

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

OA No.1644/2002

Date of decision: 07.11.2002

Ram Prakash Mandal

.. Applicant

(By Advocate: Shri B.S.Mainee)

versus

Union of India, through

.. Respondents

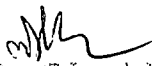
(By Advocates: Shri Surender Kumar)

CORAM:

The Hon'ble Shri M.P. Singh, Member(A)

The Hon'ble Shri Shanker Raju, Member(J)

To be referred to the Reporter or not? Yes


(M.P. Singh)
Member(A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1644/2002

New Delhi, this the 7th day of November, 2002

Hon'ble Shri M.P. Singh, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

Ram Prakash Mandal
JE(E), Civil Construction Wing
AIR, DDB Ph.II, Copernicus Marg
New Delhi

.. Applicant

(Shri B.S.Mainee, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Information & Broadcasting
Shastri Bhavan, New Delhi
2. Chief Engineer/CCW
Soochna Bhavan, New Delhi
3. Suddt. Engineer
Mandia House Project/CCW
Soochna Bhavan, New Delhi
4. Chief Executive Officer
Prasar Bharati, PTI Building
New Delhi

... Respondents

(Shri Surender Kumar, Advocate)

ORDER

Shri M.P. Singh, Member(A)

By the present OA, applicant seeks to quash the communication dated 20.5.2002 as according to him his date of continuous appointment as Junior Engineer(JE) has been wrongly shown as 29.11.1991 instead of 18.3.1982.


2. Briefly stated, it is the case of the applicant that he had worked in Indian Air Force as AC(U/T) from 19.11.1977 to 29.7.1987 when he was retired at his own request. In response to advertisement issued by respondents for filling up of 148 posts of JE(Civil) and JE(Electrical), out of which 19 were reserved for ex-servicemen, applicant applied for the same and he was

selected. He joined the said post on 29.11.1991. On 15.2.1999 he made a representation to respondents to include his period of service in IAF for pensionary benefits as also for seniority. On 23.2.2001 Respondent No.1 issued a letter to Respondent No.2 informing him that decision had been taken to accede to the request of applicant for counting of past military service subject to fulfilment of all other conditions as laid down in Rule 19 of CCS(Pension) Rules and that pensionary benefits if any received by the applicant would be refunded alongwith interest. In response to another representation of the applicant, he was informed vide Memo dated 16.4.2002 that the period of interruption in service w.e.f. 30.7.87 to 28.11.1991 had been condoned in accordance with rules and consequently the effective date of appointment shall be considered with effect from 18.3.1982 for the purpose of pension, gratuity and seniority etc. Thereafter, respondents issued a letter on 20.5.2002, which is under challenge here, in terms of which 41 JEs were rendered surplus in CCW as on 28.2.2002. Applicant made a representation on 10.6.2002 inviting respondents' attention to letter dated 16.4.2002 and protesting against the letter dated 20.5.2002 in terms of which his name has been included in the list of staff rendered surplus. However, respondents are proceeding to implement the order dated 20.5.2002 and therefore the applicant is before us seeking to quash the said order.

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3. Respondents in their reply have stated that the Department has issued the letter dated 16.4.2002 for counting of applicant's past Military service from 19.11.77 to 29.7.87 subject to fulfilment of all other conditions laid down in Rule 19 of CCS(Pension) Rules, 1972 and the effective date was fixed as w.e.f. 18.3.82 for the purpose of pension, gratuity and other benefits and not for seniority. Rule 19 of CCS(Pension) Rules, 1972 provides for counting of qualifying service for retirement benefits only and not for seniority. By letter dated 20.5.2002, in which date of appointment is correctly written as 29.11.91, the applicant has been declared surplus. No other rules have been issued by the Government by which benefit of past service can be counted for seniority also. The applicant joined service in respondent-department from 29.11.91 and therefore he would count seniority only from that date and not from any earlier date. Junior staff who had been appointed from 1989 onwards have been rendered surplus and the applicant is one of them. Applicant's request for considering seniority has been referred to Ministry of Law vide their letter dated 27.6.2002 and further action would be taken after hearing from that Ministry. In view of this, the OA is devoid of merit and be dismissed.

4. We have heard the learned counsel for the parties and perused the records.



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5. During the course of the arguments, learned counsel for the applicant has very vehemently contended that since the OM dated 16.4.2002 issued by the respondents clearly states that "the effective date shall be considered w.e.f. 18.3.1982 for purpose of pensionary, gratuity, service, seniority and other benefits as per relevant rules", respondents cannot turn back and say that his effective date shall be only from 29.11.91 and declare him surplus. He has also drawn our attention to the judgement of Karnataka High Court of Judicature in T.P.Thomas Vs. UOI in WP No.7695/76 decided on 31.1.77 in support of his contention.

6. On the other hand, the learned counsel for respondents has submitted that the word 'seniority' had crept in inadvertently in the Memo dated 16.4.2002 and the applicant cannot be allowed to take advantage of that mistake. Since the applicant joined the department from 29.11.91 his seniority would count only from that date. Rule 19 of CCS(Pension) Rules, 1972 provides for counting military service as qualifying service only for the purpose of retiral benefits and not for seniority.

7. We have considered the above aspect. We have also gone through Rule 19 of CCS(Pension) Rules, 1972 and we find that nowhere it provides for counting of past military service for the purpose of seniority also. The applicant having joined the respondent-department on 29.11.91 cannot take advantage of the mistake committed

[Signature]

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by the respondent. Even the judgement(sura) relied upon by the applicant would not render any support to him as the same is distinguishable in the sense that the issue involved in that case related to counting of past military service (combatant) for the purpose of next promotion in the civil service. Applicant's counsel has not produced any rule or law under which he is entitled to count past service from an earlier date than 29.11.91 when he actually joined the respondent-department. We are satisfied that applicant cannot get seniority from the date of joining the IAF unless a specific Rule is framed by the Government for this purpose. The respondentss have, therefore, rightly counted his seniority from 29.11.1991, i.e. the date of his joining the civil service.

8. In view of this position, we find no merit in the present OA and the same is accordingly dismissed.

S. Raju
(Shanker Raju)
Member(J)

M.P. Singh
(M.P. Singh)
Member(A)

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