

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 1770 of 1999

New Delhi, this the 17th day of December, 1999

HON'BLE SH. S. P. BISWAS, MEMBER (A)
HON'BLE SH. KULDIP SINGH, MEMBER (J)

Mrs. Jasbir Kaur Dang
R/o 7943/4, Gali No.6,
Arakashan Road, Paharganj,
New Delhi-110 001.

..Applicant

By Advocate Shri G.K. Aggarwal.

Versus

1. Union of India through
Defence Secretary,
South Block, DHQ PO,
New Delhi-110 011.

2. The Chief Administrative Officer &
JS (Trg.),
Ministry of Defence,
C-II Hutments, DHQ PO,
New Delhi-110 011.

..Respondents

By Advocate Shri P.H. Ramchandani.

ORDER

By Hon'ble Shri Kuldip Singh, Member (J)

The applicant has filed this OA whereby she is assailing an order dated 3.5.1999 fixing her seniority with effect from 25.6.66 whereas she claims that she was appointed as Lower Division Clerk (hereinafter referred to as LDC) in the Armed Forces Headquarters in a temporary capacity w.e.f. 4.2.64 and she is entitled to count her services with effect from 4.2.64 when she joined the service and as such, she has prayed that the impugned order be set aside and respondents be directed to comply with the Tribunal's final order dated 20.2.99 passed in OA No. 724 of 1995 entitled Jasbir Kaur Dang Vs. U.O.I. As the compliance of the said order can be done only in case the applicant's seniority is counted as LDC since 4.2.64

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and she has also prayed for all consequential reliefs.

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2. We are quite at pain to note that the applicant has come to the court for the 5th time ever since the year 1975. The case has a chequered history.

3. The facts in brief are that the applicant was initially offered an appointment for the post of LDC on purely provisional and temporary basis vide Annexure A-3 and there was a condition that she was to qualify the next UPSC Clerks' Grade Examination for regular temporary continuance. It will not be out of place to mention here that the respondents had also constituted a service known as AFHQ Clerical Service Scheme and framed rules also known as AFHQ Clerical Service Rules, 1968 which came into effect from 1.3.68. The conditions governing clerical service prior to 1968 were regulated by various administrative instructions since there were no rules for the appointment of clerks in the AFHQ Clerical Service. Applicant is also one of the case who was appointed prior to coming to the force of the AFHQ Clerical Service Rules.

4. According to the AFHQ Clerical Service Rules, the seniority of an employee is to be considered from the date of confirmation. This situation was challenged by some of the similarly situated employees in a Writ Petition before the Delhi High Court and the Hon'ble Delhi High Court by a Single Bench decision had directed that the applicants who were employed earlier were entitled to the seniority from the date of their continuous service. The judgment of this Single Bench was set aside by the

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Division Bench. However, the parties went to the Hon'ble Supreme Court in Civil Appeal where the judgment of the Single Bench of the Delhi High Court was restored. The Hon'ble Supreme Court also observed that the appellants who joined service before the coming into force of rules are to be governed by those memorandums and had the right to have their seniority determined accordingly. That being their right, the rules cannot take it away to their prejudice. The Division Bench was, therefore, clearly in error in directing that the seniority shall follow their respective confirmations. The memorandum in question which was relied upon by the Single Bench of the Delhi High Court as well as by the Hon'ble Supreme Court was dated 21.12.1963 and the same has also been annexed as Annexure R-V along with the counter.

5. The applicant's grievance is that despite the fact that in the case of D.P. Sharma Vs. U.O.I [1989 Supp(1) SCC 244] it was decided that the seniority is to be considered from the date of appointment but the respondents did not count the applicant's seniority from the date of appointment but counted it from 25.6.1966 when she cleared the UPSC Clerks' Grade examination. As such, the applicant filed an OA 724/95 to claim seniority w.e.f. 4.2.64 in terms of D.P.Sharma's case and one Mr. Sher Singh who was similarly placed had also claimed seniority though his OA was rejected. He then filed an appeal before the Hon'ble Supreme Court and Hon'ble Supreme Court allowed his appeal directing the respondents that the judgment in the case of D.P. Sharma's case(Supra) should also be applied in the case of Sher Singh. So in view of the order of the Hon'ble Supreme Court, the applicant also

prayed in her OA 724/95 that she is also similarly placed like Sher Singh and she should be given the same benefit as given to Sher Singh. The Tribunal allowed the OA by its final order dated 22.2.1999 and observed that since respondents themselves admitted in para 3 of their reply that the applicant is similarly placed as Sher Singh (applicant in OA NO. 1590/88), so the respondents were directed to give the same benefit as given to Sher Singh by the Hon'ble Supreme Court. But despite that it is alleged that the seniority was not given to the applicant w.e.f. 4.2.64 and she was given seniority w.e.f. 25.6.66.

