

Malcom Lawrence Cecil D'souza

Vs

Union of India and Others

Writ Petition No. 296 of 1971

(CJI A. N. Ray, Y. V. Chandrachud, H. R. Khanna, M. H. Beg JJ)

01.05.1975

JUDGMENT

KHANNA, J. -

1. This is a petition under Article 32 of the Constitution of India by Malcom Lawrence Cecil D'Souza, Additional Commissioner of Income-tax for an appropriate writ to quash the seniority list of the Additional Commissioner of Income-tax as on February 1, 1971 circulated by the Government of India, Ministry of Finance. The petitioner claims that he is senior to respondents Nos. 4 to 26, but in the impugned list he is shown junior to those respondents. Prayer has also been made by the petitioner for others consequential reliefs. Apart from respondent Nos. 4 to 26, the petitioner has impleaded the Union of India, the Secretary, Ministry of Finance, Department of Revenue and the Chairman, Central Board of Direct Taxes as respondents Nos. 1 to 3.

2. The petitioner served in the Royal Navy as a Sub-lieutenant from March 1945 till November 1946 when he was released from the naval service because of the end of war. On July 1, 1947 the petitioner was appointed Income-tax Officer Class II. On August 12, 1949 the petitioner was appointed Income-tax Officer Class I grade II in post-1945 vacancy reserved for candidates with war service. On January 24, 1950 a seniority list of Income-tax Officers Class I Grade III as on January 1, 1950 was issued on the basis of 1947 Seniority Rules. The petitioner was shown in that list senior to respondents Nos. 4 to 26. The same position was reflected in a seniority list issued in 1953. The petitioner was promoted as Income-tax Officers Class I Grade I with effect from January 1, 1951 and confirmed in that post from the said date.

3. According to 1947 Rules, the seniority of candidates inter se appointed to post-1945 vacancies was to be determined by age irrespective of the category from which they were recruited. The Rules of 1947 were revised and in supersession of them 1952 Seniority Rules were issued by the Ministry of Home Affairs. According, inter alias, to 1952 Seniority Rules, the break in service was not to be taken into account for determining the seniority of persons confirmed against post-1945 war reserved vacancies. The Income-tax Department took some time to revise the seniority list of Income-tax Officers Class I in accordance with 1952 Seniority Rules and finally on November 26, 1956, the revised seniority list of Income-tax Officers Class I Grade I as on October 1, 1956 was issued. In this list respondents Nos. 4 to 26 were shown senior to the petitioner and were entitled to be promoted to higher posts earlier than the petitioner. Another seniority list of Assistant Commissioners was issued as on January 1, 1958. This list was in accordance with the earlier list of Income-tax Officers as on October 1, 1956 showing the petitioner to be junior to respondents Nos. 4 to 26. It may be stated that by this time the petitioner and respondents Nos. 4 to 26 had all been promoted Assistant Commissioners.

4. The seniority list of Income-tax Assistant Commissioners as on August 1, 1965 was challenged by Assistant Commissioner Vasant Jayaram Karnik in Gujarat High Court by means of a writ petition filed in 1967. The High Court allowed that petition and issued a writ quashing the seniority list as on August 1, 1965 in so far as that list showed several officers senior to Karnik and another officer B. S. Nadkarni. The High Court gave its own interpretation of the 1952 Seniority Rules. An appeal was filed in this Court on behalf of the Union of India against the above judgment of the Gujarat High Court in 1969. This Court as per judgment dated September 7, 1970 reported in 78 ITR 243 (Union of India v. Vasant Jayaram Karnik, (1970) 3 SCC 658) dismissed that appeal. This Court held that the following principles emerge from 1952 Rules for determining the seniority:

- (i) Between Income-tax Officers promoted at the same meeting, their seniority inter will be reflected in the list of Assistant Commissioners of Income-tax;
- (ii) Between an officer promoted earlier and another officer senior to him, but who was not considered in the meeting when the former was promoted, seniority in the list of Income-tax Officers will be reflected in the higher cadre;
- (iii) Where the senior officer was considered and not promoted, and the junior officer was promoted at that meeting, the order or promotion will govern seniority in the higher grade;
- (iv) Where a senior officer is promoted and confirmed and at a later meeting a junior officer is promoted, the latter cannot claim to be placed above the senior officer in the higher cadre relying upon the circumstance that he could not be considered for promotion at the earlier meeting, because he had not to his credit the qualifying minimum service.

In pursuance of the above judgment of this Court, seniority of Income-tax Assistant Commissioners promoted before April 1, 1964 was recast and the impugned seniority list was accordingly issued.

