

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Reserved on :04.04.2024
Pronounced on:20.04.2024**

**SWP No.656/2019
CM Nos.2461/2019,
[1/2019]**

MES No.510536 Naresh Sharma,
Aged 43 Years
S/o Sh. Bal Krishan Sharma,
Draftsman O/O Garrison Engineer, CS, **...Petitioners**
R/o 19-Shastri Nagar, Jammu.

Through: Mr. Ajay Abrol, Advocate

versus

1. Union of India,
through Secretary to Government of
India, Ministry of Defence,
South Block, New Delhi.
2. Director General (Personnel),
Engineer-in-Chief's Branch,
Integrated HQ of MOD (Army),
Kashmir House, New Delhi - 110011. **.....Respondent(s)**
3. Chief Engineer,
Northern Command, Udhampur (J&K).
4. MES No.510436 Vivek Kumar,
Technical Offricker,
O/O Commander Works Eng. (AF),
Jammu. C/o 56 APO
**(set *ex parte* vide order dated
11.05.2023)**

Through: Mr. Vishal Sharma, DSGI

**Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

JUDGMENT

Tashi Rabstan – J

1. This petition is directed against the order dated 22.11.2018 passed by the Central Administrative Tribunal, Chandigarh Bench in O.A. No.061/00040/2016, whereby the learned Tribunal though admitted that the O.A. has merit but dismissed the same on the ground of being barred by law of limitation.

2. The facts-in-brief are that petitioner-Naresh Kumar (general category) and respondent No.4-Vivek Kumar (OBC category) appeared for direct recruitment to the post of Draughtsman Grade-II. On being successful, petitioner was placed at Sr. No.3 of the panel, whereas respondent No.4 was placed at Sr. No.21. Petitioner joined his duties on 16.03.2005, whereas respondent No.4 joined on 14.03.2005. As per seniority list issued on 01.01.2008, petitioner was at Sr. No.4, whereas respondent No.4 was at Sr. No.9.

3. Thereafter, seniority list of Draughtsman Grade-II was issued in August, 2010, but the name of petitioner was not there. He represented on 04.10.2010. Accordingly, another seniority list was issued on 23.01.2012, in which petitioner was shown at Sr. No.307, whereas respondent No.4 was at Sr. No.285, i.e., respondent No.4 was placed over and above the petitioner in the seniority list though respondent No.4 was having less merit than the petitioner. The petitioner again submitted a representation on 19.03.2012, it was followed by another representation on 08.05.2015 and reminders also. Thereafter, the

respondents issued another seniority list on 19.10.2015 in which the petitioner was placed at Sr. No.287-B, but again he was placed below respondent No.4 on the basis of his date of joining the service, as petitioner joined his duties on 16.03.2005, whereas respondent No.4 joined on 14.03.2005. Thereafter, on the basis of seniority, respondent No.4 was promoted as Technical Officer vide order dated 06.11.2015. Thereafter, another seniority list was issued on 02.02.2016, but the petitioner was again shown junior to respondent No.4.

4. Ultimately, the petitioner filed O.A. No.061/00040/2016 before the learned Tribunal and the learned Tribunal vide order dated 22.11.2018 though admitted that the O.A. has merit but dismissed the same on the ground of being barred by law of limitation. Hence, the present petition.

5. Learned counsel appearing for respondents 1 to 3 argued that the learned Tribunal in its earlier cases had not given any finding that the seniority was to be fixed on the basis of position of the panel. He further argued that the O.A. before the learned Tribunal was barred by the law of limitation.

6. Heard learned counsel appearing for the parties, considered their rival contentions and also perused the file at length.

7. The present petition was filed on 28.02.2019. Notice was directed to be issued to the respondents on 29.03.2019. Thereafter, the Registry reported on 11.03.2020 that the petitioner had taken steps for the service of respondent No.4. However, the notice issued by the Registry to respondent No.4 was not received back either served or unserved. This Court again vide order dated 03.03.2020 directed to issue fresh notice for service of respondent No.4. Thereafter, the Registry reported that the notice issued to respondent No.4

under registered cover on 16.12.2020 had not been received back either served or unserved. However, when despite service respondent No.4 did not appear, he was set *ex parte* by the Court on 20.07.2022. On the said date the petition was also admitted to hearing. Mr. Vishal Sharma, learned DSGI appeared for respondents 1 to 3, and post admission notice was directed to be issued to respondent No.4.

