

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6490 OF 1997

Arun Kumar Bhattacharyya

... Petitioner

Versus

Union of India and others

... Respondents

.....

Mr. Nishant Tripathi a/w Mr. Vaibhav Bandgar and Mr. Somnath Iyer i/b M/s. M. Tripathi & Co. for the Petitioner.

Mr. Rui A. Rodrigues for the Respondents – Union of India.

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**CORAM : SMT. V. K. TAHILRAMANI, ACTING C.J.
AND M. S. KARNIK, J.**

DATE : 08th FEBRUARY, 2018.

ORDER [PER M. S. KARNIK, J.]

1. Heard learned Counsel for the parties.
2. The Petitioner challenges the judgment and order dated 25/06/1997 passed by the Central Administrative Tribunal, Mumbai in O.A. No.589 of 1992 and O.A. No. 770 of 1993.
3. The Petitioner filed O.A. No. 589 of 1992 along with others in his representative capacity. The Petitioner also filed O.A. No. 770 of 1993 praying the very same relief in his individual

capacity. The Petitioner by filing O.A. prayed for quashing and setting aside the seniority list dated 01/09/1987. It is the contention of the Petitioner that the date of continuous officiation in the cadre should be taken into consideration for determining seniority. The Petitioner also prayed for consequential reliefs directing the Respondents to notionally promote him to the next higher grades and to give financial compensation with effect from the date when his juniors who are actually promoted to the higher grade.

4. It is not in dispute that similarly situated officials like the Petitioner had filed Writ Petition No.794 of 1979 before Delhi High Court which was renumbered as T.A. No. 476 of 1985 on transfer to the Principal Bench of the Tribunal. The Principal Bench of Tribunal, by its order dated 08/03/1987 passed the following order.

“In the facts and circumstances discussed above, we allow the petition to the extent of quashing the seniority lists 1 /4.4.1978 and 10.7.1978 and direct that these seniority lists should be revised as in 1978 by keeping the promotees who were promoted as AMFs in the promotion quota before 5.2.1972 enbloc above the direct recruits

who were appointed as AMF after 5.2.1972. So far as the petitioners who were promoted after 5.2.1972 are concerned, their inter-se seniority vis-a-vis direct recruits appointed after 5.2.1972 will be determined on the basis of the 1971 rules read with the Home Ministry's O.M. of 23.12.1959 and will be subject to the various relevant rulings of the Supreme Court governing such cases. The seniority list so revised should be circulated by inviting objections within a month and should be finalised within two months thereafter. A review DPC should be held on the basis of the revised seniority list so finalised and those of the petitioners who are found suitable for promotion to the next next higher grade should be so promoted.”

5. It is pursuant to the decision of the Tribunal that the Respondents revised the seniority list and as a result notional promotions were given to many officers. Till the revision of the said seniority list, ad-hoc promotions were being made in accordance with the earlier seniority list.

6. Pursuant to the decision of the Principal Bench of the Tribunal, a draft seniority was circulated on 22/06/1987 calling for objections. The Petitioner submitted his representation on 08/07/1987 contending that the benefit of ad-hoc service

rendered by him in the grade of Assistant Manager from 02/07/1979 should be given to him. The Petitioner was promoted to the grade on regular basis with effect from 03/08/1982.

7. Learned Counsel for the Petitioner contended that the Petitioner's seniority ought to have been counted from the date of his initial promotion as Assistant Manager. Learned Counsel invited our attention in the decision of the Apex Court in the case of G.S. Lamba and others Vs. Union of India and others reported in (1985) 2 SCC 604, he invites our attention in para 25, which reads thus;

“25. The language of Rule 13(1) appears to be mandatory in character. Where recruitment to a service or a cadre is from more than one source, the controlling authority can prescribe quota for each source. It is equally correct that where the quota is prescribed, a rule of seniority by rotating the vacancies can be a valid rule for seniority. But as pointed out earlier if the rule of seniority is inextricably intertwined with the quota rule and there is enormous deviation from the quota rule, it would be unjust, inequitable and unfair to give effect to the rota rule. In fact as held in O.P. Singla case, giving effect to the rota rule after noticing the enormous

departure from the quota rule would be violative of Article 14. Therefore assuming that quota rule was mandatory in character as pointed out earlier, its departure must permit rejection of rota rule as a valid principle of seniority.”

