

Dr. A. K. Mitra, DG, C.S.I.R. and Another

Vs

D. Appa Rao and Another

Civil Appeal No. 1037 of 1992

(K. Venkataswami, A. P. Mishra JJ)

27.02.1998

JUDGMENT

K. VENKATASWAMI, J. –

1. The appellants are aggrieved by the order dated 9-8-1989 of the Central Administrative Tribunal, Patna Bench, in OA No. 172 of 1988.

2. The first respondent moved the said OA No. 172 of 1988 before the Central Administrative Tribunal for declaring that his seniority must be counted w.e.f. 11-4-1972 for further promotion to the post of Section Officer (General) and the consequential benefits also must be given to him. The Tribunal, while giving the relief of declaration declaring that the first respondent herein was entitled to claim seniority w.e.f. 11-4-1972, declined to grant the consequential benefits.

3. The appellants are aggrieved by the declaration given by the Tribunal in favour of the first respondent. Hence, the present appeal by special leave.

4. The Council of Scientific and Industrial Research (hereinafter called "the CSIR") is a Society registered under the Societies Registration Act, 1860 for doing inter alia research in the field of science and technology. The first respondent joined National Metallurgical Laboratory, the second appellant (for short "NML"), a unit of CSIR, as unskilled Laboratory Bearer on an ad hoc basis on 29-12-1959 and was subsequently appointed as Khalasi on regular basis w.e.f. 9-1-1961. He was promoted as Lower Division Clerk w.e.f. 10-7-1962 and thereafter appointed as Upper Division Clerk against a post created and operated for Magnesium Project of NML w.e.f. 6-12-1966. This Magnesium Project was made a separate unit w.e.f. 1-5-1969 and no longer remained a part of NML. The first respondent continued to work as UDC in the said Project. On 19-8-1971, the first respondent was reverted back to the parent unit, namely, NML-Appellant 2 herein. While so, two posts of Office Assistants were sanctioned for Magnesium Project on ex cadre basis for which an advertisement was published inviting applications for recruiting Assistants for those two ex cadre posts. The first respondent was also one of the candidates, who responded to the advertisement for the ex cadre post. A panel was prepared on the basis of the written examination in the order of merit and Respondent 1 was shown in the fourth place. Since there were only two posts, the first respondent was not given the appointment. The third respondent herein was offered the post as he was within the first two candidates in the order of merit. Even on that occasion, the first respondent made representation about his non-selection and he was given a reply on 21-4-1972 saying that since the appointments were by direct recruitment, the question of giving any preference to departmental candidates did not arise. After some months, the ex cadre posts in Magnesium Project were regularised.

5. Till 12-11-1981, the promotion for the post of Assistant (General) was made both from the open market and also by promotion to the service candidates. 50% quota was reserved for departmental UDCs on all-India basis. After 12-11-1981 the promotion as Office Assistant from UDC was decentralised and it was done on local basis. In that process, the first respondent was appointed as Office Assistant (General) in the cadre of NML w.e.f. 6-4-1983.

6. The next promotional post was the Section Officer. When the vacancies arose for Section Officer's post, the appellants conducted departmental interview in which the third respondent was called for consideration to the post of Section Officer (General). The first respondent sent representations to the appellants against the promotion given to the third respondent ignoring his claims. In other words, the first respondent once again attempted to reopen the issue that his claim for promotion to the post of Office Assistant should have been considered favourably in the year 1972 and the decision of the appellants turning down his representation on earlier occasion, was not correct. The appellants replied to the representation stating that the question now raised cannot be reopened and, therefore, the same cannot be considered at that stage. Feeling aggrieved by the decision of the appellants, the first respondent moved the Tribunal for the relief as mentioned above.

7. The Tribunal, on a wrong appreciation of the facts and circumstances, declared that the first respondent (applicant before the Tribunal) was eligible to be considered for appointment to the post of Section Officer. Since the third respondent herein (sixth respondent before the Tribunal), according to the Tribunal, cannot be treated as in a better position, the first respondent has to be considered. On that view, the Tribunal held as follows :

"We hold that for the purpose of consideration for appointment as Section Officer (General), the applicant shall be deemed as having been validly appointed to the post of Assistant (General) with effect from 11-4-1972, the date on which the sixth respondent was so appointed."

8. The appellants, aggrieved by the above view of the Tribunal and the consequential directions, have filed this appeal.

9. We do not find any difficulty in holding that the Tribunal went wrong in appreciating the facts placed before it while coming to the above conclusion. First of all, the Tribunal failed to appreciate the fact that the first respondent's representation about his non-selection to the post of Assistant (General) in April 1972 was rejected by the appellants and the same question was again reopened by the first respondent when the subject of further promotion was considered and again the representation of the first respondent was turned down by the appellants. The Tribunal by the impugned order has allowed the first respondent to reopen the issue that was settled in the year 1972 in an indirect manner holding that the first respondent must be deemed to have been appointed to the post of Assistant (General) w.e.f. 11-4-1972. For coming to that conclusion, no provision of law or any other material was shown to support the same by the Tribunal. The Tribunal was not justified in entertaining the claim of the first respondent to reopen an issue relating to the year 1972 in the year 1988. It must be noted that after the appointment of third respondent as Office Assistant (General) in the year 1972, the first respondent was regularly promoted to the post of Office Assistant only on 6-4-1983 and that being the position and he having accepted the promotion without challenge, it was not open to him to contend that he must be deemed to have been promoted as Assistant (General) w.e.f. 11-4-1972 when the third respondent was appointed by direct recruitment to that post. Furthermore, the first respondent in response to the advertisement for the ex cadre post for direct recruitment, applied and appeared for the examination and took a chance

and thereafter made representation that he should be promoted to the post of Assistant (General) as a departmental candidate which was rejected immediately by the appellants.

10. For all these reasons, we are clearly of the view that the Tribunal went wrong in declaring that the first respondent must be deemed to have been validly appointed to the post of Assistant (General) w.e.f. 11-4-1972. The order of the Tribunal is, therefore, set aside and the appeal is accordingly allowed with no order as to costs.