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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2511/98

New Delhi this the 9th day of February, 2001.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Smt. Pushpa Rani,
D/o late Sh. Tara Chand,
R/o 222 Sector-I, Type III,
Sadiq Nagar,
New Delhi-110 029.

...Applicant

(By Advocate Shri Surinder Singh)

-Versus-

1. Union of India through
the Scientific Adviser to
Raksha Mantri & Director General,
Research and Development,
Research and Development Organisation,
Raksha Mantralaya,
South Block, New Delhi-110 011.

2. The Director,
Defence Science Centre,
Metcalf House,
Delhi.

...Respondents

(By Advocate Shri S.M. Arif)

ORDER

By Mr. Shankar Raju, Member (J):

The applicant, who was a Telephone Operator Grade II after the Government decision to merge the cadre of Telephone Operator with the clerical grade of Defence Research Development Organisation is seeking the relief of retrospective application of letter dated 8.12.93 passed by the Government of India, Ministry of Defence and further to revise the date of promotion we.f. 1.12.89 in the post of UDC from the date of promotion of the immediate junior, contending that the seniority in the merged cadre of Telephone Operator would be counted towards the seniority in the grade of LDC in the present equivalent grade for the purpose of seniority.

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2. The applicant's previously approached this Tribunal in OA-1157/97 and the Tribunal vide order dated 17.9.98 directed the respondents, while referring to letter dated 24.1.94 issued by Director MPD, to secure the clarification and convey the decision to the applicant within a period of 8 weeks from the date of receipt of a copy of the order. The applicant had been working as a Telephone Operator having been appointed as such on 23.8.67. In pursuance of the recommendations made by the Third Pay Commission in the year 1973 the Government accepted the recommendation of merger of cadre of Telephone Operators with clerical cadre. The recommendations of the Third Pay Commission were implemented by various other departments of Government of India in the years from 1973-75 but the matter was referred on the request of the staff side to JCM and ultimately the merger was carried out in 1993. The applicant was re-designated in the equivalent scale of clerical grade (LDC) and after counting her service she was promoted as UDC w.e.f. 1.12.94. On the representation of the applicant, as directed by the Tribunal in the judgement supra the respondents have issued an order dated 12.11.98 whereby it has been stated that the Government of India's letter dated 8.12.93 is effective from the date of its issue and there cannot be an application with retrospective effect. It has further been stated that the merger was to be based on the post held on the effective date of that order, i.e., 8.12.93. As the applicant was holding the post of Telephone Operator she was correctly merged with the LDC and accorded appropriate seniority. The claim of the applicant claiming seniority over Smt. Kanta Sharma who was already UDC on 8.2.93 has not been accorded to the applicant.

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3. The respondents have further issued letter dated 20.1.94 where the applicant has been allowed to count his past service in the present equivalent grade for the purpose of seniority. According to the decision taken by the respondents on 15.6.94 the said re-designation and merger would not disturb the promotions made in the past and the same were not allowed to be reviewed. The merger and counting of seniority has been made applicable to vacancies occurring in future.

4. Subsequently SRO No.167 has been issued by the respondents on 14.7.95, whereby necessary amendments have been carried out in the DRDO Group 'C', Non Gazetted (Technical, Scientific and other Non-Ministerial) Posts Recruitment (Amendment) Rules, 1968 and in that through an explanatory memorandum it has been incorporated as under:

"By Government of India letter DRDO/76657/MPD-2/5139/D(R&D) dated 08 December 1993 the posts of Telephone Supervisor, Telephone Operator Grade I and Telephone Operator Grade II, Upper Division Clerk and Lower Division Clerk respectively w.e.f. 08 December, 1993 and the posts of Telephone Supervisor, Telephone Operator Grade I and Telephone Operator Grade II have become non-existent. The rescission does not affect the interest of any employee adversely."

5. The applicant contended that the respondents have delayed the merger for 21 years as the other departments had carried out the merger immediately after the Third Pay Commission. According to the applicant the respondents have themselves admitted to have accorded seniority to the applicant in the present equivalent grade of LDC on the basis of counting her past service. The applicant further contended that SRO has been given retrospective operation w.e.f 8.12.93 and also states that

the respondents have themselves vide order dated 24.1.94 initiated the process of creating a supernumerary post of UDC so that the applicant could have been promoted to the grade of UDC w.e.f. 1.1.90. In this conspectus the applicant contends that as the past service in the Telephone Operator grade is to be reckoned towards the seniority in the present equivalent grade the applicant was appointed as Telephone Operator on 23.8.67 would get his seniority in the LDC grade with effect from the same date and as Smt. Kanta Sharma was appointed as a Clerk on 1.1.68 and promoted from 1.12.89 as UDC the applicant being senior to her in the equivalent grade of LDC would have ranked senior to her and would be entitled for promotion to the post of UDC w.e.f. 1.12.89.

6. The relief prayed for by the applicant regarding operation of merger w.e.f. 1.1.73 has not been pressed by the learned counsel of the applicant. The applicant's counsel had further reiterated his plea in the OA by way of filing his rejoinder where he had annexed the order passed by various other departments of Government of India, according the benefit of seniority in the merged cadre, i.e., the past service in the respective grade.

