

CASE NO.:
Appeal (civil) 8208 of 2001

PETITIONER:
Union of India

RESPONDENT:
Smt. Sadhana Khanna

DATE OF JUDGMENT: 14/12/2007

BENCH:
A.K. Mathur & Markandey Katju

JUDGMENT:
J U D G M E N T

MARKANDEY KATJU, J.

1. This appeal has been filed against the impugned judgment of the Delhi High Court dated 21.3.2000 in Civil Writ Petition No.1311 of 2000.
2. Heard learned counsel for the parties and perused the record.
3. The facts of the case are that the respondent joined the Central Secretariat Service on 13.7.1983 after passing Assistants Grade Examination held in October, 1981. The respondent was allocated to the finance cadre comprising the Ministry of Finance.
4. After completion of eight years of regular service in the grade of Assistant, the respondent was granted a short-term promotion to the grade of Section Officer on 24.7.1991. The respondent continues to work in this post till date.
5. Select List (Seniority quota) for promotion to the Section Officers Grade for the year 1991 was issued on 28th May, 1993. The respondent's name has not been included in this select list although the respondent was qualified to be included in the select list. Officers junior to the respondent who have secured lower rank in the Assistant Grade Examination 1981 have been included in the select list for Section Officers 1991.
6. The seniority list of Assistants Grade had been issued on 1st October, 1990. In this list the respondent ranks at S.N.29 whereas other officers of the same grade at S.Nos.30, 32, 34, 25 and so on who are junior to the respondent in this seniority list have superseded the respondent and promoted as Section Officer on the basis of the Select List of 1991. Promotion to the post of section officers from the grade of Assistant to the grade of Section Officers (seniority quota) is on non-selection basis, based only on seniority.
7. The grievance of the respondent was that her juniors were included in the select list but her name was not so included. Hence, she filed an O.A. before the Central Administrative Tribunal.
8. In the counter affidavit filed before the Tribunal the appellant herein (respondent before the Tribunal) alleged that the respondent was not eligible for inclusion in the Select List of 1991, since on 1.7.1991 she was short of the minimum eligibility service requirement of eight years by twelve days. The respondent joined as Assistant on 13.7.1983 and as such she could not be placed on the select list.
9. The Tribunal allowed the O.A. by its order dated 24.9.1999. In the

said O.A. it was hold that the Department of Personnel and Training had issued an Office Memorandum dated 19.7.1989 soon after the decision of this Court in R. Prabha Devi and others vs. Government of India Through Secretary, Ministry of Personnel and Training, Administrative Reforms and others 1988(2) SCC 233 stating that where the junior had completed the eligibility requirement of promotion then their seniors will also be considered even if they have not completed the eligibility period.

10. The appellant filed a writ petition before the Delhi High Court which was dismissed and hence this appeal.

11. It may be noted that the respondent was offered appointment vide letter dated 5.7.1983 which is after 1.7.1983 from which the eligibility was to be counted. Hence, it is the Department which is to blame for sending the letter offering appointment after 1.7.1983. In fact, some of the candidates who were junior to the respondent were issued letters offering appointment prior to 1.7.1983. Hence it was the Department which is to blame for this. Moreover, in view of the Office Memorandum of the Department of Personnel and Training dated 18.3.1988 and 19.7.1989 the respondent was also to be considered, otherwise a very incongruous situation would arise namely that the junior will be considered for promotion but the senior will not.

12. In view of the above there is no merit in this appeal and it is dismissed.