

Central Administrative Tribunal, Principal Bench

Original Application No.2168 of 1998

New Delhi, this the 23rd day of January, 2001

Hon'ble Mr.V.K.Majotra, Member (Admnv)

Hon'ble Mr.Shanker Raju, Member(J)

Gopi Ram, S/o late Maman Aged about 57 years, R/o-RZP/1 Raj Nagar-I, Dada Chatri Wala Marg, Palam Colony, New Delhi-45 Working as Civ/MTD Gde-I in Air Force Station, Palam, New Delhi-10.

- Applicant

(By Advocate Shri A.K.Trivedi)

Versus

1. Union of India, Through It's Secretary, Ministry of Defence, South Block, New Delhi

2. Air Headquarters, Vayu Bhawan, New Delhi.

3. Office I/c Command PC HQs Western Air Command, IAF Subroto Park, New Delhi-10.

4. Air Officer Commanding, Air Force Station, Palam, New Delhi-110010.

5. Shri Anand Singh, Civ/MTD, P.A.No.26388 M.T.Section, Air Force Station, Palam, New Delhi-110010.

- Respondents

(By Advocate Shri K.R.Sachdeva)

O R D E R

By V.K.Majotra, Member(Admnv) -

The applicant has challenged the action of the respondents in not fixing his seniority and pay vis-a-vis Shri Anand Singh, respondent no.5 alleged to be junior to the applicant. According to the applicant he came to learn about assignment of higher seniority to respondent no.5 when on the basis of the recommendations of the 5th Central Pay Commission (for short '5th CPC') his pay was fixed. He made representations dated 31.3.1998 and 8.5.1998 but to no avail.

2. According to the applicant he was appointed as Civilian MTD on 14.5.1963 at 629 Coy ASC(GT)(3TON). He was absorbed in the Indian Air Force and posted at No.1 G.T.S. Air Force from 19.5.1965. Later on he was posted to Air Force Station Palam with effect from 15.12.1969. The applicant has contended that respondent no.5 was appointed on 5.10.1966 at No.9 Wing, Air Force

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and was posted at Air Force Station Palam on 11.9.1979. The applicant has alleged that the respondents have not issued any seniority list of Civilian MTD and as per his pay slip Annexure-A-1 he was promoted from Civilian MTD Grade-II to Civilian MTD Grade-I with effect from 31.8.1981. On implementation of the recommendations of the 5th CPC when his pay was fixed at Rs.4590/- the pay of respondent no.5 was fixed at Rs.5100/-, he learnt about higher seniority having been accorded to respondent no.5. Thereupon he made representations dated 31.3.1998 and 8.5.1998. The applicant has claimed seniority from the date of his absorption in the Air Force with effect from 19.5.1965 with consequential benefits.

3. In their counter the respondents have stated that the applicant was appointed as Civilian Driver in lieu of combatant vacancy with effect from 14.5.1963 at No.629 Coy ASC (GT)(3Ton). He was subsequently posted to 4 EME Centre Kamptee with effect from 10.1.1964 under surplus/ deficiencies scheme. He was again rendered surplus and absorbed at No.1 G.T.S. Air Force with effect from 19.5.1965. Later on he was posted to Air Force Station Palam on compassionate ground with effect from 15.12.1969. Respondent no.5 Shri Anand Singh Civilian MTD was appointed on 5.10.1966 at No.9 Wing Air Force and posted to Air Force Station Palam in public interest with effect from 11.9.1979. Both the applicant and respondent no.5 were promoted to Selection Grade MTD-II with effect from 31.1.1981 in terms of memorandum dated 22.11.1978. In 1984 both the applicant and respondent no.5 along with few Civilian MTD were promoted to Civilian MTD Grade-I. Respondent 5 was promoted with effect from 2.3.1982 on the first

available vacancy as he was considered senior to the applicant as Civilian MTD because he was posted to Air Force Station Palam in public interest. Hence respondent no.5 was given the benefit of seniority from the date of his appointment i.e. 5.10.1966. As the applicant was posted to Air Force Station on compassionate ground on 15.12.1969 his seniority was counted from that date. According to the respondents the seniority of the applicant was fixed in the year 1982 which has not been challenged by him till he filed this OA, which is barred by limitation.

