

Central Administrative Tribunal, Principal Bench

Original Application No. 777 of 1998

New Delhi, this the 24th day of September, 2000

Hon'ble Mr. Kuldip Singh, Member (J)

Hon'ble Mrs. Shanta Shastri, Member (A)

Shri Jyoti Prasad Pal S/o Shri A.K. Pal
aged 45 years
working as Instrument Mechanic (E)

R/o C/o B.N. Dalui
28-A Nivedita Enclave
A-6 Paschim Vihar,
New Delhi-110 063.

Applicant

(By Advocate - Shri E.X. Joseph, Sr. Counsel with
Shri S.S. Sabharwal, Counsel)

Versus

1. Union of India through the Secretary
to the Government of India,
Min. of Defence,
South Block,
DHQ Post Office,
New Delhi-110 011.

2. The Director General (EME) (Civil)
Army Headquarters,
Sena Bhavan,
New Delhi-110 01.

3. Officer In-Charge (EME-Records)
Ministry of Defence,
SECUNDERABAD-500 021 (A.P)

4. The Commanding Officer,
EME Station Workshop,
Delhi Cantonment,
New Delhi-110 010.

- Respondents

(By Advocate - Shri R.P. Aggarwal)

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (J)

Applicant in this case is aggrieved of the facts regarding his alleged illegal forfeiture of his service rendered by him as Tradesman in the EME (Records). He claims that he was a permanent employee with 24 years of service before his transfer from 505 Army Base Workshop, Agra. He was transferred to Delhi Station Workshop and in consequence thereof he has been

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disqualified for promotion to the next post of Senior Chargeman. He further states that his further disqualification was effected from an executive Standing Order of the Ministry of Defence from the incidence, which is contrary to the letter and spirit of the relevant statutory Recruitment Rules. Thus the applicant has prayed for quashing of the said Army Instructions and for constituting a review DPC for the purpose of promotion to the post of Senior Chargeman.

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2. Facts in brief are that the applicant was appointed as Tradesman on 23.10.1971 vide Annexure A-7 issued on 12.11.1971 and he claims that this appointment letter shows that the cadre to which the applicant was appointed ~~as~~ an All India cadre and the applicant could be transferred to any other Station in India. Since the applicant was posted at 509 Army Base Workshop, Agra, he applied for transfer to Delhi on compassionate grounds. His request was accepted and he joined Station Workshop EME Delhi Cantt. in February, 1993. The applicant thus claims that both the units, i.e., of Agra as well as of Delhi fall within the functional jurisdiction of respondent No.3, who is also the cadre controlling authority and who has been all along approving the All India seniority and has also been circulating the same.

3. It is further alleged that the respondent No.3 circulated a seniority list on 28.5.93 in which the applicant was shown at S.No.26 as against S.No.11 which was assigned to him in the year 1989 and the

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list revealed that the seniority was assigned with reference to the date of joining and not with reference to the date of commencement of continuous service of the applicant in the cadre of Tradesman. The applicant had made a protest against this, but to no avail. Thereafter a final representation was made by the applicant on 26.5.95 and the applicant was informed vide Memo dated 22.6.95 that as per Civilian Personnel Routine Orders (hereinafter referred to as CPRO) No.73/73, the service rendered prior to the date of transfer to Delhi cannot be counted, as a separate list ~~at~~ unit based, is being maintained for the purpose of promotion. The applicant in this OA has also challenged the Army Instructions, i.e., 241/50 and CPROs 11/75 and 73/73. The case of the applicant is that the CPROs are in violation of the Recruitment Rules as they did not contain any provision which disqualifies a member of the cadre of Tradesman for the purpose of promotion in the order of transfer from one administrative unit to another administrative unit. The applicant also claims that he is fully qualified for the post of Senior Chargeman and has also passed the required test and has also got a qualifying service for the same, but he has not been considered merely because his seniority has been suppressed because of his seeking compassionate transfer from Agra to Delhi. The applicant also claims that since the Recruitment Rules do not provide for such forfeiture of service rendered before the transfer, so the CPRO should be quashed and seniority

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of the applicant should be restored and thereafter respondents should be directed to constitute a review DPC and consider him for promotion.

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4. The respondents contested the application and they have taken a plea that as per the CPRO 73/73, a revised principle of seniority has been laid down therein and the principle laid down in CPRO 73/73 has been further clarified vide CPRO 11/75 and it has been made clear that the revised principles of seniority state that any individual who gets transferred on compassionate grounds will have to be adjusted in the transferee unit as per his date of his joining the new unit and the employee will not get the benefit of previous service. So the respondents submitted that the seniority of the applicant has been fixed in accordance with the Army Instructions and CPROs and the seniority list is justified and the OA should be dismissed.