7. The respondents refuted the claim of the applicant by contending that the SRO would not have any retrospective effect and as the merger has taken place on 8.12.93 the employees who are existing as on that date in various posts have been merged respectively in the categories of clerical cadre. The letter dated 8.12.93 cannot be applied retrospectively to disturb the promotion made in clerical grade of UDC before 8.12.93 and as such

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she cannot take march over Smt. Kanta Sharma who was already working as UDC on 8.12.93. According to the respondents it was not mandatory in view of paragraph 70 Part-I of the Third Pay Commission Report to implement the recommendation regarding merger of Telephone Operator and it was at the discretion of the concerned department. According to the respondents after the request of the staff side to JCM the merger was carried out w.e.f. 8.12.93. According to the respondents the applicant was rightly re-designated as LDC and was allowed to count her past service and accordingly after review of her seniority, was promoted to the post of UDC in her turn on 1.12.94. The respondents further contended that letter dated 24.1.94 was reconsidered and the decision was communicated to the applicant on 12.11.98. According to the respondents merger has not affected the interest of applicant but rather increased the promotional avenues of the Telephone Operator cadre. The counting of past service vis-a-vis counting past service in the equivalent grade of clerical cadre as on 8.12.93 the Government has no intention to allow seniority over the individuals who had already been promoted to the higher grades and were correspondingly merged with the higher grades with the Telephone Operators in the Clerical Cadre. The respondents further contended that the applicant was appointed as a Telephone Operator on 23.8.67 and not as a LDC.

8. We have carefully considered the rival contentions of the learned counsel and perused the available material on record. The applicant's previous OA was disposed of by the Tribunal directing the respondents in view of their letter dated 24.1.94 to re-consider the

issue and intimate the applicant. The respondents accordingly reconsidered the same and conveyed the decision to the applicant by denying seniority over Smt. Kanta Sharma in the post of UDC as existing on 8.12.93 and also intimating that the letter dated 8.12.93 would not have any retrospective effect. In our view the letter dated 24.1.94 does not pertain to the applicant as in that letter a reference has been drawn for creating a supernumerary post of UDC to accommodate one LDC after re-constituting his seniority in the LDC cadre. In pursuance of the directions issued by the Tribunal another order was issued on 12.11.98 we are satisfied that the course adopted by the respondents previously has been discontinued after giving second thought and after evaluating the effect of merger dated 8.12.93. This letter of 24.1.94 is superseded by another letter dated 15.6.94 whereby it has been clearly observed that the Telephone Operator would count continuous service for the purpose of seniority in the corresponding grade in the clerical grade for promotion to the next higher grade in the vacancies occurring in future and the promotions made in the past are not to be reviewed. In our view after passing of this order on 15.6.94 the previous order of 24.1.94 has been validly reviewed by the respondents and the same was not brought to the notice of the Tribunal on 17.9.98 and thereafter a decision has been taken by the respondents on the representation of the applicant we feel that the letter dated 24.1.94 would not be validly applicable to the case of the applicant and she cannot derive any benefit out of it.

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9. The contention of the applicant that the other departments have already implemented the merger claimed immediately after the recommendation of the Third Pay Commission whereas the respondents have delayed for 21 years to implement the same is not valid in view of paragraph 70 of the Third Pay Commission's report where it is the discretion of the department to implement the recommendations regarding merger of Telephone Operator. The merger was ultimately carried in 1993 after the request of staff side in JCM. The plea of discrimination and meeting out differential treatment would not be applicable in the facts and circumstances of the case and in view of paragraph 70 ibid.

10. The contention of the applicant that the letter dated 8.12.93 has been made retrospective in operation by virtue of SRO 167 issued on 14.7.95 as the interest of employee has been taken care of and would not be adversely affected is not logical and legally tenable. We find no indication either from the SRO or from the letter dated 8.12.93 that the same are retrospective in operation. In fact SRO has safeguarded the interests of the existing employees in the merged cadre and counting of seniority in the equivalent grade. The letter dated 8.12.93 is also prospective in application. As far as the letter of the respondents dated 20.1.94 allowing the applicant to count her past service in the present equivalent grade for the purpose of seniority is nothing but reference to the equivalent grade of LDC. The respondents have rightly counted their past service in the present equivalent grade of LDC and accordingly in view of the seniority assigned later on the applicant was



ultimately given promotion to the post of UDC w.e.f. 8.12.93. In our view the interest of the applicant has not been adversely affected rather she has been given her due promotion in accordance with her seniority in the present equivalent grade of LDC as such the plea of the applicant that the letter dated 8.12.93 would have to be read as retrospective in nature by virtue of SRO is not based on sound and legal reasoning and the same is rejected.

11. We also find that on 1.12.89 Smt. Kanta Sharma who was appointed as LDC was in her clerical cadre was given promotion to the post of UDC much before the merger had taken place on 8.1.93. As such Smt. Kanta Sharma was holding the grade of UDC and was accordingly merged in the respective grade. As such, there cannot be a parity between the applicant and Kanta Sharma as both were having different equivalent grades at the time of merger. The merger has only allowed counting of past service in the equivalent grade for the purpose of seniority and promotion as such being a LDC at the time of merger the applicant cannot compare herself and count her seniority in the grade of UDC which was not equivalent and to have marched over Smt. Kanta Sharma in the matter of her promotion to the post of UDC. Apart from this the respondents' decision dated 15.6.94 that the promotions made in the past are not to be reviewed is based on equitable principles as adhering to the request of the applicant would amount to affecting the entire cadre and unsettling the settled position.

12. In view of the above discussion we are of the considered opinion that the letter dated 8.12.93 would not have any retrospective application and the applicant

has been rightly accorded the seniority in the equivalent grade of LDC and was rightly promoted to the post of UDC w.e.f. 1.12.94. The applicant cannot claim parity with Smt. Kanta Sharma who was having a different equivalent grade of UDC on 8.12.93. The applicant is not entitled to get her seniority revised w.e.f. 1.12.89 and to get back wages, as claimed in the OA. The OA is bereft of merit and is accordingly dismissed, but without any order as to costs.

S. Raju

(Shanker Raju)
Member(J)

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V.K. Majotra

(V.K. Majotra)
Member (A)