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D.Thangaraj and Another Vs. Devika and Others

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Court : Chennai

Decided On : Sep-25-2012

Judge : Elipe Dharma Rao &Amp; M.Venugopal

Appeal No. : W.P.No.27592 of 2010 and W.P.No.28256 of 2010

Appellant : D.Thangaraj and Another

Respondent : Devika and Others

Advocate for Pet/Ap. : For the Petitioners: P.Raja, Advocate, V.K.Rao, Senior Counsel. For the Respondents: R1, Veera Kathiravan, R2 to 4, M.T.Arunan, Advocates, R5, Tribunal.

Judgement :

(COMMON PRAYER: Petitions filed under Article 226 of the Constitution of India praying for an issuance of a Writ of Certiorari calling for the records relating to the order dated 09.04.2010 in O.A.No.1154 of 2009 on the file of the Registrar, Central Administrative Tribunal, Madras Bench, Chennai and quash the same.)

COMMON ORDER

M.VENUGOPAL, J.

The Petitioners have preferred W.P.No.27592 of 2010 praying for the issuance of a Writ of Certiorari calling for the records relating to the order dated 09.04.2010 in

O.A.No.1154 of 2009 on the file of the 5th Respondent/Registrar, Central Administrative Tribunal, Madras Bench, Chennai and to quash the same.

The Petitioners have filed W.P.No.28256 of 2010 praying for the issuance of a Writ of Certiorari calling for the records relating to the order dated 09.04.2010 in O.A.No.1154 of 2009 on the file of the 4th Respondent/Registrar, Central Administrative Tribunal, Madras Bench, Chennai and to quash the same.

2. The Central Administrative Tribunal, (5th Respondent in W.P.No.27592/2010 and 4th Respondent in W.P.No.28256/2010), while passing the orders in O.A.No.1154 of 2009, has, inter alia, observed that 'the 1st Respondent/Applicant has joined the service on 25.06.1998 and the Respondent No.4-Shri D.Thangaraj has joined on 11.10.1998 and the Respondent No.5-Shri K.Rajasekaran has joined on 24.03.2000. The Hon'ble Supreme Court in a series of Judgments has held that in the absence of any specific rule, the seniority among persons holding similar posts in the same cadre has to be determined on the basis of the length of service and not on any other fortuitous circumstances (Ref. K.Anjaya Vs. Chandraiya reported in JT 1998(2) SC 242: 1998 (3) SCC 218 : AIR 1998 SC 1202 and many others)' and further found that there is no specific rule and therefore, the seniority has to be determined based on the date of appointment which in turn determines the length of service in the cadre of Lab Technician etc. and has come to the conclusion that as found from the records, in the revised seniority list issued on 04.10.2008, the date of appointment in the present post has to be altered as 01.01.1996 for Respondent No.4 and 11.03.1997 for Respondent No.5 and according to them, this appears to be incorrect because their appointment has already been notified to be 11.10.1998 and 24.03.2000. Moreover, the said notification has not been set aside and held that the alteration in the date of appointment of Respondents 4 and 5 is illegal and consequently set aside the revised seniority list dated 04.10.2008 issued by the Respondents (Petitioners in W.P.No.28256 of 2010) and ordered to restore the seniority list issued on 11.04.20057 wherein, the 1st Respondent/Applicant has been shown at Sl.No.2 and Respondents No.4 and 5 at Sl.No.4 and 6 respectively. In fact, the Tribunal set aside the impugned order dated 04.11.2009 and directed the Respondents (Petitioners/Union of India and 2 others) to restore all the

consequential service and monetary benefits to the 1st Respondent.

Contentions in W.P.No.27592 of 2010:

3. The Learned Counsel for the Petitioners submits that pursuant to the recommendations of V Pay Commission, the 2nd Respondent issued directions to implement the same to various centres/ institutions functioning under it and to grant higher scales of pay to certain categories of posts in various cadres mentioned in Part B and C of Government of India Notification No.GSR 569 (E) dated 30.09.1997 with effect from 01.01.1996 and further, the Assistant Technician in the equivalent and similar pay scale of Rs.4500-7000 was re-designated as Laboratory Technician from 01.01.1996. As such, the Petitioners, who were holding the post of Assistant Technician, were re-designated as Laboratory Technician with effect from 01.01.1996 and 11.03.1997 in the pay scale of Rs.4500-7000.

4. The Learned Counsel for the Petitioners urges before this Court that while publishing the seniority list in April 2007, the 1st Respondent /Applicant was placed senior at Sl.No.2 according to her date of appointment to the post of Laboratory Technician viz., 25.06.1998 and that the Petitioners were kept at Sl.No.5 and Sl.No.6 as if their date of appointment to the said post was on 14.10.1998 and 24.03.2000 respectively without taking into account the fact that the appointments to the said post were given effect from 01.01.1996 and 11.03.1997.