8. Thereafter, the Registry reported on 27.07.2022 that fresh particulars along with registered cover were filed by the learned counsel for petitioner in the Registry for service of respondent No.4. Accordingly, Registry issued notice to respondent No.4 on 29.07.2022; however, even thereafter none appeared on behalf of respondent No.4.

9. Ultimately, this Court vide order dated 11.05.2023 set respondent No.4 *ex parte* observing that despite service after the petition was admitted to hearing, respondent No.4 has not appeared.

10. As regards the controversy of determination of *inter-se* seniority of direct recruits of the same panel/batch, it is to be seen that the post in question is governed by Military Engineer Services (Non-industrial Class III and Class IV posts) Recruitment Rules, 1970. Admittedly, there is no provision in the said rules for determination of *inter-se* seniority of direct recruits. It was pleaded that in the absence of any provision in the recruitment rules, the seniority is fixed on the basis of instructions issued by the Department of Personnel & Training, New Delhi, including one dated 03.07.1986 and instructions of Ministry of Defence dated 01.05.2000. As per these instructions, the principle for fixation of seniority is as per merit in the panel and not as per date of joining the service.

11. We are also of the opinion that the instruction of Ministry of Defence dated 01.05.2000 make the position clear that seniority ought to be fixed as per the merit position at the time of selection for appointment. Further, we are also in agreement with the observations of the Punjab and Haryana High Court in CWP No.23600/2015, titled as, Union of India vs Jatinder Pal, decided on 17.09.2018, that a candidate at number one in the merit list can be posted at a faraway place where he can reach after 2/3 days, whereas a candidate lower in merit can be posted to the nearest place. In this way, the later candidate with less merit will obviously join earlier than the candidate higher in merit. Therefore, it is well settled that seniority of direct recruits of the same batch is to be determined on the basis of their *inter-se* merit in the select list, unless the rules provide otherwise.

12. In the present case no provision of rules has been shown by the respondents which may permit them to determine seniority on the basis of date of joining. Therefore, it is illogical to assign the seniority on the basis of date of joining amongst the direct recruits. Therefore, in the given circumstances, it can be said that the action of official respondents in fixing the seniority on the basis of date of joining is *per se illegal* and the seniority is to be determined on the basis of merit position in the panel.

13. Now we come to the second issue that the O.A. before the learned Tribunal was barred by the law of limitation.

14. It is to be seen here that in the select list of Draughtsman Grade-II issued in March, 2005, the petitioner was placed at Sr. No.3 of the panel, whereas respondent No.4 was placed at Sr. No.21. As per seniority list issued on 01.01.2008, petitioner was at Sr. No.4, whereas respondent No.4 was at Sr.

No.9; meaning thereby in the first seniority list issued in January 2008 petitioner had been shown senior to respondent No.4.

15. Thereafter, seniority list of Draughtsman Grade-II was issued in August, 2010, but the name of petitioner was not there. He represented on 04.10.2010. This fact is also corroborated vide communication dated 04.10.2010 addressed to Headquarters Commander Works Engineer, Mamun, Pathankot written by Major for Garrison Engineer, whereby it has been admitted that the name of petitioner was not found included in the seniority list. In another Communication No.1004/SL/56/E1 dated 19.03.2012 it was requested to HQ CWE Mamun, Pathankot to include the name of petitioner in the seniority list at appropriate place as his name was found missing in the seniority list.

