

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No. 824/2010**

% **Date of Decision:09.02.2010**

UNION OF INDIA AND ANR. .... PETITIONERS

Through: Ms. Reeta Kaul, Advocate

Versus

HAWA SINGH & ORS. .... RESPONDENTS

Through: None

**CORAM:**

**HON'BLE MR. JUSTICE ANIL KUMAR**

**HON'BLE MR. JUSTICE MOOL CHAND GARG**

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|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not?                                | No  |
| 3. | Whether the judgment should be reported in the Digest?                | No  |

**: MOOL CHAND GARG, J.**

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1. The Union of India has filed this petition under Article 226 of the Constitution of India seeking reversal of the order passed by the Central Administrative Tribunal (hereinafter referred to as "the Tribunal") dated 28.07.2009 in OA No. 1601/2008 whereby the Tribunal has set aside the order dated 7.1.2008 recasting the seniority of the fourth respondent in OA (respondent No.6 before this Court) as well as the order dated 28.02.2008 promoting him to the post of Laboratory

Assistant, without considering the claim of the applicants in OA (respondent Nos. 1 to 5 before this Court).

2. Briefly stating, the facts of this case are that:

(i) Respondents were appointed as Laboratory Attendant even though on transfer of service basis but through a competitive examination vide order dated 27.11.2002. While making their appointments it was specifically mentioned in the order that *inter se* seniority in the grade would be indicated in the order and the concerned officials would cease to have any claim in seniority in their previous ranks for the purpose of promotion. The said order for the sake of reference is reproduced hereunder:-

“The following personnel are appointed as Laboratory Attendants in the Intelligence Bureau on transfer of service basis in the pay scale of Rs. 2610-60-3150-65-3540/-. Their appointment will take effect from the date they took over charge of the post of Laboratory Attendants in IB Hqrs., New Delhi.

2	Hawa Singh, Peon 10.1.63	Chem. Lab	AD/Tech- Chem.
3	Rajesh Kumar Arora Peon 6.8.67	WT Branch	Ad/Tech-TP
5	Hirendra Singh Rawat, Peon 4.3.64	Chem. Lab	Ad/Tech- Chem.
6	Top Bahadur Thapa, Washboy 6.1.70	SIB Srinagar (at Jammu) DD/Tech-NC	JDD/Tech- Mob.
1 4	Shankar Rao, Peon 25.9.66	C-II Branch	AD/Tech-ANA
1 6	Hawaldar Singh, Daftry 15.12.60	SDN	SDN

2. On induction in the Laboratory Attendant Cadre, their inter se seniority in the grade will be as indicated above.

3. Consequent upon their appointment as Lab. Attendant on transfer of service basis, the concerned officials will cease to have any claim in seniority in their previous ranks for the purpose of promotion etc.”

3. This seniority assigned to Respondent Nos. 1 to 5 and Respondent No.6 was further authenticated vide memorandum dated 31.5.2007.

4. The said seniority was circulated after revising the same by deleting the names of those who have since been promoted to the higher rank. The memorandum also stated that the seniority list is enclosed and in case there is any discrepancy/omission or the name of any person is found to be missing in the seniority list, the same can be brought to the notice along with particulars as recorded in the service book of the official concerned within a period of six months, failing which the list would be treated as final. As per the seniority list annexed with the memorandum aforesaid, nine Laboratory Attendants were senior to all those who came to be appointed vide orders dated 27.11.2002. Respondent No. 6 was once again shown at the bottom of the seniority list at serial no. 24.

5. However, the seniority of Respondent No. 6 was changed by the petitioners for the reasons given in the order dated 11.3.2008 after rejecting the representation of Top Bahadur Thapa on the ground that as per MHAs direction the seniority of Respondent No.6 had been re-fixed with effect from the date of his appointment as Daftry as the post

of Daftry carries the same pay scale as that of Laboratory Attendant as he was holding the post of Washboy prior to his appointment as Laboratory Attendant and had, therefore, been assigned seniority as Laboratory Attendant on the basis of his marks position in the competitive examination. It is further stated that the case of the other respondents could not be treated at par with the sixth respondent and that as such no change in the seniority position of the respondents is called for.

6. Being aggrieved of the aforesaid order passed by the Government of India, Respondent Nos. 1 to 5 filed the OA in question and assailed the order granting seniority to the sixth respondent above them in terms of the order passed by the MHA. While disposing the said OA, the Tribunal has made the following observations:-

6. We have heard the learned counsel representing the parties and with their assistance examined the records of the case. In the context of the facts as fully detailed above, we are of the considered view that the respondents in the matter of re-casting seniority of the 4th respondent and then promoting him to the post of Laboratory Assistant, have committed patent illegality. Re-casting of seniority could be set aside straightway for bringing about such a change as bringing a person at the bottom of the seniority to a far higher position, only for want of notice to the adversely affected persons like the applicants, but that course may not be advisable, as we are of the view that in the context of the defence projected by the respondents, which is absolutely hollow, the matter needs to be given a quietus and remitting the matter for re-consideration after notice to the applicants would be an exercise in futility. It may be recalled that in the order dated 27.11.2002 appointing the applicants and others as also the