5. The Learned Counsel for the Petitioners contends that the 1st Petitioner submitted a representation to the official Respondents that inasmuch as the re-designation had taken place from 01.01.1996, he should be placed first in the seniority list, since all others were appointed and promoted after 01.01.1996. The Committee constituted by the Director, comprising of 9 senior officials, gave a re-look to the seniority list of the post of Laboratory Technician. The claim of the 1st Petitioner was found genuine and because of the fact that the post of Assistant Technician in the equivalent and similar scale of pay of Rs.4500-7000 were re-designated as Laboratory Technicians from 01.01.1996, a revised seniority list was circulated on 04.10.2008 placing the 1st Petitioner at Sl.No.1 and the 1st

Respondent at Sl.No.3 followed by V.N.Azgar Dusthackeer at Sl.No.4.

6. The Learned Counsel for the Petitioners submits that the 2nd Petitioner who was promoted as Assistant Technician on 11.03.1997 was also re-designated as Laboratory Technician, similar to the case of 1st Petitioner and hence was placed at seniority No.2.

7. The stand taken by the Petitioners was that the 1st Petitioner made a detailed representation dated 16.07.2009, among other things, mentioning that C.Thirukumar was junior to him but superseded him and was selected to the post of Technical Assistant on the basis of wrong seniority and therefore, he must be considered to the post of Technical Assistant, since he was entitled to be promoted to the said post with just 5 years of service as Laboratory Assistant as per the V Pay Commission.

8. The Learned Counsel for the Petitioners drew the attention of this Court by stating that a Committee went into the question as to whether the position of the 1st Petitioner due to the V Central Pay Commission was 'Revision of Pay' or 'Re-designation' and found that the post of Assistant Technicians were designated as Laboratory Technicians. In the earlier DPC, the 1st Petitioner was not considered for his re-designation from 01.01.1996 and the Committee recommended for review of DPC in the place of DPC held on 02.11.2007 in and by which the said C.Thirukumar was selected.

9. According to the Petitioners, the Committee, after analysing the documents and records, came to the conclusion that the 1st Petitioner's case was an instance of a DPC conducted before a person's seniority was revised retrospectively which resulted in a junior candidate being promoted ahead of a senior candidate and thus recommended for a Review DPC. Subsequently, the 1st Petitioner was promoted to the post of Technical Assistant on adhoc basis with effect from 04.11.2009. At this stage, it was to be pointed out that the 1st Petitioner was entitled to be given the retrospective promotion from 2001 onwards.

10. The Learned Counsel for the Petitioners vehemently submits that the 1st Respondent in her Original Application No.1154 of 2009 had averred that the

qualification to the post of Laboratory Technician is a Degree in the concerned subject and that the same should apply only to the appointment by a direct recruitment and that the said qualification would not apply in case of promotees to the post of Laboratory Technician, notwithstanding the fact that a common seniority was maintained both for direct recruits and promotees.

11. Proceeding further, the Learned Counsel for the Petitioners contends that the seniority list published on 11.04.2007 was an improper and incorrect one and further, the same had not reflected the correct seniority. A review committee meeting was held on 08.04.2008 based on the representation made by the 1st Petitioner to correct the seniority list and the mistake in the seniority list dated 11.04.2007 was found to be a true one. The fresh seniority list was published on 04.10.2008, correctly placing the Petitioners at Sl.Nos.1 and 2 respectively.

12. Yet another submission of the Learned Counsel for the Petitioners was that the Petitioners held the post of Laboratory Assistant from 01.01.1996 and 11.03.1997 respectively, much ahead of the 1st Respondent/Applicant who was appointed to the said post only during the year 1998.

13. As a matter of fact, it is the submission of the Petitioners side that after the re-designation of the post of Technical Assistant as Laboratory Technician, no one held the post of Assistant Technician, since the said post got abolished on merger.

14. Expatiating his submissions, the Learned Counsel for the Petitioners contend that the Tribunal while observing that the 1st Respondent was not heard while revising the seniority list, ought to have remanded the matter to the authorities for affording an opportunity to the 1st Respondent, instead of allowing the Original Application.

Contentions in W.P.No.28256 of 2010:

15. The Learned Senior Counsel for the Petitioners submits that the 1st Respondent was appointed on 25.06.1998 as Lab Technician on direct recruitment basis in the pay scale of Rs.4000-6000 which was upgraded by the ICMR to Rs.4500-7000 on 30.10.2000.

16. The stand of the Petitioners is that the 2nd Respondent (D.Thangaraj) was appointed on 03.04.1989 as Lab Attendant in the pay scale of Rs.800-1150 and promoted as Lab Assistant on 27.03.1993 in the pay scale of Rs.975-1540 (IV CPC) and further, he was promoted as Assistant Technician on 29.09.1995 in the pay scale of Rs.1200-1800 and placed on the replacement pay scale of Rs.4000-6000 under V CPC on 01.01.1996. Furthermore, on 14.10.1998 the 2nd Respondent (D.Thangaraj) was promoted as Lab Technician in the pay scale of Rs.4000-6000.