5. We have heard the learned counsel for the parties and have gone through the records of the case.

6. The only question which is to be examined in this case is whether the CPRO 73/73 and the clarification issued on the same vide CPRO 11/75 are applicable in the case of the applicant; do the CPROs suffer from any irregularity or illegality and are they liable to be quashed.

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7. The learned counsel appearing for the applicant submitted that the applicant belongs to an

All India cadre as it is clear from the appointment letter Annexure A-7 page 71 of the paper book. So mere fact of transfer cannot forfeit his service and his seniority cannot be revised since the cadre is an All India based. The department may be maintaining a local seniority list as per Unit-base but for the purpose of promotion seniority on All India basis has to be counted, as such the Army Instructions contrary to these are liable to be quashed. To support his contention, the learned counsel for the applicant also referred to CPRO 73/73 of February, 1975 and particularly he has referred to paragraph 4, which is reproduced hereinbelow:-

" 4. Seniority of the individuals centrally controlled on Corps/Service roster will not be disturbed under the revised seniority rules. If they are adjusted/transferred within the Corps/Service". (emphasis supplied)

8. As such Shri E.X. Joseph, senior Counsel appearing for the applicant submitted that since the seniority of the individual is centrally controlled, so in case of the transfers the roster of seniority is not to be disturbed. The learned counsel for the applicant has also referred that since the cadre is centrally controlled, the seniority is to be determined in accordance with the continuous length of service and the service rendered prior to the compassionate appointment cannot be forfeited.

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9. In reply to this Shri R.P. Aggarwal, Counsel appearing for the respondents submitted that as per the CPRO 73/73 Clause 3, in case of transfer on compassionate ground, revised seniority is applicable w.e.f. 1.1.73 and the transferee is not entitled to the benefits of his previous service on report to the new unit.

10. We have given our thoughtful consideration to the matter involved.

11. From a perusal of the OA, we find that the applicant in his OA has impugned the CPRO 73/73 and the clarification issued vide CPRO 11/75 and it appears that is why he has made a prayer for quashing of the same. However, during the arguments Shri E.X. Joseph, Sr. learned counsel for the applicant did not canvass for quashing of the impugned CPROs, rather the learned counsel for the applicant relied upon Clause 4 which has been reproduced above and submitted that since the seniority is centrally controlled, the roster cannot be disturbed and the original seniority is to be maintained. The learned counsel for the applicant was also unable to point out from the Recruitment Rules as to how the impugned CPROs is in violation of the recruitment rules.

12. The learned counsel for the applicant has placed a strong reliance on Clause 4 of the CPRO 73/73, but we are of the considered view that this Clause 4 of the CPRO is not to be read in isolation and the CPRO has to be read as a whole and since as

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per Clause 3 the seniority of the individuals on or after 1.7.73 is to be determined in accordance with the revised principles of seniority, in other words, those adjusted/transferred on or after 1.7.73, will not get the benefit of their previous service on their reporting to the new units. Reading of Clauses 3 and 4 shows that a seniority list unit-wise is also being maintained.

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13. In the OA, the learned counsel for the applicant had also requested that the respondents be directed to place on record the seniority lists of various preceding years. Accordingly, the respondents had placed on record the seniority lists issued on 25/28.4.1994, similarly on 27/3.4.95, 26.4.96 and 8/15.5.97 and of the year 2000.

14. The columns 4 and 5 of the seniority lists are quite significant. Col.4 gives the date of appointment and Col.5 gives the date of transfer to other units and in the seniority list dated 25/28.4.94 where the applicant was shown at S.No.27, Col.3 shows his date of appointment as 23.10.1971 and Col.4 shows his date of transfer as 28.2.93 and it further gives the present place of posting. Similarly in second seniority list dated 27/3.4.95 Col.3 and Col.4 have similar entries. The covering letter of the seniority lists also show that the seniority lists have been assessed as under:-

"The Seniority has been assessed as under:-

(a) From the date of appointment/remustering to Part I cadre tradesman.

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(b) If the date at para 2 (a) above is the same, from the date of appointment as skilled tradesman.

(c) If both the dates at para 2 (a) and (b) above are the same, from the date of continuous service.

(d) If the dates at para 2(a), (b) and (c) above are the same, the elder is senior.

Authority: Army Headquarters letter
No.87837/EME CIV dated 20 Dec.
1968".

15. The para extracted from the seniority list and reproduced above do show that the seniority lists had been prepared in accordance with the CPRO 73/73, so the seniority list of the applicant is in order. The applicant can be considered for promotion when he comes under the consideration zone.

16. During the entire arguments, the learned counsel for the applicant had been unable to show that this CPRO 73/73 is in violation of any Recruitment Rules framed under Article 309 of the Constitution of India. As such we find that the impugned CPROs cannot be quashed and the OA is devoid of any merit and the same is liable to be dismissed. Accordingly, OA is dismissed. No costs.

Shanta
(Mrs. Shanta Shastri)
Member (A)

Kuldip Singh
(Kuldip Singh)
Member (J)

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