4th respondent as Laboratory Attendants, it was stated in clear and unequivocal terms that on induction in the Laboratory Attendant cadre, the inter se seniority of those who came to be appointed on the said date, would be as mentioned in the order, and further that consequent upon their appointment as Laboratory Attendant, the concerned officials would cease to have any claim in seniority in their previous ranks for the purpose of promotion etc. **The order re-casting seniority on the ground as taken by the respondents, as mentioned above, is in sharp contrast to the order dated 27.11.2002 (Annexure A-3). That apart, it is too well established a proposition of law that when employees coming from different cadres merge and come to occupy a post either by selection or promotion, their entry in the feeder cadres or services rendered by them earlier, if it may be a case of appointment by selection, would be of no meaning and consequence. Whether the applicants were holding different posts than that of the 4th respondent, and whether on the said posts they were appointed earlier or later than the said respondent, in our view, would be wholly inconsequential. Concededly, present is a case of appointment by transfer of employees holding different posts in IB by the method of selection, which constituted written test and interview, in which the selection panel had determined their merit position, according to which alone seniority was drawn. The inter se seniority as mentioned in the order dated 27.11.2002 and confirmed by order dated 6.2.2003 and then by order dated 31.5.2007, by no stretch of imagination, could be disturbed only on the ground that the 4th respondent was holding the post of Daftry carrying an equivalent pay scale as that of Laboratory Attendant, on which post he came to be appointed. In the circumstances as mentioned above, at the most, the pay of the 4th respondent could be protected and as mentioned above, by no stretch of imagination he could rank senior to others and then promoted by superseding them.**

7. The Tribunal by the impugned order allowed the OA filed by Respondent Nos. 1 to 5 and set aside the order dated 7.1.2008 as well as the order dated 28.2.2008, which are impugned before us.

8. The only submission made on behalf of the petitioners is that the office memorandum dated 27.3.2001 which was amended in terms of the order passed by the Hon'ble Supreme Court has not been considered by the Tribunal. The said memorandum for the sake of reference is reproduced hereunder:-

F.No.20011/1/2000-Estt (D)  
Government of India  
Ministry of Personnel, Public Grievances & Pensions  
Department of Personnel & Training  
New Delhi 110001  
March 27, 2001

OFFICE MEMORANDUM

Subject : Seniority of persons absorbed  
after being on deputation

The undersigned is directed to say that according to our O.M. No. 20020/7/80-Estt. (D) dated May 29, 1986 (copy enclosed) in the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for "transfer on deputation/transfer"), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from

the date he has been holding the post on deputation,

or

the date from which he has been appointed on a regular basis to same or equivalent grade in his parent department.

*Whichever is later.*

2. The Supreme Court has in its judgment dated December 14, 1999 in the case of *Shri S.I. Rooplal & Others Vs. Lt. Governor through Chief Secretary, Delhi, JT 1999 (9) SC 597* has held that the words “whichever is later” occurring in the Office Memorandum dated May 29, 1986 and mentioned above are violative of Articles 14 and 16 of the Constitution of India and, hence, those words have been quashed from that Memorandum. The implications of the above ruling of the Supreme Court have been examined and it has been decided to substitute the term “whichever is later” occurring in the Office Memorandum dated May 29, 1986 by the term “whichever is earlier”.

3. It is also clarified that for the purpose of determining the equivalent grade in the parent department mentioned in the Office Memorandum dated May 29, 1986, the criteria contained in this Department Office Memorandum No. 14017/27/75-Estt(D)(pt) dated March 7, 1984 (copy enclosed), which lays down the criteria for determining analogous posts, may be followed.

4. These instructions shall take effect from the December 14, 1999 which is the date of the judgment of the Supreme Court referred to above.

5. Insofar as personnel serving in Indian Audit and Accounts Departments are concerned, these instructions are issued in consultation with the Comptroller and Auditor General of India. However, these orders (in keeping with paragraph 4 of the Office Memorandum dated May 29, 1986 as referred to above) will not be applicable to transfers within the Indian Audit and Accounts Department which are governed by orders issued by the C&AG from time to time.

6. The above instructions may be brought to the notice of all concerned for information, guidance and necessary action.

(K.K.JHA)  
DIRECTOR (Establishment)

9. However, this memorandum cannot help the petitioners for the reason that vide their own order dated 27.11.2002 while appointing respondent Nos. 1 to 5 including respondent No.6, which was issued later than the memorandum referred to above. In fact, the letter of appointment contains clause (3), which reads as under :-

3. Consequent upon their appointment as Lab. Attendant on transfer of service basis, the concerned officials will cease to

have any claim in seniority in their previous ranks for the purpose of promotion etc.

10. The order of the Tribunal is based upon the letter of appointment and does not call for any interference by this court while exercising powers under Article 226 of the Constitution of India. The writ petition is accordingly dismissed.

CM No. 1747/2010 (Stay)

In view of the orders passed above, the application has become infructuous and is accordingly disposed of.

**MOOL CHAND GARG, J.**

**FEBRUARY 09, 2010**  
**dc**

**ANIL KUMAR, J.**