17. Likewise, the Petitioners contend that the 3rd Respondent (K.Rajasekaran) was appointed on 16.09.1985 as Attender in the pay scale of Rs.196-232 (Rs.750-940) and appointed as Lab Attendant on 25.06.1990 in the pay scale of Rs.800-1150 and promoted as Lab Assistant on 27.03.1993 in the pay scale of Rs.975-1540 (IV CPC). Also, on 11.03.1997 he was further promoted as Assistant Technician in the pay scale of Rs.1200-1800 and placed on the replacement pay scale of Rs.4000-6000 under V CPC with effect from the same date. The 3rd Respondent was promoted as Lab Technician on 24.03.2000 in the time scale of pay of Rs.4000-6000.

18. The Learned Senior Counsel for the Petitioners invited the attention of this Court to the ICMR letter dated 10.10.2005 in and by which the pre-revised scales of Rs.1200-1800, Rs.1200-2040 and Rs.1320-2040 of all Technicians were merged and replaced in the pre-revised scale of pay of Rs.1350-2200 and given in the replacement scale of pay at Rs.4500-7000 with effect from 01.01.1996 under V CPC and re-designated as Laboratory Technician.

19. That apart, the Learned Senior Counsel for the Petitioners submits that by an order dated 02.11.2005, the TRC, Chennai re-designated all the Assistant Technician as Lab Technicians in the pay scale of Rs.4500-7000 with effect from 01.01.1996 and fixed their pay accordingly. This fixation was done for 2nd and 3rd Respondents (Petitioners in W.P.No.27592/2010) with effect from 01.01.1996 and 11.03.1997.

20. The prime contention advanced on behalf of the Petitioners was that while publishing the seniority list in the year 2007, inadvertently, the 2nd and 3rd

Respondents were shown below the 1st Respondent/Applicant and as a matter of fact, the 1st Respondent/ Applicant got upgradation on 25.06.1998. A committee was formed when the 2nd and 3rd Respondents made representations to recast their seniority and the committee made a recommendation to restore the seniority of both of them above, the 1st Respondent/Applicant as they were upgraded prior to her. A revised seniority was also circulated to all the employees and other officers placing the 2nd and 3rd Respondents over and above the 1st Respondent/Applicant.

21. The Learned Senior Counsel for the Petitioners contends that the finding of the Tribunal as to the correction of date of appointment in the present post as 01.01.1996 and 11.03.1997 in respect of 2nd and 3rd Respondents was an incorrect and perverse one.

22. Lastly, it was the submission of the Learned Senior Counsel for the Petitioners that the Tribunal came to the conclusion of allowing the Original Application based on surmises and conjectures.

Plea of the 1st Respondent/Applicant:

23. Per contra, it is the stand of the 1st Respondent/Applicant that she joined the service as Laboratory Technician on 25.06.1998 and that the qualification for appointment to the post of Laboratory Technician was a Degree in the concerned subject and the next avenue of promotion is Technical Assistant. Further, she was placed at Sl.No2 in the seniority list of Laboratory Technician published by the 2nd Appellant (in W.P.No.28256/2010) on 11.04.2007 and that V.N.Azgar Dusthackeer was placed in Sl.No.3 and D.Thangaraj (1st Petitioner in W.P.No.27592/2010 and 4th Respondent in O.A.1154/2009) was placed at Sl.No.4 and V.Girijalakshmi was placed at Sl.No.5 and K.Rajasekaran (2nd Petitioner in W.P.No.27592/2010 and 5th Respondent in O.A.1154/2009) was placed at Sl.No.6. When the department called for objections to the seniority list to be furnished on or before 25.04.2007, no objections were filed and as such, the seniority list became final.

24. The stand of the 1st Respondent/Applicant is that Thirukumar in Sl.No.1 was admittedly senior to her was promoted as Technical Assistant in accordance with

seniority. All of a sudden, one Girijalakshmi, who was far junior to the 1st Respondent/Applicant, was promoted and therefore, she submitted a representation before the 2nd Respondent in O.A.No.1154/2009 on 10.04.2008 and 30.04.2008 claiming the original seniority and consequential promotion.

25. The 1st Respondent/Applicant approached the Central Administrative Tribunal in O.A.No.1154 of 2009 praying for issuance of a direction to the Respondents in O.A.No.1154/2009 (Appellants in W.P.No.28256/2010) to promote her as Technical Assistant in accordance with seniority. The Tribunal directed the 1st Respondent/ Applicant to approach it after the disposal of her representation dated 30.04.2008.