8. Learned Counsel for the Petitioner also invited our attention to the Rules called the Post and Telegraphs Telecom Factories organisation (Class I Posts) Recruitment Rules, 1971. According to him, Rule 9 is a provision for Power to Relax – where the Central Government can relax any of the provisions of the rules with respect to any class or category of persons or posts. He also invited our attention to Rule 11 which provides that seniority of officers appointed under the rules shall be determined in accordance with the principles of seniority laid down in the Ministry of Home Affairs O.M. No.9/11/55-RPS, dated 22nd December, 1959 and such other general orders on the subjects. He points out Clause 4 of O.M. dated the 22nd December, 1959 relating seniority of direct recruits which clearly provides that seniority shall follow the order of confirmation and not the original order of merit. Learned Counsel points out that, the ad-hoc service rendered by Petitioner from 02/07/1979 ought to have been taken into consideration for

the purpose of seniority. Clause 5 of O.M. dated 22nd December, 1959 provides that the relative seniority of persons promoted to the various grades shall be determined in the order of their selection for such promotion.

9. Learned Counsel for the Respondents on the other hand invited our attention to the order passed by the Tribunal. He supported the reasonings of the Tribunal. He pointed out that there was non availability of the direct recruits through UPSC. Some of the departmental candidates were promoted on ad-hoc basis and were continuing for quite some time till the decision of the Principal Bench of the Tribunal in 1987. Learned Counsel submits that, pursuant to the decision of the Tribunal in 1987, the seniority list was recast and finalised in the year 1987-88.

10. It is not in dispute that similarly situated officers like the Petitioner had approached the Tribunal in T.A.No. 476 of 1985, which came to be decided by an order dated 08/03/1987. Based on the decision of the Tribunal, the seniority list was recast after inviting objections. Even the objection of the Petitioner i.e. ad-hoc services should be taken into consideration to the seniority, was

duly considered. The Respondents based on the advise of the personal training department that seniority list for any grade consists only of those officers who have been appointed on regular basis either by direct recruitment or by promotion to that grade, therefore, did not take into consideration the ad-hoc services as rendered by the Petitioner for the purpose of seniority. The Petitioner was promoted on ad-hoc basis due to non availability of direct recruits through UPSC. There is nothing on record to show that there was a complete break down of the quota rule. In fact, it is a specific case of the Respondents that each recruitment or the regular vacancies arising out of the retirement on resignations etc. are taken into account and divided equally amongst direct recruits and promoters as per the provisions of the Recruitment Rules.

11. It is the specific stand of the respondents that vacancies meant for direct recruits are communicated to the UPSC for filling up from the engineering services examination conducted by the UPSC on the yearly basis. Insofar as the date of regular appointment, it is the date when they joined the organisation on probation in relevant. The probationers have to successfully complete their probation period and also qualify examination

before their confirmation in the grade. Not clearing the departmental examination only affects their confirmation and not their appointment in the grade.

12. We find that the seniority list was recast after 1987 and finalised in the year 1987-88 in the light of the directions of the Principal Bench of the Tribunal. The similarly situated officers like Petitioner had approached the Principal Bench of the Tribunal. On the basis of the directions issued by the Tribunal the seniority list was revised. The view taken by the Tribunal that it is not open for the Petitioner to adjudicate the very same issue once again is not untenable. We do not find any error in approach of the Tribunal in observing that it is a settled principle of law that seniority once settled, cannot be reopened at the instance of an individual at a belated stage.

13. We do not find any merit in the present petition. The Petition is dismissed. Rule is discharged with no order as to costs.

(M. S. KARNIK, J.)

(ACTING CHIEF JUSTICE)