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(38)

Central Administrative Tribunal
Principal Bench

O.A. No.2007/2001

New Delhi this the 25th day of April, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri V.K. Majotra, Member (A)

1. Anil Kumar
S/o Late Shri M. Sreedharan,
R/o B-55-A, New Gupta Colony,
Delhi-110009.

2. Khem Chand,
S/o Shri Daulat Ram,
R/o, House No. 333/21, Roop Nagar,
Street No. 1, Sonepat-131001.

3. Smt. Pushpa Singh,
W/o Shri Inder Singh,
R/o House No.175, Sector-IV,
R.K. Puram, New Delhi-110066.

-Applicants

(By Advocate: Shri A.K. Behra)

Versus

1. Union of India
Through the Secretary,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi-110001.

2. The Secretary,
Department of Personnel & Training,
North Block, New Delhi-110001.

3. The Director General,
Narcotics Control Bureau,
West Block No.1, Wing No. 5,
R.K. Puram,
New Delhi-110066.

-Respondents

(By Advocate: Shri A.K. Bhardwaj)

ORDER

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

In our view, whereas applicants 1-3 are Stenographers Grade-III (Grade 'D') and applicant No.4, Smt.Rita Harjani is an Upper Division Clerk (UDC), the first three applicants only have a common interest and as such permission to join together in the OA is granted to the first three applicants only.

(39)

However, liberty is granted to applicant No.4 to pursue her case separately, if so advised as per law. Accordingly, the name of applicant No.4 be deleted from the Memo of parties.

2. The applicants have assailed the respondents' action in not granting seniority in their respective posts with consequential benefits upon their cadre transfer to the office of Respondent No.1 as far back as September, 1998.

3. Applicants, three in number, joined as Stenographers Grade III (Grade 'D') in the Narcotics Control Bureau (NCB) between 1991 and 1998. Vide Annxure A-1 dated 24.9.1998 issued by the Department of Revenue. It has been stated that NCB was set up in the Headquarters of the Department of Revenue vide Office Order No. 273 dated 5.11.1997 with a view to coordinating the work relating to Narcotics Control and also to monitor and review the work of various agencies handling Narcotics work under the Department of Revenue. Vide Annexure A-1, respondents took a decision to transfer various posts borne on the strength of the NCB to the Headquarters of the Department of Revenue w.e.f. 1.10.1998. The posts of Stenographers Grade III (Group D) held by these applicants were among those transferred vide Annexure A-1. Learned counsel of the applicants stated that whereas the respondents had proposed to encadre the posts held by these applicants under the Department of Revenue in the Central Secretariat Stenographer

Service (CSSS), applicants are aggrieved that even after lapse of a long time, final decision has not been taken by the respondents. Learned counsel supplemented that though options had been asked from the applicants in 1998 for encadrement of their posts into CSSS and the applicants had submitted their options also accordingly, the respondents did not take any positive action towards encadrement of their posts into CSSS. Learned counsel has relied on order dated 22.5.2001 in OA 1941/1998 -**Shri Harish Chander V. UOI and Ors.** in which in a similar matter relating to Central Secretariat Clerical Service (CSCS) the respondents were directed to encadre the post of Hindi Typist in CSCS taking recourse to Rule 24 A of CSCS Rules providing for relaxation. It was also directed therein that applicant had to be absorbed as UDC in the cadre with seniority only from the date of final absorption. It was further directed that he was entitled for protection of pay and allowances being drawn by him. Learned counsel further stated that the directions in that OA have been implemented by the Union of India.

4. On the other hand, learned proxy counsel for respondents' counsel contended that respondents had not invited options from the applicants for encadrement in the Revenue Headquarters and even though the applicants had submitted their options on their own, no rights for encadrement accrue to them.