5. The petition has been resisted by the respondents and the affidavit of P. S. Mehra, Under Secretary to the Government of India, Ministry of Finance, Department of Revenue and Insurance has been filed in opposition to the petition.

6. It has been argued by Mr. Ram Panjwani on behalf of the petitioner that as he was promoted Assistant Commissioner on August 19, 1955 while respondents Nos. 4 to 26 were promoted to that post subsequent to that date, the petitioner should be shown senior to those respondents. We find it difficult to accede to this contention. The fact that the petitioner was promoted as Assistant Commissioner prior to respondents Nos. 4 to 26 would not make him senior to respondents Nos. 4 to 26 because according to the seniority list issued on the basis of 1952 Seniority Rules the above mentioned respondents were senior to the petitioner. The seniority of the petitioner vis-a-vis respondents Nos. 4 to 26 has to be determined in the light of proposition No. 2 laid down by this Court in Karnik's case (supra), according to which between an officer promoted earlier and another officer senior to him, but who was to considered in the meeting when the former was promoted, seniority in the list of Income-tax Officers will be reflected in the higher cadre. As respondents Nos. 4 to 26 were admittedly shown senior to the petitioner in the list as on October 1, 1956 prepared in accordance with 1952 Rules, their seniority qua the petitioner would be reflected in the higher cadre of Assistant Commissioners. It has not been shown to us that the names of respondents Nos. 4 to 26 were also considered in the meeting wherein a decision was taken to promote the petitioner as

Assistant Commissioner. Assuming that a decision to promote respondents Nos. 4 to 26 to the posts of Assistant Commissioners was taken at the same meeting in which it was decided to promote the petitioner, in that event proposition No. 1 in Karnik's case would be attracted. Even in such a contingency the seniority of respondents Nos. 4 to 26 qua the petitioner would be reflected in the list of Assistant Commissioners. In the seniority list of Assistant Commissioners issued in 1958, the petitioner was shown junior to respondents Nos. 4 to 26 in conformity with the seniority list of 1956. In the matter of confirmation to the post of Assistant Commissioner, six of respondents Nos. 4 to 26 were confirmed earlier than the petitioner, while the rest of them were confirmed at the same time as the petitioner. The impugned list of servant circulated in 1971 merely reflected the seniority of the petitioner qua respondents Nos. 4 to 26 as determined in 1956.

7. The case of *S. K. Ghosh v. Union of India* ((1968) 3 SCR 631 : AIR 1968 SC 1385 : 1968 Lab IC 1520) to which reference has been made on behalf of the petitioners can be of no assistance to him as that case related to rules for recruitment to the grade of Directors of Postal Services in Indian Postal Service. So far as the seniority of the petitioner vis-a-vis respondents Nos. 4 to 26 is concerned, the matter is governed by 1952 Seniority Rules and those rules as already mentioned have been of subject of the decision of this Court in Karnik's case (*supra*). In view of the direct decision of this Court relating to the precise question which we are concerned, it is not necessary, in our opinion, to refer to other rules.

8. The matter can also be looked at from another angle. The seniority of the petitioner qua respondents Nos. 4 to 26 was determined as long ago as 1956 in accordance with 1952 Rules. The said seniority was reiterated in the seniority list issued in 1958. The present writ petition was filed in 1971. The petitioner, in our opinion, cannot be allowed to challenge the seniority list after lapse of so many years. The fact that a seniority list was issued in 1971 in pursuance of the decision of this Court in Karnik's case (*supra*) would not clothe the petitioner with a fresh right to challenge the fixation of his seniority qua respondents Nos. 4 to 26 as the seniority of 1971 merely reflected the seniority of the petitioner qua those respondents as already determined in 1956. Satisfactory service conditions postulate that there should be no sense of uncertainty amongst public servants because of stale claims made after lapse of 14 or 15 years. It is essential that anyone who feels aggrieved with an administrative decision affecting one's seniority should act with due diligence and promptitude and not sleep over the matter. No satisfactory explanation has been furnished by the petitioner before us for the inordinate delay in approaching the Court. It is no doubt true that he made a representation against the seniority list issued in 1956 and 1958 but that representation was rejected in 1961. No cogent ground has been shown as to why the petitioner became quiescent and took no diligent steps to obtain redress.

9. Although security of service cannot be used as a shield against administrative action for lapses of a public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one's position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a *quietus* after lapse of some time.

10. The writ petition fails and is dismissed but in the circumstances without costs.

</html