MALOON LAWRENCE CECIL D' SOUZA

v.

UNION OF INDIA & ORS.

May 1st, 1975

[A. N. RAY, C. J., H. R. KHANNA, M. H. BEG, AND Y. V. CHANDRACHUD, JJ.]

Constitution of India, 1950, *Article* 16—*Seniority List, validity of—Promotion of petitioner as Assistant Commissioner of Income-Tax prior to respondents* 4 *to* 26—*Petitioner, if could claim seniority over respondents in subsequent seniority list.*

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 II as on January 1, 1950 was issued on the basis of 1947 Seniority Rules. The petitioner was shown in that list senior to respondents 4 to 26. The same position was reflected in a seniority list issued in 1958. The petitioner was prompted as Income Tax Officer Class I Grade I with effect from January 1, 1951 and confirmed in that post from the said date. The Rules of 1974 were revised and in supersession of them 1952 Seniority Rules were issued by the Ministry of Home Affairs. 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 revised seniority list of Income-tax Officers Class I Grade I as on October, 1 1956, was issued. In this list respondents 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 in conformity with the earlier list of 1956 showing the petitioner to be junior to respondents 4 to 26. By this time the petitioner and respondents 4 to 26 had all been promoted Assistant Commissioners.

This Court in *Karnik's case* 78 I.T.R. 243 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 se* 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 of promotion will govern seniority in the higher grade and (iv) Where 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 new seniority list was issued on February 1, 1971. The petitioner filed this writ petition challenging the seniority list of Additional Commissioners of Income-tax as on February 1, 1971 circulated by the Government of India, Ministry of Finance.

It was contended on behalf of the petitioner that as he was promoted Assistant Commissioner on August 19, 1955 while respondents 4 to 26 were promoted to that post subsequent to that date, the petitioner should be shown senior to those respondents.

A Rejecting the contention and dismissing the writ petition.

HELD : (i) The fact that the petitioner was promoted as Assistant Commissioner prior to respondents 4 to 26 would not make him senior to respondents 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 4 to 26 has to be determined in the light of proposition No. 2 laid down by this Court B in *Karniks* case, according to which 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. As respondents 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 Commissioner. [412 GH]

C (ii) It has not been shown that the names of respondents 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 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 4 to 26 qua the petitioner would D 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 4 to 26 in conformity with the seniority list of 1956. In the matter of confirmation to the post of Assistant Commissioner, six out of respondents 4 to 26 confirmed earlier then the petitioner. while the rest of them were confirmed at the same time as the petitioner. The impugned list of seniority circulated in 1971 merely reflected the seniority of the petitioner qua respondents 4 to 26 as determined in 1956. [412 H, 413 A-C]

E *S. K. Ghosh & Anr.* v. *nion of India & Ors.*, [1968] 3 SCR 631 referred to.

HELD FURTHER—(iii) The seniority of the petitioner qua respondents 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. No satisfactory explanation has been furnished F by the petitioner 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 the 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. The petitioner, therefore, cannot be allowed to challenge the seniority list after lapse of so many years. [413EFGH]

ORIGINAL JURISDICTION : Writ Petition No. 296 of 1971.

G Under Article 32 of the Constitution of India.

Ram Panjawani and B. R. Agarwala, for the petitioner.

S. N. Prasad and S. P. Nayar, for respondents Nos. 1 to 3.

Memo for the respondents Nos. 4 to 26.

H The following Judgment of the Court was delivered by :

KHANNA, J.—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 Commissioners 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 4

to 26, but in the impuged list he is shown junior to those respondents. Prayer has also been made by the petitioner for other consequential reliefs. Apart from respondents 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 1 to 3. A

B

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 Office 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 II as on January 1, 1950 was issued on the basis of 1947 Seniority Rules. The petitioner was shown in that list senior to respondents 4 to 26. The same position was reflected in a seniority list issued in 1953. The petitioner was promoted as Income-tax Officer Class I Grade I with effect from January 1, 1951 and confirmed in that post from the said date. C D

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 alia,* 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 was 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 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 4 to 26. It may be stated that by this time the petitioner and respondents 4 to 26 had all been promoted Assistant Commissioners. E F G

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 dismissed that appeal. This Court H

A 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 se* will be reflected in the list of Assistant Commissioners of Income-tax;
>
> B (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 C meeting, the order of 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 D 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 E Income-tax Assistant Commissioners promoted before April 1, 1964 was recast and the impugned seniority list was accordingly issued.

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.

F 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 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 4 to 26 would not make him senior to respondents G 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 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 H 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. As respondents 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 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 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 (supra) would be attracted. Even in such a contingency the seniority of respondents 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 4 to 26 in conformity with the seniority list of 1956. In the matter of confirmation to the post of Assistant Commissioner, six out of respondents 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 seniority circulated in 1971 merely reflected the seniority of the petitioner qua respondents 4 to 26 as determined in 1956.

The case of *S. K. Ghosh & Anr.* v. *Union of India & Ors*(1) 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 4 to 26 is concerned, the matter is governed by 1952 Seniority Rules and those rules as already mentioned have been the 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 with which we are concerned, it is not necessary, in our opinion, to refer to other rules.

The matter can also be looked at from another angle. The seniority of the petitioner qua respondents 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 4 to 26 as the seniority list 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 any one 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.

Although security of service cannot be used as a shield against administrative action for lapse of a public servant, by and large one

(1) [1968] 3 SCR 631.

A 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
B 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.

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

V.M.K. *Petition dismissed.*