5. In Para 4.20 of the OA a specific averment

has been made by the applicants to the effect that they had given their options for encadrement to the concerned grades of CSSS and that nothing had happened on the same even though the said options were given long back. We find from the reply of the respondents that respondents have given a common reply to Paras 4.14 to 4.20 of the OA stating that the contents of these paragraphs are incorrect and unfounded and hence the same are denied. The averments made in Para 4.20 have not been specifically denied and the kind of statement made by the respondents in a general manner cannot be accepted and as such we are of the considered view that respodents had asked for the options for encadrement of the applicants among others and thus the applicants had submitted their options. Learned counsel stated that respondents have taken decision vide Annexure R-1 dated 21.12.1999 rejecting the proposal of the Department of Revenue regarding encadrement of posts along with incumbents of NCB, Department of Revenue into CSSS.

6. Vide MA-257/2002 filed on 29.1.2002, copy of Annexure MA-1 dated 24.1.2002 was filed by which these applicants have been re-transferred from NCD back to NCB. Respondents have not clarified when the applicants had been transferred from NCB to NCD on taking consent of these applicants without keeping their lien in NCB, how they have been transferred back to NCB without their consent after lapse of several years. The facts and circumstances of the case go to establish that applicants had been transferred along

with their posts to NCD on administrative grounds and not on their request. They have been functioning in NCD for a long time and have naturally developed valid expectations to grow in their career in NCD. The State as a model employer is not expected to play with the career of the employees in a capricious manner as has happened in the present case. When the State had brought these employees to NCD along with their posts from NCB and without keeping their lien in NCB, they cannot be allowed to re-transfer the posts and the incumbents back to NCB after a lapse of 5 years approximately without any rhyme or reason which has disturbed the lives of the applicants and put them to great hardship. At the time of arguments, learned counsel of respondents had sought and was allowed to produce a copy of the judgment he relied upon with a copy to the opposite side on 10.4.2003 itself, such a judgment has not been produced till 22.4.2003.

7. In our view the ratio in the matter of **Shri Harish Chander** (supra) is squarely applicable to the facts of the present case. In that case, rejection of applicant's request for inclusion of his post in CSCS cadre was quashed and set aside and respondents were directed to encadre the post of Hindi Typist in CSCS, taking recourse to Rule 24A of CSCS Rules, providing for relaxation. It was further held that the applicant will have to be absorbed as UDC in the cadre but he will be permitted to reckon his seniority only from the date of final absorption. He would also be entitled for protection of pay and allowances, being drawn by him.

43

8. In the present case, learned counsel of the applicant on 23.10.2002 had stated that apart from the applicants in the present OA , other persons who were similarly transferred along with their posts to NCD were taken on the strength of NCD subsequently. He established this fact from respondents' office order No.A-58/2002 dated 12.9.2002 with respect to one Shri S.P. Singh, Staff Car Driver. Learned counsel sought similar orders with respect to the applicants as they were similarly situate as Shri S.P. Singh. Shri M.K. Bhardwaj, learned proxy counsel for respondents had sought time to obtain necessary instructions from respondents with regard to the contentions of learned counsel of applicants. He was granted two weeks time to file additional reply to these averments to clearly explain why applicants should not be treated similarly as Shri S.P. Singh. No such clarification has forth-come from respondents till the date of final hearing.

9. In view of totality of facts and circumstances as discussed above, this application succeeds and is accordingly allowed. Annexure MA-1 order dated 24.1.2002 is quashed and set aside and the respondents are directed to take action at the earliest and in any event within two months from the date of receipt of this order to consider encadring the posts of Stenographers Grade III (Group D) held by the applicants in the CSSS in the Department of Revenue taking recourse to relevant rule of CSSS Rules providing for relaxation. The applicants will have to

44

be absorbed as Grade-II (Group D) in the cadre but their seniority will be reckoned from the date of their final absorption. They would be entitled for protection of pay and allowances, being drawn by them. No order as to costs.

(V.K. Majotra) Member (A)	(Smt. Lakshmi Swaminathan) Vice-Chairman (J)

cc.