26. In the revised seniority list of Lab Technician, the Writ Petitioners (in W.P.No.27592/201 and Respondents 4 and 5 in O.A.No. 1154/2009), who were appointed subsequent to the appointment of the 1st Respondent/Applicant, were placed below her in the seniority list dated 11.04.2007 were placed above her at Sl.No.1 and 2. In the revised seniority list, the date of appointment of the Writ Petitioners (Respondents 4 and 5 in O.A.No.1154/2009) was mentioned as 01.01.1996 and 11.03.1997. However, in the earlier seniority list dated 11.04.2007, their date of appointment was mentioned as 11.10.1998 and 24.02.2000.

27. The 1st Respondent/Applicant submitted a representation on 07.10.2008 raising objections in regard to the revision of seniority based on her earlier representation dated 30.04.2008 and prayed for restoration of her original seniority. The 3rd Appellant/3rd Respondent in O.A.No.1154/2009 (Officer-in-charge, TRC, Chennai) on 14.10.2008 passed an order rejecting her claim and affirmed the revised seniority list dated 04.10.2008.

28. It is not in dispute that the 1st Respondent/Applicant projected O.A.No.799 of 2008 questioning the revised seniority list of Lab Technician dated 04.10.2008 in which she was down graded. The Tribunal on 17.09.2009 passed an order directing the Appellants/ Respondents to consider her representation dated 07.10.2008 and to pass a reasoned order for the revision of seniority contra to the earlier seniority list dated 11.04.2007. The Tribunal also gave liberty to the 1st

Respondent/Applicant to submit a comprehensive representation questioning the validity of seniority list dated 04.10.2008.

29. The 1st Respondent/Applicant submitted a detailed representation with a request to restore her original seniority as it stood in the year 2007. But, through a non-speaking order dated 04.11.2009, the 3rd Appellant/3rd Respondent in O.A.No.1154/2009 rejected her request for original seniority.

30. The principal contention of the 1st Respondent/Applicant was that she was directly recruited as Laboratory Technician with Degree qualification on 25.06.1998, but the Writ Petitioners in W.P.No.27592 of 2010 (Respondents 4 and 5 in O.A.No.1154/2009) became Lab Technicians on 14.10.1998 and 24.03.2000 and as such, they were not seniors to her.

31. Yet another plea of the 1st Respondent/Applicant is that the 1st Petitioner in W.P.No.27592/2010 (4th Respondent in O.A.No.1154 of 2009) was appointed as Lab Attendant on 03.04.1989 with S.S.L.C. Qualification and experience in Lab Work and subsequently, on 29.09.1995 he was promoted as Assistant Technician with the same qualification and Lab Technician course in the pay scale of Rs.4000-6000. The terms of the recommendations of the pay commission, he was granted a time scale of pay of Rs.4500-7000 and further, he was appointed as Laboratory Technician only on 14.10.1998.

32. Apart from the above, the 1st Respondent/Applicant comes out with a plea that in similar circumstances, one Janartha Rao and S.Janakiraman, who were initially appointed as Laboratory Technicians, were re-designated as Technical Assistants and as such, she is also entitled for promotion/re-designation as Technical Assistant ahead of their juniors.

33. The Writ Petitioners in W.P.No.28256/2010 (Respondents 1 to 3 in O.A.No.1154/2009) had pleaded in the reply to the Original Application that ICMR letter dated 10.10.2005 re-designated certain categories of posts while granting higher scale of pay as per the provisions of Part BC and C of 5th Central Pay Commission vide Notification dated 30.09.1997, in and by which, the 1st Writ Petitioner in W.P.No.27592/2010 (4th Respondent in O.A.No.1154/2009) who was

holding the post of Assistant Technician was re-designated as Laboratory Technician. The 1st Respondent/Applicant, in the seniority list of April 2007, was placed senior at Sl.No.2 according to her date of appointment to the post of Laboratory Technician as on 25.06.1998 and the 1st Writ Petitioner (D.Thangaraj) in W.P.No.27592/2010 (4th Respondent in O.A.No.1154/2009) was placed at Sl.No.4, by virtue of his date of appointment on 14.10.1998.

34. It is brought to the notice of this Court that the Writ Petitioner (D.Thangaraj) made a representation to the effect that inasmuch as the re-designation had taken place from 01.01.1996, he ought to be kept first in the seniority list, since all others were appointed/promoted after 01.01.1996. The Committee, formed by the Director, found that the claim made by the Writ Petitioner (D.Thangaraj) was genuine and revised the seniority list which was circulated on 04.10.2008 and the 1st Writ Petitioner (D.Thangaraj) was placed at Sl.No.1 and the 1st Respondent/Applicant was placed at Sl.No.3.

35. In regard to the case of Mrs.Girijalakshmi, she was holding the post of Laboratory Technician under the reserved post of ST category, who was considered and promoted to the post of TA, since the vacancy fell on ST category as per Reservation Roster and also based on the Central Administrative Tribunal, Madras Bench order dated 20.12.2006 made in O.A.No.876 of 2006.

