

Central Administrative Tribunal  
Principal Bench, New Delhi

OA No.1906/2001

This the 8th day of April, 2002

Hon'ble Shri V.K. Majotra, Member (A)  
Hon'ble Shri Kuldip Singh, Member (J)

Trilok Nath, Inspector  
Circle-4, Food & Supply Department  
Government of National Capital Territory of Delhi  
Jal Vihar, Lajpat Nagar, New Delhi,  
resident of 6/88, Old Rajinder Nagar, New Delhi-110060.

.... Applicant

(Applicant present in person)

VERSUS

1. Government of National Capital Territory of Delhi  
Through its Chief Secretary, Player's Building,  
Indra Prastha Estate, New Delhi.
2. Principal Secretary, Directorate of Education  
Old Secretariat, Delhi.
3. Secretary-cum-Director, Directorate of Employment,  
Government of National Capital Territory of Delhi  
Player's Building, Indra Prastha Estate, New Delhi.
4. The Principal Secretary (Services), Government of  
National Capital Territory of Delhi, Player's  
Building, Indra Prastha Estate, New Delhi.
5. Commissioner, Food & Supply Department, Government  
of National Capital Territory of Delhi, Player's  
Building, Indra Prastha Estate, New Delhi.

.... Respondents

(By Advocate Shri Ashwani Bhardwaj, proxy for  
Shri Rajan Sharma)

ORDER

Hon'ble Shri V.K. Majotra, Member (A)

Applicant was appointed as Lower Division Clerk (LDC)  
Grade IV w.e.f. 13.8.1964 in the Directorate of  
Employment, Training and Technical Education, Delhi  
Administration. However, by a later order passed on  
10.11.1965 his services were terminated. According to  
applicant on his representation the applicant was

*W*

re-instated in service by w.e.f. 6.1.1966. Applicant has thereafter earned several promotions and has been holding the post of Inspector (Grade II) in the Food and Supply Department and was scheduled to retire on 31.8.2001. It is stated that in the seniority list dated 23.2.1978 (Annexure A.IV) applicant's name is mentioned at Sr.No. 2325 mentioning his date of joining as 6.1.1966. Applicant claims that his date of joining ought to have been mentioned as 13.8.1964 and his pay should also have been fixed accordingly. On his representation the break in his service between 10.11.1965 and 5.1.1966 was condoned and he has been shown to have been regularised w.e.f. 13.8.1964 by an order passed on 31.8.1998 at (Annexure A.I). It is alleged that he has not been accorded benefit of pay and promotions to higher grades taking into account the period between 10.11.65 and 5.1.66. According to him he should have been placed in Grade IV w.e.f. 13.8.64 instead of 6.1.66, in Grade III from 11.7.75 instead of 23.2.77 and in Grade II w.e.f. 27.5.93 instead of 9.7.96, with consequential benefits.

2. On the other hand, the learned counsel of the respondents stated that having been appointed as LDC on adhoc basis w.e.f. 13.8.64, his adhoc appointment was extended from time to time till terminated from 10.11.65. He was re-appointed as LDC w.e.f. 6.1.66 which was a fresh appointment and not in continuation of his earlier adhoc appointment. He was appointed on regular basis w.e.f. 7.10.66 after verification of various particulars. The learned counsel stated that under Rule 28 of the CCS

(M)

(Pensions) Rules, 1972, the period of interruption in service of applicant from 10.11.65 to 5.1.66 was condoned for purpose of pension only and that there is no rule, order or law under which the aforesaid condonation could be considered for purpose of seniority also. Learned counsel also relied on the ratio of the judgement of the Constitution Bench of the Supreme Court in **Direct Recruit Class II Engineering Officers' Association and Others vs State of Maharashtra and others AIR 1990 SC 1607** contending that adhoc service, which, too, was interrupted before regular appointment cannot be counted for seniority. Learned counsel further stated that Annexure A.I condoning interruption in service of the applicant from 10.11.65 to 5.1.66 for the purpose of pension alone was issued on 1.9.98 while the present OA was filed on 30.7.2001 and as such this OA is barred by limitation for which applicant has not filed even an application for condonation of delay in filing the OA.

3. Rule 28 of the CCS(Pensions) Rules reads as follows:

- a) In the absence of a specific indication to the contrary in the service book, an interruption between two spells of civil service rendered by a Government servant under government including civil service rendered and paid out of Defence Services Estimates or Railway Estimates shall be treated as automatically condoned and the pre- interruption service treated as qualifying service.
- b) Nothing in clause (a) shall apply to interruption caused by resignation, dismissal or removal from service or for participation in a strike.
- c) The period of interruption referred to in clause (a) shall not count as qualifying service.

UH

4. In the case of Direct Recruit Class II Engineering Officers Association (Supra) it was held as follows:-

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not from the date of his confirmation. The corollary of the above rule is that where the initial appointment is only adhoc and not according to rules and made a stop gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

5. It is clear from Annexure R.II which is statement of service of the applicant that applicant was appointed as LDC on 13.8.64 on adhoc basis. His service was regularised vide Memo (Annexure A.I) on 1.9.98 under Rule 28 of the CCS (Pensions) Rules i.e. that interruption of service of applicant from 10.11.65 to 5.1.66 was condoned only for pensionary purposes. Applicant has also not filed any application for condoning delay for filing the application beyond the period of limitation taking into account that Annexure A.I was issued on 1.9.98.

6. While no good ground has been explored by the applicant to establish his claim, we are in agreement with the learned counsel of the respondents in the facts and circumstances of the case. We do not find any infirmity in the action of the respondents contained in Annexure A.I considering the provisions of Rule 28 of CSS(Pension) Rules and ratio of AIR 1990 SC 1607.

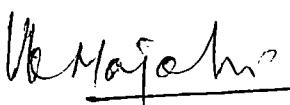
W

7. The OA is badly barred by limitation also, while the applicant has not made any application for condonation of delay in making the OA.

8. Having regard to the reasons recorded and discussion made above we do not find any merit in the OA, which is dismissed accordingly, however, without any cost.

  
(Kuldip Singh)

Member (J)

  
(V.K. Majotra)

Member (A)

