

Smt. Usha Sachdeva Vs. Union of India (Uoi) and ors.

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Court : Delhi

Decided On : Sep-09-2002

Reported in : 2003(68)DRJ658

Judge : S.B. Sinha, C.J. and; A.K. Sikri, J.

Appeal No. : CWP No. 7080 of 1999

Appellant : Smt. Usha Sachdeva

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : A. Mathur, Adv. for R-1

Advocate for Pet/Ap. : N. Ranganath Swamy, Adv

Disposition : Writ petition allowed

Judgement :

A.K. Sikri, J.

1. This writ petition is aimed against the judgment and order dated 12th August, 1999 passed by the Central Administrative Tribunal, Principal Bench, New Delhi whereby the Original Application filed by the petitioner herein was dismissed. The petitioner has spelled out the issues which arise for consideration and a cursory glimpse thereof would indicate the nature of controversy involved in the present

case. These issues as (sic) by the petitioner are to the following effect:

1. Where the respondent can revise the seniority list after a lapse of nearly ten years without affording an opportunity to petitioner to challenge such revision.
 2. Whether the respondents are justified in promoting junior to the petitioner to higher grade and reverting the petitioner to the lower grade, when the respondent No. 3 who superseded the petitioner did not possess necessary qualification and experience which were required for the post.
 3. Whether on restructuring the respondents are justified to revise the seniority list when the purpose of restructuring was only for classification of duties and fixing the responsibility for different posts on restructuring.
 4. Whether Schedule Caste/Scheduled Tribes to which category the respondent No. 3 belongs, could be promoted to higher category over-looking the seniority of petitioner and whether 40 point roster is applicable when promotions are made to higher category of the departmental employees on the basis of seniority which existed since several years.
2. The background facts which give rise to the aforesaid issues as raised by the petitioner may now be noted.
3. The petitioner was appointed as Puncher-cum-Verified on 1st November, 1977 and she was confirmed in this post 23rd January, 1981 after she successfully completed the probationary period. The respondent No. 3, on the other hand, was appointed to this post on 23rd November, 1978 and confirmed on 24th January, 1981. A provisional seniority list of Puncher-cum-Verifier was issued as on 1st April, 1991 vide Officer Order dated 12th April, 1991. In this seniority list the name of the petitioner was at S.No. 5 and that of the respondent No. 3, a scheduled tribe candidates, at S.No. 8. After inviting the objections and disposing of the same, a final seniority list was circulated in the month of October, 1991 wherein the petitioner was again show as senior to the respondent No. 3. On the recommendations of the IV Pay Commission, the official respondents decided to restructure the post of Key Punch Operator which was later on known as Data

Entry Operator (DEO). These DEOs were put in five grades, namely, Grade A, B, C, D and E. One of the eligibility conditions was that the employee should be a graduate with the knowledge of data entry work or promotional grade for DEO grade A which was the entry grade at the lowest rung. Posts in Grades B, C, D and E etc. were to be filled up by promotions.

4. On the restructuring of these posts the petitioner was shown as DEO Gr. C (pay scale of Rs. 1400-2300 whereas the respondent No. 3 was shown in the lower grade, i.e., DEO Gr. B (pay scale of Rs. 1350-2200). This is clear from the tentative seniority list of EDP personnel which was issued on 25th September, 1992. This provisional seniority list was amended vide Officer Order No. 103/92-Estt. as per which one Smt. R.K. Narang was shown as senior to the petitioner in Gr.C. The petitioner admittedly did not challenge the placement of Smt. R.K. Narang above her and the Explanationn given by the petitioner in the petition is that it was because Smt. Narang was confirmed in the post from a date earlier than the date on which the petitioner was confirmed.