36. According to the Petitioners in W.P.No.28256/2010, the Petitioners through Memo dated 04.10.2008 mentioned the reasons for revising the seniority list published in 2007 because of the fact that the Central Administrative Tribunal, through its order dated 16.06.2008, directed the Writ Petitioners to furnish a reply to the application dated 30.04.2008 of the 1st Respondent/Applicant. Also, the 2nd Writ Petitioner-K.Rajasekaran in W.P.No.27592/2010 (5th Respondent in O.A.No.1154/2009) who was promoted as Assistant Technician was also re-designated as Laboratory Technician similar to that of the 1st Writ Petitioner-D.Thangaraj and therefore, he was placed at seniority in Sl.No.2.

37. The Writ Petitioners in W.P.No.28256/2010 brings it to the notice of this Court that the representation of the 1st Respondent/ Applicant dated 07.10.2008 was duly replied by the 3rd Writ Petitioner in W.P.No.28256/2010 (Officer-in-charge,

Tuberculosis Research Centre, Chennai) as per their Office Memorandum dated 14.10.2008. As such, a revised seniority list dated 04.10.2008 was issued on the basis of Council's Letter No.6/24/97-Admn.II (Part II) dated 10.10.2005.

38. The pith and substance of the stand of the Writ Petitioners in W.P.No.28256/2010 is that because of merger of posts with effect from 01.01.1996 as per Council's Letter No.6/24/97-Admn.II (Part II) dated 10.10.2005, the 1st Petitioner (D.Thangaraj _ Sl.No.1) and 2nd Petitioner (K.Rajasekaran _ Sl.No.2) were placed senior to that of the 1st Respondent/Applicant (Mrs.K.Devika _ Sl.No.3) and further that the revision of seniority list with retrospective effect from 01.01.1996 in respect of the 1st Writ Petitioner (D.Thangaraj) and from 11.03.1997 in respect of the 2nd Writ Petitioner (K.Rajasekaran) was correct and as per the rules in the matter of service seniority.

39. It is evident that the 3rd Writ Petitioner in W.P.No.28256/2010 (Officer-in-charge, TRC, Chennai) in Ref. No.Estt./Lab.Seniority/2008-09 dated 14.10.2008 issued a Memorandum to the 1st Respondent/ Applicant inter alia stating that in the TRC Circular No.Estt./Lab. Seniority/2008-09 dated 04.10.2008, the reason for revising the seniority was also mentioned with a direction to raise any objection by 10.10.2008 otherwise it will be assumed that there was no claim and the above revised seniority list would be treated as final. Moreover, the 1st Respondent/Applicant was also informed that through her representation dated 07.10.2008 she had not brought out a tangible proof to substantiate her claim of her seniority and hence, the revised seniority list of Lab Technician circulated on 04.10.2008 was treated as final.

40. In the Memorandum in Ref.No.Estt./Lab.Seniority/2009-10 dated 04.11.2009 issued by the 2nd Respondent (Director-in-charge of Tuberculosis Research Centre, Chennai _ 31) and addressed to the 1st Respondent/Applicant, it was mentioned that the Council implemented One Time Cadre Review for Technical Staff during the year 1990-91 revising the pay scale of Rs.1200-1800, 1200-2040 and 1320-2040 to Rs.1350-2200 and on implementation of Part A of the 5th CPC, these technical staff were given the revised scale of pay of Rs.4500-7000. Further, it was stated that a copy of the Council's Letter No.6/24/97-Admn.II (Part II) dated

10.10.2005 implementing the scheme from 01.01.1996 is enclosed for ready reference and hence, D.Thangaraj and K.Rajasekaran (Petitioners in W.P.No.27592/2010) were holding the pay scale of Rs.4500-7000 from 01.01.1996 and 11.03.1997 respectively. Also, it was mentioned that the equivalent posts automatically got merged as Lab Technician and since the 1st Respondent/Applicant was directly appointed on a later dated i.e. 25.06.1998, she was junior to the above two employees and accordingly, disposed of the representation dated 15.10.2009 of the 1st Respondent/Applicant in compliance to the Central Administrative Tribunal's Order dated 17.09.2000 in O.A.No.799 of 2008.

41. As seen from the Minutes of Review Committee dated 08.04.2008, in the meeting that took place on 08.04.2008 at 3.00 p.m. in the CVR Conference Room of TRC, based on the statement and after thorough verification of details of pay scales and the previous services, D.Thangaraj (1st Petitioner in W.P.No.27592/2010) was placed senior to Mr.K.Rajasekaran (2nd Petitioner in W.P.No.27592 of 2010) and Mrs.Devika (1st Respondent/Applicant) and Mr.Azgar Dusthakeer and Mr.B.Daniel was placed before Mr.N.Rajendran and Mr.M.Baskaran and it was further stated that administration would prepare a seniority list.

