

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1463/1999

New Delhi this the 12th day of July, 2001.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI M.P.SINGH, MEMBER (A)

Shri Charan Dass Garg
Junior Engineer (Electrical)
Under Executive Engineer
Air Conditioning Division No.III
C.P.W.D., New Delhi.

... Applicant

(By Shri B.S.Mainee, Advocate)

-versus-

1. Union of India
Through Secretary to the
Government of Urban Development
Nirman Bhavan
New Delhi.
2. The Director General of Works
C.P.W.D.
Nirman Bhavan.
New Delhi.
3. The Superintending Engineer
Outer Delhi Elect. Circle
C.P.W.D.
East Block-1, Level-5
R.K.Puram
New Delhi-110 066.
4. The Executive Engineer (E)
Air-conditioning Division III
C.P.W.D.
Vidyut Bhavan
New Delhi.

... Respondents

(By Shri S.K.Gupta, Advocate)

O R D E R (ORAL)


Shri M.P.Singh:-

Applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 challenging the order dated 9.6.1999 at Annexure A-1 issued by the respondent No.3 whereby the higher pay scale of Rs.2000-3500 granted to him has been withdrawn.



7 2. The brief facts of the case are that the applicant was appointed in the Beas Project as Sectional Officer with effect from 19.10.1971. After completion of the Beas Project, he was declared surplus and subsequently redeployed in the C.P.W.D. as Junior Engineer in the grade of Rs.425-700 (pre revised) with effect from 22.3.1985. In accordance with the recommendations of the Fourth Central Pay Commission, the respondents granted two scales for the incumbents of the Junior Engineer vide Notification dated 22.3.1991. According to this Notification, there will be two scales of pay for Junior Engineer/Sectional Officers in the C.P.W.D. i.e. Rs.1400-2300 and Rs.1640-2900 and the incumbents thereof will be designated as Junior Engineers/Sectional Officers (Hort.) in the grade of Rs.1400-2300 and Junior Engineers/Sectional Officers (Hort.) in the grade of Rs.1640-2900. The entry grade will be Rs.1400-2300. On completion of five years service in the entry grade, they will be placed in the scale of Rs.1640-2900 subject to rejection as unfit. This higher grade will not be treated as a promotional one but will be non-functional and the benefit of F.R. 22(I)(a)(i) will not be admissible while fixing the pay in the higher grade. It further provides that Junior Engineers/Sectional Officers (Hort.) who could not be promoted to the post of Assistant Engineer/Assistant Director (Hort.) in the scale of Rs.2000-3500 due to non-availability of vacancies in the grade of Assistant Engineer/Assistant Director (Hort.) will be allowed the scale of Assistant

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Engineer/Assistant Director (Hort.) i.e. Rs.2000-3500 on personal basis after completion of 15 years of total service as Junior Engineer/Sectional Officer (Hort.). This promotion will be given on fitness basis.

3. In pursuance of the aforesaid order, respondents held a D.P.C. and placed the applicant in the grade of Rs.1640-2900 w.e.f. 28.4.1990. Aforesaid decision of the respondents was contrary to the decision of the Govt. of India because applicant had already completed five years of service as on 1.1.1986. As such, he was entitled to be placed in the higher scale of Rs.1640-2900 w.e.f. 1.1.1986. Aggrieved by this, the applicant filed O.A. No.1331/1995 in the Tribunal. The Tribunal disposed of the OA by its judgment dated 14.5.1996 and allowed the benefit of past service rendered by him prior to his redeployment in the C.P.W.D. The judgement of the Tribunal was challenged by the respondents in the Supreme Court by way of a Special Leave Petition. The S.L.P. was dismissed by the Supreme Court on 10.2.1997. Thereafter similarly placed persons filed applications in the Chandigarh Bench, Principal Bench and the Hyderabad Bench of the Tribunal. Various Benches of the Tribunal followed the decision of the Bombay Bench of the Tribunal and allowed the benefit of past service. However, the respondent No.3 has now suddenly issued an order dated 9.6.1999 withdrawing the benefit of promotion in the grade of Rs.2000-3500. Aggrieved by this, he has filed the present OA.




with a prayer for quashing and set aside the aforesaid order.

