the DOPT Office Memorandum provided for crucial date for eligibility for vacancy as 1st of January of the year, i.e. for the vacancy year 2010-11, the crucial date for counting the eligibility on which a candidate had to complete the requisite year of regular service is 1st January, 2010. Under the senior/junior clause, a relaxation of half year of service or two years whichever is less could be permitted to consider the candidature of a candidate for a particular vacancy year. The relaxation was applicable for only 2 years and if the junior of the applicant had completed 5 years of regular service as on 1st of January of that year, the senior had to complete at least 3 years of regular service as on 1st January of that year to become eligible to promotion to the post of ADCO(T). The department considered the eligibility of the petitioner against the available

vacancy of 2012-13. Since the applicant had joined on 04.01.2008 and had completed 3 years of regular service in the grade of S.I. Grade-I on 03.01.2011 and he had less than 3 years of service as on 01.01.2011. Therefore, he was not eligible for promotion to the post of ADCO(T) for the vacancy year 2011-12. Whereas the contesting respondents from Sl. No.3 to 15 completed 3 years of regular service in the grade of S.I. Grade-I between March, 2010 to September, 2010 (had more than 3 years of regular service as on 1st January, 2011) and were eligible for promotion to the post of ADCO(T) for the vacancy year 2011-12 under the junior/senior clause.

4. It is the further case of the respondents borne from the counter affidavit filed before the learned CAT that the DPC was held on 17.02.2015 by the UPSC where the applicant was considered for promotion to the post of ADCO(T) for the vacancy year 2012-13 under the junior/senior clause whereas the contesting respondents from Sl. No.3 to 15 were considered for promotion to the same post for the vacancy year 2011-12 under the junior/senior clause. The UPSC prepared the year-wise panel of the candidates where the name of the applicant was below the names of the contesting respondents from Sl. No.3 to 15. It is the case of the respondent-department that since the panel provided by the UPSC fixed the seniority of the candidates in the grade of ADCO(T) in the Final Seniority List of ADCO(T), the office memorandum containing the seniority list dated 13.07.2017 showed the applicant as junior to the other private respondents. In substance, since there was a delay in issuing the appointment letter to this applicant and his joining on 04.01.2008 out of the same merit list in which the private respondents were junior to him and have

been shown junior in the seniority list of 01.01.2009 also, therefore the applicant's case was not considered under the junior/senior clause as he completed the recurring period of 3 years in January, 2011 for being eligible to be considered in the vacancy of 2012-13 instead of 2011-12.

5. This anomaly in his eligibility apparently is not on fault of the applicant. From the pleadings of the instant writ application which contains the pleadings before the learned CAT also it appears that there was a delay in issuance of an appointment letter in favour of the applicant whereas the private respondents were allowed to join between March to September, 2007. The seniority list of 01.01.2009 prepared on the basis of the merit list of the UPSC also placed the petitioner above the private respondents. The applicant, therefore, did not have any reason to agitate the question of his seniority till it was upset by the impugned seniority list of 13.07.2017. Taking into consideration these relevant facts in chronology, the learned CAT opined as under:

"6. It is a settled position of law that if the appointment is delayed due to laches on the part of administration, then, the seniority will be fixed as per the ranking given in the selection list. Further, it is a settled principle of law that after due selection against the vacancy, seniority cannot be taken away merely because of the delay or inaction on the part of the Government in notifying the appointment letter. The above position is corroborated by the following documents:

(a) O.M. No.22011/7/86-Estt.(D) dated 03.07.1986 by the DoP&T, Government of India.

(b) O.M. No.20011/5/90-Estt.(D) dated 04.11.1992 by the DoP&T, Government of India.

(c) Hon'ble Supreme Court's order in the case of Pilla Sitaram Patrudu & Ors. Vs Union of India & Ors. [1996 SCALE(4) 192].

(d) Hon'ble Supreme Court's order in the case of Union of India and another Vs J. Santhanakrishnan and Ors. [(2007) 15 SCC 694].

(e) Hon'ble High Court of Karnataka in its judgement dated 21.04.2011 in W.P. No.37322/2011 and 1576 to 1698/2011 [The Managing Director cum Chairman and Others Vs. Sri K.S. Premakumar

and Others] upheld by the Hon'ble Apex Court by dismissing the SLP, by judgement dated 25.08.2011 in SLP No.22720/2011 against the said judgement dated 21.04.2011.

7. In the light of the above, we are of the firm conviction that the balance of convenience in this case unequivocally lies with the applicant and that he cannot be made junior to Respondents no.3 to 15 in the Grade of Assistant Director Census Operations (Technical). Therefore, the impugned Seniority list of Assistant Director of Census Operations (Technical) issued vide O.M. No.A-24011/22/2015-Ad III/650 dated 13.07.2017 deserves to be quashed and set aside. Accordingly, the same is hereby quashed and set aside. Respondent no.2 is directed to restore the seniority position of the applicant by placing him above respondents non.3 to 15 in the new Seniority List of Assistant Director of Census Operations (Technical) as on 01.04.2016 to be prepared by them.

8. Accordingly, the O.A. is allowed with the above observations and directions with no order as to costs."

6. We have also put specific query to learned counsel for the writ petitioner/the Union of India as to the reason for delay in issuance of the appointment letter in favour of the applicant. Learned counsel for the writ petitioner has referred to paragraph-4.22 of the counter affidavit before the respondent-CAT to submit that the delay, if any, was occasioned on account of the verification of the credentials of the applicant and certificate of medical fitness etc. However, the above procedure has been replaced now by accepting the undertaking of the recommended candidates for their joining.

7. This explanation also does not excuse the writ petitioner/Union of India since while delay in police verification was not at the fault of the applicant. Moreover, the seniority list of 01.01.2009 reckoned him senior to the private respondents. The date of joining therefore should not have made any material difference in consideration of the subsequent promotional exercise of the applicant.

8. Mr. P.K. Biswas, learned senior counsel assisted by Mr. R. Nath, learned counsel for the UPSC, submits that the merit list of the candidates recommended for appointment to the post of Statistical Investigator Grade-I were provided to the respondent No.2, the appointing authority, in one transaction and the position of the applicant was at Sl. No.12 above the private respondents. Delay, if any, on the part of the respondent No.2 in issuing offer of appointment to the applicant has not been explained by the appointing authority.

9. On the cost of repetition we again say that there was no reason for the applicant to agitate the question of his seniority since he was shown as senior to the private respondents in the seniority list of 01.01.2009. The application of the Office Memorandum of DOPT containing the junior/senior clause and minimum requirement of 3 years of eligibility has resulted in the consideration of the applicant in the vacancy available for the 2012-13 whereas his juniors have been considered for the available vacancy of 2011-12 for which the petitioner cannot be blamed. As such, the injustice done to the applicant has to be remedied. The learned CAT has rightly taken into consideration the relevant material facts, the office memorandums relied upon by the parties and also the judgment of the Apex Court and set aside the impugned seniority list with a direction to the respondent No.2 to restore the seniority position of the applicant by placing him above the respondents No.3 to 15 in the new Seniority List of Assistant Director of Census Operations (Technical) as on 01.04.2016.

10. We, therefore, do not find any grounds to entertain this writ petition. Accordingly, it is dismissed.

Pending application(s), if any, shall also stand disposed of.

(S.D. PURKAYASTHA), J (APARESH KUMAR SINGH), CJ

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