16. However, in the meantime, another seniority list was issued on 23.01.2012, in which petitioner was shown at Sr. No.307, whereas respondent No.4 was at Sr. No.285, i.e., for the first time in January, 2012 cause of action arose to the petitioner when respondent No.4 was placed over and above the petitioner in the seniority list even though respondent No.4 was having less merit than the petitioner. Petitioner again submitted a representation on 19.03.2012, followed by another representation dated 08.05.2015, representation dated 29.10.2015 and reminders also. Thereafter, the official respondents issued another seniority list on 19.10.2015 in which the petitioner was placed at Sr. No.287-B, but again he was placed below respondent No.4 on the basis of his date of joining the service, as petitioner joined his duties on 16.03.2005, whereas respondent No.4 joined on 14.03.2005. However, it is to be seen here that the seniority list issued on 19.10.2015 was not circulated to the petitioner nor he was disclosed anything. Compelled by the circumstances,

the petitioner filed an application under Right to Information Act on 27.11.2015. Again he submitted reminder on 05.01.2016. In the meantime official respondents issued another seniority list on 02.02.2016. When the petitioner came to know about the same, he again submitted representation on 18.03.2016. When despite making application under the RTI Act the respondents did not supply the seniority list, the petitioner filed an appeal to the first appellate authority, and only thereafter, the official respondents supplied the seniority list to the petitioner on 17.05.2016. Thereafter, the petitioner filed the O.A. before the learned Tribunal in July, 2016.

17. Therefore, under these circumstances, how one can say that the O.A. was barred by the law of limitation. Admittedly, the petitioner and respondent No.4 were appointed as Draughtsman Grade-II in March, 2005 and the petitioner was having higher merit than respondent No.4. The first seniority list was issued in the year 2008, wherein, admittedly, the petitioner was shown senior to respondent No.4. For the first time the cause of action accrued to the petitioner on 23.01.2012 when the official respondents issued the subsequent seniority list wherein the petitioner was shown below respondent No.4. The petitioner made number of representations and acting on such representations the official respondents issued another seniority list on 19.10.2015 in which the petitioner was upgraded and placed at Sr. No.287-B, but even then he was placed below respondent No.4. The official respondents were intentionally not circulating the seniority list to the petitioner and he got the same only when he filed an application under the Right to Information Act and, thereafter, also approached the appellate authority. Only then he got the information on 17.05.2016 and, thereafter, he filed the O.A. before the learned Tribunal in July, 2016.

18. Admittedly, the petitioner was pursuing his matter regularly and the official respondents also acting upon the representations of petitioner upgraded his position from serial number 307 to 287-B. Therefore, it cannot be said that the petitioner was not vigilant in pursuing his case or there was any delay in approaching the learned Tribunal. The delay, if any, was on the part of official respondents who were not circulating the seniority lists to the petitioner. The petitioner got such information only after filing an application under the RTI Act and also by approaching the appellate authority. Even the official respondents did not sought any objections from the petitioner when they changed the seniority position of petitioner thereby placing respondent No.4 over and above the petitioner despite the petitioner having higher merit than respondent No.4. Thus, the petitioner was condemned unheard as he was not afforded any opportunity of hearing before changing his seniority position. Thus, the official respondents have failed to adhere to the principle of natural justice. Even respondent No.4 came to be promoted as Technical Officer vide order dated 06.11.2015 ignoring the preferential claim of petitioner.

19. Therefore, in view of what has been discussed above, we deem it proper to allow the petition, set aside the order of learned Tribunal dismissing the O.A. of petitioner on the ground of delay and laches and, consequently, allow the O.A. Ordered accordingly. Official respondents are directed to prepare the seniority list-in-question and fix the *inter-se* seniority on the basis of merit in the panel from the year 2005 and the petitioner be placed in the seniority list at appropriate place as per his merit position. The petitioner shall also be entitled to all consequential benefits including monetary benefits in terms of his seniority position. Let this exercise be completed within a period of three months from the date a copy of this judgment is made available by the

petitioner to the official respondents against proper receipt. Connected CM, accordingly, stands disposed of.

Jammu 20.04.2024 (Anil Sanhotra)	(Puneet Gupta) Judge	(Tashi Rabstan) Judge
	Whether the order is reportable ?	Yes/No
	Whether the order is speaking ?	Yes/No

I pronounce this judgment today in terms of Rule 138(4) of the J&K High Court Rules, 1999.

Jammu 20.04.2024	(Tashi Rabstan) Judge
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