6. She further alleges that after the judgment in the case of D.P. Sharma, the respondents ought to have antedated applicant's promotions to UDC and Assistant grades from 24.3.75 and 7.12.82 to 1972-73 and 1981 respectively. However, they post-dated the same to 13.1.77 and 12.9.86 respectively, in gross and wilful violation of Supreme Court's judgment in D.P. Sharma's case, Mr. Sher Singh's case and the final order passed by the Tribunal in the case of applicant on 22.2.99. So she has prayed that she should be assigned seniority as LDC w.e.f. 4.2.64 and all consequential benefits flowing from the same should also be allowed to her.

7. The respondents further stated that as per the judgment in the case of D.P. Sharma and the judgment of the Single Bench of the Delhi High Court for fixing the seniority of those LDCs who were employed upto 29.2.1968 shall be determined as per the Memorandum of 21.12.1963 of the Defence Ministry which incorporated that the said

principles had been applied and it was observed that the seniority of the petitioners in those cases shall be decided by the length of service, i.e., from the date of joining the Armed Forces Headquarters as LDCs. 12

8. In paragraph 4 of the counter, the respondents have also quoted relevant paragraphs of the Memorandum dated 21.12.1963 which governed the clerks who joined service on 22.12.1959 or thereafter and the said paragraphs are reproduced hereinbelow:-

"(c) Persons who joined Armed Forces Headquarters (including Inter Service Organisations) as Lower Division Clerks on 22nd Dec. 59 or thereafter will reckon their seniority in that grade from the date on which they joined Armed Forces Headquarters (including Inter Services Organisations).

(d) The inter-se seniority of candidates appointed to AFHQ Clerical cadre on the results of Clerks' Grade Examination conducted by the UPSC, except those already employed in Armed Forces Headquarters (including Inter Service Organisations), will be regulated according to their rank in the examination".

9. So the respondents pleaded in compliance of the directions given by the Hon'ble Supreme Court that they have applied the memo of 21.12.1963 and since the applicant was appointed as LDC on regular basis only on the basis of the results of the UPSC Clerks' Grade Examination, 1965 w.e.f. 25.6.66, so she has been correctly assigned her seniority w.e.f. 25.6.66 and as such they have prayed that the application merits dismissal.

10. We have heard the learned counsel appearing for the parties and have gone through the records.

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11. The learned counsel for the applicant submitted that vide Annexure A-1 the applicant was offered an appointment on 1.2.1964 and she joined the services on 4.2.1964. Thereafter, she had cleared the typing test conducted by the department and vide Annexure A-4 dated 10.2.1965 her appointment was issued appointing her as an IDC in a 'temporary' capacity with retrospective effect, i.e., w.e.f. 4.2.64. So the learned counsel for the applicant submitted that though she was initially offered 'provisional temporary' post with a special rider that it will not confer any title to regular temporary or permanent employment but after she had qualified the typing test, temporary status was accorded to her vide Annexure A-4 issued on 10.2.1965 so she is entitled to count her service w.e.f. from 4.2.1964. (13)

12. In reply to this, the learned counsel appearing for the respondents submitted that applicant's appointment was purely provisional and temporary one and this provisional and temporary appointment cannot be considered for the purpose of assigning seniority and it cannot be counted. As far as the judgments given by the Single Bench of the Delhi High Court and by the Hon'ble Supreme Court are concerned, it is agreed by the counsel for the respondents that the applicant who was appointed before the coming into force of the AFHQ Clerical Service was governed by the memo dated 21.12.1963. However, the counsel for the respondents emphasised that since the appointment held by the applicant was "provisional" and "temporary" and there was a special rider attached to it

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that it will not confer any title to regular temporary or permanent employment, so she is not entitled to claim the seniority. (A)

13. In reply to this, the learned counsel for the applicant again submitted that as per the judgment in the case of D.P. Sharma (Supra) and followed by other judgments such as Sher Singh and order passed by the Tribunal on the application of the applicant herself, she is entitled to get the benefit of the judgment given in the case of D.P. Sharma and her seniority is to be counted on the basis of the length of service, i.e., from the date on which she has joined the Armed Forces Headquarters and as such, her seniority should be counted from 4.2.1964.

