

A

UNION OF INDIA  
v.  
SMT. SADHANA KHANNA

DECEMBER 14, 2007

B

[A.K. MATHUR AND MARKANDEY KATJU, JJ.]

C

*Service Law—Promotion—Select List for promotion—Non inclusion of senior candidates' name though qualified whereas names of junior candidates included—Challenge to—Held: Senior candidate was issued appointment letter after the eligibility date for promotion whereas junior candidates were issued prior to eligibility date—Hence, Department was at fault—Senior candidates' name to be considered for promotion.*

D

E

**Aggrieved respondent filed application challenging the Select List for promotion to the post of Section Officer for year 1991, since her name was not included in the Select List though she was qualified and the name of the officers junior to the respondent was included in the select list and were promoted to the post of Section Officer. The Tribunal allowed the application. High Court upheld the order. Hence the present appeal.**

**Dismissing the appeal, the Court**

F

G

**HELD:** The respondent was offered appointment by letter dated 5.7.1983 which was after 1.7.1983 from which the eligibility was to be counted. 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 was to be blamed for sending the letter offering appointment after 1.7.1983. 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 would be considered for promotion but the senior would not. [Para 11] [744-G-H; 745-A-B]

H

*R. Prabha Devi & Ors. v. Government of India Through Secretary, Ministry of Personnel and Training, Administrative Reforms & Ors., [1988] 2 SCC 233, referred to.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8208 of 2001.

From the Final Judgment and Order dated 21.3.2000 of the High Court of Delhi at New Delhi in Civil Writ Petition No. 1311 of 2000.

T.S. Doabia, Kiran Bhardwaj, Sushma Suri and Manpreet Singh Doabia for the Appellant.

Rachna Gupta, Dr. Indra Pratap Singh and Amrit Singh for the Respondent.

The Judgment of the Court was delivered by

**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.

A 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  
B 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.

C 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.

D 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.

E 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 Ors. v. Government of  
India Through Secretary, Ministry of Personnel and Training,  
Administrative Reforms and Ors.*, [1988] 2 SCC 233 stating that where  
F 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.

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

H 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

[MARKANDEY KATJU, J.]

which is to blame for this. Moreover, in view of the Office Memorandum A 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 B dismissed.

N.J.

Appeal dismissed.