5. However, cause of grievance for the petitioner arose when this provisional seniority list was further revised by Officer Order No. 49/93-Estt. dated 21st June, 1993. This time the petitioner was shown as DEO Gr.B whereas the respondent No. 3 was shown as DEO Gr.C. Thus the petitioner was brought to lower pay scale whereas the respondent No. 3 was given higher pay scale. She made a representation dated 29th June, 1993 which was rejected vide memorandum dated 5th November, 1993. The petitioner at this stage approached the learned Tribunal by filing Original Application No. 2402/93. This Original Application, as already pointed out above, has been dismissed by the learned Tribunal vide judgment dated 12th August, 1999.

6. The learned Tribunal in the impugned judgment repelled the argument of the petitioner by observing that simply because she was senior to the respondent No. 3, she could not claim promotion to the post of DEO Gr.C before respondent No. 3 on this ground alone. It accepted the Explanationn of the official respondents to the effect that it was the implementation of the 40 point roster meant for ST candidates in the grade of DEO Gr.C which resulted in earlier promotion or

placement of respondent No. 3 in DEO Gr.C as he admittedly belonged to ST category.

7. Learned counsel for the petitioner assailed the aforesaid reasoning of the learned Tribunal by submitting:

a) There was no question of reservation for SC/ST candidates in the upgradation of existing posts. In support of this proposition, he relied upon the judgment of the Supreme Court in the case of All India Non-SC/ST Empl.Assn. (Railway) v. V.K. Agarwal and Ors. reported in 2002 (1) Scale 542.

b) The petitioner had been shown as senior to the respondent No. 3 throughout as Puncher-cum-verified and even as DEO after the restructuring of the posts. The official respondents could not act to the prejudice of the petitioner and unsettle the settled position regarding her seniority after number of years.

c) By placing the petitioner from DEO Gr.C to DEO Gr.B, she was reverted and this was done without following the principles of natural justice inasmuch as no show cause notice was given and the petitioner was not given the opportunity of being heard before the impugned action was taken.

8. Nobody appeared on behalf of the respondent No. 3, though served. Mr. A. Mathur, Advocate argued the case on behalf of the official respondents and supported the reasoning adopted by the learned Tribunal given in the impugned judgment.

9. We may note here that the learned Tribunal in the impugned judgment has quoted from the reply given by the official respondents and accepted the same. therefore, it would be appropriate to reproduce the same before proceeding further:

'Para 3: The application is resisted by the official respondents. In paragraph 1 of their reply, the official respondents have made the following statement:-

'1. It is submitted that since the post of Date Entry Operator Grade 'C' (Rs. 1400-2300) has been treated as promotional grade, the feeder grade being Data Entry

Operator Grade 'B' (Rs. 1350-2200), the Provisional Seniority List issued vide Commission's Office Order No. 99/92-Estt. (A-26016/3/91-Estt.Vol.II dated 25.9.92 (Annexure I), read with the Commission's Office Order No. 103/92-Estt. (Annexure IA), was revised vide Commission's Office Order No. 21.6.93 (A-26016/3/91-Estt. Vol. II) (Annexure II), to take care of the roster point meant for ST in the Grade of DEO 'C'. Hence, the Respondent No. 3, a DEO 'B' was appointed as a consequence thereof, the application was placed as DEO 'B'.' It is further stated by them in reply to paragraph 4.5 of the application that:- 'In pursuance of Ministry of Finance O.M. No. 7(I)/IC/86(44), dated 11.9.1989 (Annexure III), the EDP posts in the SSC were re-structured with retrospective effect from 11.9.89 through O.M.No. 47/91-Estt. (No. A-26016/1/89-Estt.), dated 15.4.91 (Annexure IV). Subsequently, provisional seniority list of the concerned EDP personnel, including those who were holding the old posts of Puncher-cum-Verified (PCV), was issued vide Officer Order No. 99/92-Estt. (please see Annexure-I). However, on a representation from an employee belonging to ST, the matter was reconsidered in consultation with D.P&T;, who advised that since the posts, inter-alia, of Data Entry Operator Grade 'B' & 'C' are promotion posts, placement of personnel in these posts will require application of 40-point roster (their letter No. 39028/7/93-Estt. B, dated 17.5.93 is at (Annexure-VII). It is for this reason that seniority list earlier issued on 15.4.91 (Annexure-IV) had to be revised on 25.9.92 (please see Annexure-I) and again on 21.6.93 (please see Annexure-II). Since the applicant was earlier placed in the grade of Data Entry Operator Grade 'C' erroneously, her placement had to be revised with reference to the 40-point roster and she was rightly placed in the grade of Data Entry Operator Grade 'B' in the subsequent seniority list issued on 21.6.93 (Please see Annexure-II).'