42. It is to be noted that an individual seniority in an establishment/organisation is of utmost importance and power as compared to other persons who work there. Ordinarily, if the service of a person is longer than that of another person, the first named person is described as senior to the other. As a matter of fact, 'Seniority' arises in relation to employees who are similarly circumstanced viz., where they are serving in the same grade or cadre, rank. Admittedly, 'Seniority' is a comparative concept.

43. It is to be remembered that intricacies of seniority disputes are recognised by Courts as 'Ticklish and complicated questions' and 'no case is comparable' as per the decision in S.B.Patwardhan and others V. State of Maharashtra and others, [AIR 1977 Supreme Court 2051].

44.Added further, even the rule of continuous officiation cannot be arbitrarily scuttled down by any statutory provision though made under Article 309 of the Constitution, as per the decision in P.S.Mahal and others V. Union of India and others, [(1984) 4 Supreme Court Cases 545].

45. It is to be borne in mind that the concept of taking a view in favour of original date of appointment/initial date of appointment is a justifiable one solely based on 'Fairness and Reasonableness' and to prevent injustice.

46. At this stage, we deem it appropriate to cite the following decisions:

(a) In Union of India V. H.R.Patankar and others, [AIR 1984 Supreme Court 1587], it is held as follows:

"Even if there are no statutory rules in force for determining seniority in a service or even if there are statutory rules but they are silent on any particular subject, it is competent to the Government by an executive order to make appropriate Seniority Rules or to fill in the lacuna in the statutory rules by making an appropriate seniority rule in regard to the subject on which the statutory rules are silent."

(b) In P.S.Mahal and others V. Union of India and others, [(1984) 4 Supreme Court Cases 545] at page 547 and 548, it is observed as follows:

"In the absence of any statutory rule or executive memorandum or order laying down a rule for determining seniority in a grade, the normal rule applicable would be to determine seniority on the basis of length of continuous officiation in service. The Court could certainly adopt this residuary rule and direct inter se seniority in the grade to be fixed on the application of this seniority rule. In A.K.Subramanian case [(1975) 1 SCC 319], unlike the First B.S.Gupta case [(1973) 3 SCC 1], the Court did not leave it to the Government to evolve a new rule of seniority but itself laid down that such inter se seniority based on length of continuous officiation. Therefore, in the present case Government was not entitled to evolve a new rule of seniority different from that recognised and given effect to by the Court in A.K.Subramanian decision. The Government was bound to determine seniority on the basis of length of continuous officiation in service after regular appointment

within their respective quota irrespective of whether such regular promotion within the respective quota was before or after December 22, 1959. But the impugned seniority list was plainly in defiance of this direction given by the Court."

(c) In the decision Sualal Yadav V. The State of Rajasthan and others, [AIR 1977 Supreme court 2050] at page 2051, the Hon'ble Supreme Court has held hereunder:

"The contention that though direct recruits appointed on probation as Deputy Engineers enter Class II Cadre from the very day of their appointment, the persons promoted as officiating Deputy Engineers do not belong to Class II Cadre until they are confirmed as Deputy Engineers cannot be accepted. On the state of the record it is difficult to hold that officiating Deputy Engineers do not belong to Class II Cadre of the Bombay and Gujarat Service of Engineers. Though drawn from two different sources, the direct recruits and promotees constitute in the instant case a single integrated cadre. They discharge identical functions, bear similar responsibilities and acquire an equal amount of experience in their respective assignments. and yet R.8 (iii) provides that probationers recruited during any year shall in a bunch be treated as senior to promotees confirmed in that year. The plain arithmetic of this formula is that a direct recruit appointed on probation, say in 1966, is to be regarded as senior to a promotee who was appointed as an officiating Deputy Engineer, say in 1956, but was confirmed in 1966 after continuous officiation till then. This formula gives to the direct recruit even the benefit of his one year's period of training and another year's period of probation for the purposes of seniority and denies to promotees the benefit of their long and valuable experience. If there was some inteligible ground for this differentiation bearing nexus with efficiency in public services, it might perhaps have been possible to sustain such a classification. Instead of adopting an intelligible differentia, R.8(iii) leaves seniority to be determined on the sole touchstone of confirmation which is indefensible. Rule 8(ii) adopts the seniority -cum-merit test fro preparing the statewise Select List of seniority. and yet Cl.(iii) rejects the test of merit altogether. The vice of that clause is that it leaves the valuable right of seniority to depend upon the mere accident of confirmation. That, under Arts. 14 and 16 of the Constitution, is impermissible and therefore, Rule 8(iii) must be

struck down: S.C.A.No.815 of 1972, D/- 17.1.1974 (Bom). Reversed; S.C.A.No.1099 of 1969 and 422 of 1970, D/- 14.7.1973 (Guj) (FB), Affirmed. AIR 1974 SC 1618 and (1976) 1 SCR 815, Distinguished (1970) 2 SCR 615, Referred."