14. From the rival contentions of the parties we find that the question which arises to be determined is whether in case of applicant the fixation of seniority by the respondents as per the impugned order Annexure A-1 has been rightly assigned after she had qualified the UPSC Clerks' Grade Examination or she should have been given benefit of the memo quoted above and her seniority should have been assigned from the date she had joined the Armed Forces Headquarters. Undoubtedly, the Hon'ble Supreme Court in D.P. Sharma's case while upholding the judgment of the Single Bench of the Hon'ble Delhi High Court had held that as per the memo of 21.12.1963 the persons should be given seniority from the date on which they joined the Armed Forces Headquarters. lw

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15. From the impugned order it reveals that the respondents have divided the employees into two categories: one falling in clause 'c' and the other in clause 'd' of the memo quoted above and in case we consider that the appointment offered to the applicant vide Annexure A-3 had continued to be governed by the same terms and conditions till she had qualified the UPSC Clerks' Grade Examination then probably she would have been governed by paragraph 'd' quoted above and then her seniority should have been assigned w.e.f. the date she had qualified the UPSC Clerks Grade Examination, i.e., w.e.f. 25.6.66. But in this case since there is a letter dated 10.2.1965 which is in the form of an appointment order issued from the office of Assistant Chief Administrative Officer appointing the applicant as LDC in the Armed Forces Headquarters in a temporary capacity w.e.f. 4.2.64, that shows that this order dated 10.2.1965 had superseded the appointment offer issued to her vide order dated 1.2.1964, Annexure A-3.

16. For this conclusion we shall refer to an appointment offer dated 1.2.1964, Annexure A-3 itself where clause (ii) of the terms of appointment shows that when a post was offered it was made clear to the applicant that she will be required to qualify in the next UPSC Clerks' Grade Examination even for "regular temporary continuance", failing which her services are liable to be terminated forthwith. However, the department chose to appoint her in a temporary capacity vide Annexure A-4 dated 10.2.1965. In this letter the word 'provisional' which was followed by conjunctive 'and' then word 'temporary' which had appeared with word 'provisional' in

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Annexure A-3 is conspicuously missing in the letter dated 10.2.1965, which shows that by letter dated 10.2.1965 the department had taken away the disability and had accorded a temporary status to the applicant with effect from 4.2.1964.

17. --- We may further add that in the letter dated 1.2.1964, Annexure A-3 in clause (ii) of the terms of appointment the applicant was required to qualify in the next UPSC Clerks' Grade Examination for 'regular temporary continuance' and it was very much clear to the department that by 10.2.1965 she had not passed the UPSC Clerks' Grade Examination, still the department had accorded her a temporary capacity status. That means either the department had dispensed with this condition or had granted her exemption from this test and 'temporary capacity' status had been accorded to her.

18. Though Shri Ramchandani had emphasised that in the case of applicant clause 'd' of the memo dated 21.12.1963 was applicable and it is only after she had qualified the UPSC Clerks' Grade Examination her seniority had to be fixed from date of the result of the examination. But as we have already observed that as per the terms of appointment contained in Annexure A-3 passing of the UPSC Clerks' Grade examination was essential before granting her temporary status and since that had been granted before passing of the UPSC Clerks' Grade Examination, so the applicant will straightaway be governed by clause 'c' of the memo dated 21.12.1963 and

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her seniority has to be reckoned from the date on which she had joined the Armed Forces Headquarters as a Clerk, i.e., w.e.f. 4.2.1964 as per Annexure A-4.

19. The approach of the department adopted in the case of the applicant for the purpose of fixing the seniority taking the date as 25.6.66 as the date when she had passed the UPSC Clerks' Grade Examination is an erroneous one and as such the impugned order is liable to be quashed. It appears that the respondents while calculating the services of the applicant had probably not taken care of the order dated 10.2.1965, Annexure A-4, that is why they have given her seniority from the date when she had qualified the UPSC Clerks' Grade Examination and not from the date when she had joined the Armed Forces Headquarters as a Clerk. So we are of the considered opinion that she has also to be given benefit of her continued service from 4.2.1964 for the purpose of seniority.

20. Accordingly we set aside the impugned order dated 3.5.1999 and quash the same and allow the OA with the following directions:-

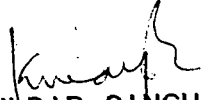
(i) The seniority of the applicant shall be counted w.e.f. 4.2.64 as per her date of joining of service as per Memorandum dated 21.12.1963.

(ii) We further allow all the consequential benefits flowing from refixing of her seniority w.e.f. 4.2.64.

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(iii) The order shall be complied within a period of 3 months from the date of receipt of a copy of this order: (18)

(iv) No order as to costs.


(KULDIP SINGH)
MEMBER (J)


(S.P. BISWAS)
MEMBER (A)

Rakesh