4. The applicant has filed a rejoinder as well.

5. We have heard the learned counsel of both sides and given our careful consideration to the material on record.

6. The learned counsel of the applicant contended that the respondents had not issued any seniority list in respect of Civilian MTDs and, therefore, the bar of limitation should not be made applicable in the present case. The learned counsel of the respondents contended that the applicant and respondent no.5 were promoted to the next grade in 1981 whereupon his seniority was fixed in 1982. The cause of action for the applicant arose on 2nd March, 1982 when his junior respondent no.5 was promoted as MTD Grade-I. The learned counsel contended that the applicant has challenged his seniority after inordinate delay of 18 years which cannot be entertained. He relied on the decisions of *Mallcom Lawrence Cecil D'Souza Vs. Union of India and others*, 1976 SCC (L&S) 115 and *K.R. Mudgal and others Vs. R.P. Singh & others*, (1986) 4 SCC 531. Even if the contention of the applicant's counsel is accepted that the respondents had not issued any seniority list in respect of Civilian MTDs, the applicant and respondent

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no.5 were promoted together to the next grade in 1981 and thereafter respondent no.5 was promoted as MTD Grade-I on 2.3.1982. Certainly, the cause of action for the applicant arose on 2nd March, 1982 when respondent no.5 was promoted as MTD Grade-I. The applicant should have challenged promotion and seniority of respondent no.5 immediately after 2.3.1982. The inordinate delay caused by the applicant in doing so cannot be condoned. The present application is certainly barred by limitation.

7. However, the present application can also not be allowed even on merits. The learned counsel of the respondents has contended that though the applicant was initially appointed on 14.5.1963 in lieu of a combatant vacancy, his services were terminated under surplus/deficiency scheme. He was subsequently posted on 10.1.1964 and again rendered surplus. Later on he was absorbed on 19.5.1965. He was posted to a different station i.e. Air Force Station Palam on compassionate grounds with effect from 15.12.1969. According to him, the applicant's service for purpose of seniority has to be counted with effect from 15.12.1969 when he was posted to a different unit on compassionate grounds. He further states that the applicant's seniority cannot be counted even from 19.5.1965 when he was absorbed at No.1 G.T.S. Air Force, as his seniority under the relevant instructions has to be counted from 15.12.1969 when he was posted to Air Force Station Palam on compassionate grounds. Respondent no.5 was appointed as Civilian MTD with effect from 5.10.1966. He was posted to Air Force Station Palam with effect from 11.9.1979 in public interest. Thus, under the rules his seniority can be counted with effect from the date of his appointment i.e. 5.10.1966. Accordingly, he was promoted as MTD

Grade-I earlier than the applicant as per seniority accorded to him. The respondents have relied on instructions contained in AFO 25/51 as amplified vide AFO 16/78 which have been reiterated in the circular dated 29.4.1986 (Annexure-R-3) relating to seniority of Group 'C' & 'D' civilians. As per these instructions "the seniority of staff rendered surplus and adjusted prior to 1st July, 1973 would be determined from the date of their original appointment". Further, "the seniority of Group 'C' and 'D' unit controlled civilians transferred on compassionate grounds or on mutual basis will be counted from the date they report to the new unit". However, when individuals are posted in public interest on administrative grounds they are given all the benefits including seniority. There is no ambiguity in these instructions. As respondent no.5 had been transferred in public interest, he was accorded seniority from the date of his appointment. On the other hand as the applicant was posted on compassionate grounds in a new unit, his seniority was counted from the date he reported in the new unit. In the light of the afore-stated instructions on the subject we are not in a position to find fault with the respective seniority allocated to the applicant and respondent no.5.

8. Having regard to what is stated above, the O.A. is dismissed being devoid of merit. No costs.

S. Raju
(Shanker Raju)
Member (J)

V.K. Majotra
(V.K. Majotra)
Member (Admnv)