(d) In the decision of the Hon'ble Supreme Court in D.P.Sharma and others V. Union of India and others [AIR 1989 Supreme Court 1071] at page 1072, it is held that 'If seniority is to be regulated in a particular manner in a given period, it shall be given effect to, and shall not be varied to disadvantage retrospectively.'

(e) In R.S.Ajara and others V. State of Gujarat and others [(1997) 3 Supreme Court Cases 641] at page 643 in paragraphs 10, 13 and 16, it is held thus:

"The 1981 Rules deal exclusively with recruitment and appointment on the post of Assistant Conservator of Forests. They do not make any mention with regard to fixation of seniority of the persons so appointed.

Rules 6, 7 and 8 of 1981 Rules cannot be construed to mean that seniority should be counted from the date of appointment and period of training should be excluded. In the absence of a provision in the Rules, it was open to the State Government to lay down the principle for fixation of seniority by an administrative order. The resolution dated 31.1.1992 cannot be held to be bad on the ground that it is inconsistent with the 1981 Rules.

A benefit that has accrued under the existing rules cannot be taken away by an amendment with retrospective effect. No statutory rule or administrative order can whittle down or destroy any right which has become crystallised. No rule can be framed under the proviso to Article 309 of the Constitution which affects or impairs the vested rights. However, there is no vested right which has been taken away by resolution dated 31.1.1992 because 1981 Rules do not contain any principle governing seniority of Assistant Conservators of Forests."

(f) In the decision of the Hon'ble Supreme Court in Bimlesh Tanwar V. State of Haryana and others [(2003) 5 Supreme Court Cases 604] at page 605, it is held as follows:

"Seniority is not a fundamental right. It is merely a civil right. Inter se seniority of the candidates who are appointed on the same day would be dependent on the rules governing the same. In the absence of rules governing seniority an executive order may be issued to fill up the gap. Only in the absence of a rule or executive instructions, the Court may have to evolve a fair and just principle which could be applied in the facts and circumstances of the case."

(g) In the decision of the Hon'ble Supreme Court in D.R.Yadav and another V. R.K.Singh and another [(2003) 7 Supreme Court Cases 110] at page 111, it is laid down as follows:

"The 1991 Rules were framed by the Governor of Uttar Pradesh in exercise of his power conferred under the proviso appended to Article 309 of the Constitution. On a plain reading of the proviso to Article 309, there cannot be any doubt whatsoever that rules framed thereunder would apply so long as the statute or statutory rules or any other subordinate legislation governing the conditions of service are not enacted or made or not otherwise operating in the field. In other words, rules made under the proviso to Article 309 are for a transitory period and the same would give way to the special rules once framed. However, if a statute or rules made thereunder was/were already operating in the field, the general rules made under the proviso to Article 309 would not apply to the services created thereunder. In the event two conflicting rules are operating in the same field, the doctrine of generalia specialibus non derogant shall apply. Therefore, the U.P. Development Authorities Centralised Services Rules, 1985 would be applicable."

47. The Writ Petitioners in W.P.No.27592/2010 (Respondents 4 and 5 in O.A.No.1154/2009) contend that no degree qualification is required for promotees and the same is required only for direct recruitments. Also, it is the stand of the Petitioners that the 1st Respondent/Applicant is trying to make an endeavour to unlawfully make use of the anomaly committed by the Writ Petitioners (in W.P.No.28256/2010) while preparing the seniority list in April 2007, which was later rectified.

48. In this connection, we aptly point out the decision of the Hon'ble Supreme Court in M.BJoshi and others V. Satish Kumar Pandey and others, [AIR 1993

Supreme Court 267] wherein it is held as follows:

"It is settled principle of service jurisprudence that in the absence of any specific rule, the seniority amongst persons holding similar posts in the same cadre has to be determined on the basis of the length of service and not on any other fortuitous circumstance."

49. Moreover, in the decision of the Hon'ble Supreme Court in H.V.Pardasani V. Union of India and others, [AIR 1985 Supreme Court 781], it is observed as follows:

"Since in the process of direct recruitment there is considerable delay and though the competitive examination is held in one particular year, by the time the selected officer comes to join the post, more than a year is lost. A rational view has been taken of the situation and for the computation of length of service the particular provision like Note No.2 below R.12(5) has been made. Such provision would not be as an arbitrary provision. A very intricate process is involved in giving effect to the scheme and in harmonising the claims of the officers belonging to the different cadres. Mathematical precision cannot be expected in a matter like this and adoption of a test of such accuracy with a view to ascertaining whether Arts. 14 and/or 16 of the Constitution are violated would not be appropriate."