10. From the aforesaid stand taken by the Official respondents, it would be clear that the entire matter was dealt with on the basis that the post of DEO Gr.C was promotion post, feeder grade being DEO Gr.B. Thus on restructuring which was done with retrospective effect from 11th September, 1989 vide Officer Memorandum dated 15th April, 1991 although initially the petitioner was placed in Grade C and the respondent No. 3 in Grade B, on a representation from the respondent No. 3, the matter was reconsidered in consultation with Department of Personnel & Training and it was found that placement of personnel in these posts

will require application of 40-point roster. It was for this reason that the seniority list issued previously was revised and the petitioner was placed in Grade B who was erroneously in Grade C earlier and the respondent No. 3 was placed from Grade B to Grade C.

11. We are of the opinion that in accepting the aforesaid stand of the official respondents, the learned Tribunal has committed a clear error. No doubt, Grade C is a promotional post and Grade B is a feeder cadre. However, the official respondents as well as the learned Tribunal lost sight of the material fact that placement of the petitioner and the respondent No. 3 and other similarly situated persons, namely, Puncher-cum-Verifiers and Key Punch Operators was on the basis of the restructuring of the posts. It was not a case where all the existing employees were given Grade B and thereafter certain persons were promoted to Grade C. In fact as a result of restructuring, various existing employees were given different Grade, namely Grade A, B, C, D and etc. It was for this reason that keeping in view the fact that the petitioner was senior to the respondent No. 3 and further keeping in view the fact that subsequent number of posts were available in each Grade, the petitioner was put Grade C whereas the respondent NO. 3 was placed in Grade B. Thus when the placement in different grades was as a result of restructuring because of upgradation of posts and the posts in various Grades from Grades A to E were redistributed into different scales of pay, the reservation for SC/ST was not applicable while doing this exercise. This is squarely answered by the Supreme Court in the case of All India Non-SC/St Empl.Assn. (Railway) (Supra).

12. Apart from above, there is yet another reason because of which impugned order dated 21st June, 1993 passed by the official respondents as per which the petitioner was placed from Grade C to Grade B has to be set aside. Admittedly the petitioner, on restructuring of posts of EDP, was placed in Grade C which enjoyed higher pay scale. She started getting the pay in this pay scale and continued to get the same till the time the impugned order was passed. Even as per the case put up by the official respondents, it was on the representation of respondent No. 3 that the matter was reconsidered and as a result of which the petitioner was put in Grade B from Grade C and the respondent No. 3 was placed in Grade C from

Grade B. By this act the petitioner was placed in a lower grade with Lesser pay which clearly amounted to her reversion. However, admittedly neither any show cause notice was given nor she was given an opportunity to be heard before such an action adverse to the interest of the petitioner was taken which clearly entailed civil and/or evil consequences.

13. For the reasons aforesaid, we are of the opinion that this writ petition has to be allowed. We, therefore, set aside the impugned order of the learned Tribunal as well as impugned order dated 21st June, 1993 of the official respondents whereby the petitioner was placed from Grade C to Grade B. The effect of that would be that the petitioner shall be treated in Grade C throughout as if she was not reverted and shall be entitled to all consequential benefits.

14. The petitioner shall also be entitled to costs quantified at Rs. 5,000/-.

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