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4. The respondents in their reply have stated that after redeployment of the applicant in the C.P.W.D., it was made clear to him that he will not get the benefit of the past service for the purpose of seniority and his seniority in C.P.W.D. will be reckoned from the date of his joining the department. The respondents have also issued further clarification on 16.8.1991 that such Junior Engineers redeployed in the C.P.W.D. will not be entitled to count the past service for getting the benefit of the two higher scales of pay given to Junior Engineers of C.P.W.D. after completion of 5/15 years of service as envisaged in Ministry of Urban Development's OM dated 22.3.1991.

5. Accordingly the applicant has been considered as new entrant in C.P.W.D. and his seniority in the department has been considered only from the date of his joining in C.P.W.D. Applicant in this case has joined in C.P.W.D. as Junior Engineer (Elect.) in 1985 and he has not completed his 15 years of service in the C.P.W.D. as on 1.1.1991 and, therefore, he was not entitled to the grant of the scale of Rs.2000-3500 with effect from 1.1.1991. He was wrongly granted the higher scale of Rs.2000-3500 with effect from 1.1.1991. The same has now been withdrawn. In view of the aforesaid circumstances, the OA has no merit and is liable to be dismissed.



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6. We have heard the learned counsel for the rival contesting parties. The admitted facts of the case are that the applicant who was declared surplus from the Beas Project and was redeployed in C.P.W.D. in 1985, was granted two higher scales of pay as envisaged in the scheme of 22.3.1991. The respondents vide their letter dated 16.8.1991 have clarified that the matter relating to the scheme of granting two higher scales to the Junior Engineers has been considered and it has been observed that according to the instructions contained in the scheme for redeployment of staff issued by the Government from time to time, the redeployed staff are treated as fresh entrants in the new office/organisation for the purpose of fixing of their seniority and they are placed below the existing employees. It has, therefore, been decided that the Junior Engineers redeployed in the C.P.W.D. are not entitled to count their past service for getting the benefit of the two higher scales of pay after completion of 5/15 years of service. It is also a fact that certain employees have filed an application in Bombay Bench of the Tribunal as OA No.866/1993 which was allowed by an order passed on 19.7.1995 and the benefit of past service was allowed to them for the purpose of granting higher pay scale. The judgement rendered by the Bombay Bench was followed by the other Benches like viz., Chandigarh Bench, Principal Bench and the Hyderabad Bench of the



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Tribunal. An S.L.P. was filed against the judgement of the Hyderabad Bench by the respondents and the Supreme Court in their judgement in the case of K.P.Reddy & ors. has held as under:-

"Learned counsel for the parties concedes that on question of law and fact, the judgement of this Court in UOI & Ors. vs. K.Savitri and Ors, (1998 (4) SCC 358) fully applies and covers this case. Following the reasons laid down in the said case, we allow this appeal and set aside the impugned judgement."

7. The Hon'ble Supreme Court in the case of UOI and others v. K.Savitri held that the past service of the redeployed staff cannot be counted for seniority in the new organisation. Equally the past experience also would not count, as the so-called past service rendered will not be service in the grade. While setting aside the judgment of the Cuttack Bench of the Tribunal dated 27.5.1994 and 27.10.1994 in OA Nos.160/1993, 161/1993 to and 163/1993, the apex court has observed that the Tribunal was wholly in error in directing that the past service of the employees should be counted for granting them the benefit of seniority and experience for promotion in All India Radio.

8. Apart from this, a similar case has been filed by three applicant in the Principal Bench in the case of Amar Singh & ors. v.Union of India & ors. in OA No.895/2000. In view of the law laid down by the Supreme Court, the Tribunal vide its judgement dated

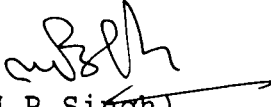


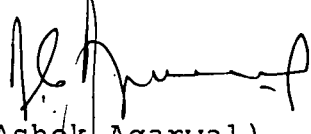
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25.5.2001 dismissed the OA and has not allowed the benefit of the past service to the applicants therein.

9. In view of the above facts and the law laid down by the Supreme Court, the applicant is not entitled to count his past service rendered by him before redeployment in the C.P.W.D. for the purpose of granting the two higher scales of pay. Hence there is no ground to interfere with the order passed by the respondents on 9.6. 1999. The OA has, therefore, no merit and is accordingly dismissed. However, the payment made to the applicant in the grade of Assistant Engineer will not be recovered from him (if not already recovered) in view of the judgement of the Tribunal in the case of R.B.Saxena vs. Union of India & ors., 1996(2)(CAT) 142.

10. Present OA is disposed of in the aforestated terms with no order as to costs.


(M.P. Singh)
Member (A)


(Ashok Agarwal)
Chairman

/sns/