50. In the decision of the Hon'ble Supreme Court in Desoola Rama Rao and another V. State of andhra Pradesh and others [AIR 1998 Supreme Court 857], it is held thus:

"The law relating to inter se seniority in a cadre is well settled. If there be a rule indicating the manner in which such seniority has to be fixed, that is binding. In the absence of such a rule, length of service is the basis for fixing inter se seniority. Thus where it was not in dispute, that respondents have put in longer service than the appellants in the post of Assistant Engineer, the order of the State Govt. that the appellant would rank below the respondents in the cadre and the promotional benefit would be given to them after the claim of the respondents has been duly considered, would be proper."

51. In the decision Rana Randhir Singh and others V. State of U.P. and others [AIR 1989 Supreme Court 218] at page 219, the Hon'ble Supreme Court, in regard to the Failure of the State Government to adhere to Scheme in Rules relating to recruitment, has refused to interfere with inter se seniority after delay of 9 years.'

52. As far as in the instant case is concerned, there is no rule governing the service in between a direct recruitment with a degree qualification like that of the 1st Respondent/Applicant and that of the Writ Petitioners in W.P.No.27592/2010 (Respondents 4 and 5 in O.A.No.1154/2009) who are from in the feeder category of the lower post. At the risk of repetition, it is to be pointed out that the 1st Respondent/Applicant joined the service on 25.06.1998 as Laboratory Technician on 25.06.1998. But the Writ Petitioners (Respondents 4 and 5) joined as Lab Technician on 11.10.1998 and 24.03.1000 respectively.

53. One cannot loose sight of a vital fact that the Writ Petitioners (Respondents 4 and 5 in O.A.No.1154/2009) have been granted the extension of higher pay scales because of the recommendations made by the Central Pay Commission. We are of the considered view that the extension of higher pay scales to the Writ Petitioners (Respondents 4 and 5 in O.A.No.1154/2009) would not by itself change the date of appointment in the post of Lab Technician. However, as per the revised seniority list dated 04.10.2008, the Writ Petitioners' (in W.P.No.27592/2010) appointments have been altered as 01.01.1996 and 11.03.1997, contra to the notification of their appointment which mentioned the date of appointments as 11.10.1998 and 24.03.2000. The said notification till date has not been superseded, annulled, modified or varied. Also that the impugned order dated 04.11.2009 passed by the 2nd Respondent (the Director, TRC, Chennai) has been passed without providing an opportunity to the 1st Respondent/ Applicant to air her views/objections.

54. To put it succinctly, we hold that the alteration of the date of appointment of the 1st Writ Petitioner - D.Thangaraj (4th Respondent in O.A.No.1154/2009) as 01.01.1996 and the 2nd Writ Petitioner - K.Rajasekaran (5th Respondent in O.A.No.1154/2009) as 11.03.1997 is per se illegal and not valid in law [especially in the absence of specific rule governing seniority and also because of the well

settled principle of service jurisprudence that a seniority has to be fixed on the strength of date of appointment which revolves the length of service in the cadre of Lab Technician put in by a concerned individual]. In any event, the Writ Petitioners (in W.P.No.28256/2010) cannot umbrage in the communication of Indian Council of Medical Research in Ref.No.6/24/97-Admn.II (Part-II) dated 10.10.2005 which is at best a clarificatory one for removal of anomaly in the revision of pay scales of ICMR technical posts based on Part B of Government of India Notification consequent to V Central Pay Commissions Recommendations and it will not provide either lever or premium to the concerned authorities to alter the date of appointment of Writ Petitioners in W.P.No.27592/2010 (Respondents 4 and 5 in O.A.No.1154/2009) much to the detriment of the 1st Respondent/ Applicant.

55. In the light of detailed discussions and for the foregoing reasons, we do not find any material infirmity or patent illegality in the Central Administrative Tribunal's Order dated 09.04.2010 in O.A.No.1154 of 2009 in setting aside the revised seniority list dated 04.10.2008 issued by the 3rd Writ Petitioner in W.P.No.28256/2010 (Officer-in-charge, TRC, Chennai) and order restoration of the seniority list issued on 11.04.2007 in and by which the 1st Respondent/Applicant is shown at Sl.No.2 and the Writ Petitioners in W.P.No.27592/2010 (Respondents 4 and 5 in O.A.No.1154/2009) are shown at Sl.Nos.4 and 6 respectively. Resultantly, we set aside the impugned order dated 04.11.2009 passed by the 2nd Respondent (The Director, Tuberculosis Research Centre, Chennai) to secure the ends of justice. Further, we direct the Writ Petitioners in W.P.No.28256 of 2010 (Respondents 1 to 3 in O.A.No.1154 of 2009) to restore all consequential service and monetary benefits to the 1st Respondent/Applicant within a period of eight weeks from the date of receipt of copy of this order. Consequently, both the Writ Petitions fail.

56. In the result, both the Writ Petitions are dismissed, leaving the parties to bear their own costs. Consequently, the order passed by the Central Administrative Tribunal, Madras Bench, Chennai in O.A.No.1154 of 2009 dated 09.04.2010 is affirmed.

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