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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O A No. 289/95

New Delhi: Dated this the 23rd day of September, 1998.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A)

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Aradhan Santra,
Staff Car Driver,
Ministry of Food, Krishi Bhawan,
New Delhi. Applicant.

(By Advocate: Shri M.P. Saxena)

Versus

1. Secretary,
Ministry of Food, Krishi Bhawan,
New Delhi.
2. The Secretary,
Deptt. of Personnel & Training,
Ministry of Personnel,
Public Grievances & Pensions,
New Delhi.
3. The Dandakaranya Development Authority,
through
the Secretary,
Rehabilitation Division,
Department of Internal Security,
Ministry of Home Affairs,
Jaisalmer House,
New Delhi. Respondents.

(By Advocate: Shri R. V. Sinha)

ORDER

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

Applicant impugns that provisions of respondents' instructions wherein the services rendered by a Govt. servant in the department from which he has been redeployed to another department in the public interest, are not counted and prays ^{in situ} for promotion as Staff Car

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Driver Gr.II (Rs.1200-1800) with effect from the date he became eligible in terms of Finance Ministry's OM dated 13.9.91 and promotion as SC0 Gr.I (Rs.1300-2040) w.e.f. 1.8.93 with all consequential benefits.

2. Admittedly applicant who began service on 1.5.59 as Cleaner in Dandakaranya Project, Orissa was appointed as Driver, a Group 'C' post (Rs.950-1500) on regular basis in that Project on 21.11.62. By Dandakaranya Development Authority's (DDA) order dated 29.2.88 (Annexure-R1 to respondents' reply) applicant and others were declared surplus and surrendered/transferred to Central (Surplus Staff) Cell/Group 'D' Call of DGET for redeployment. A copy of that order was endorsed to all those mentioned in that letter through their respective incharges. Thereupon by DDA Office Order dated 28/29.6.88 (Annexure-II) applicant was relieved from his duties in the Project w.e.f. 30.6.88 to report for duty in Food Ministry, New Delhi against the post of Driver (Rs.950-1500) where he was appointed by Food Ministry Office order dated 29.7.88 as Driver after sanctioning him 15 days' joining time as admissible under CCS Joining Time Rules and noting that he had availed of 10 days' joining time from 1.7.88 to 10.7.88 and crediting the remaining 5 days as Earned Leave to his leave account.

3. The CAT PB in its judgment in O.A. No.2957/91 Staff Car Drivers Association Vs. UOI had directed the Govt. to devise a promotional scheme for Staff Car Drivers with a graded structure viz. Rs.950-1500; Rs.1200-1800; and Rs.1320-2040 similar to that in the Railway Ministry and pursuant to that OPAR in its

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OM dated 30.11.93 (Annexure-V) devised a promotional scheme for Staff Car Drivers w.e.f. 1.11.93 with the following graded structure:

Sl.No.	Nomenclature	Scale (Rs)	Eligibility Period
1	2	3	4
1.	S.C.D.Ord.Grade	950-1500	Basic Grade.
2.	S.C.D. Grade II	1200-1800	9 years' regular service in Ord. grade.
3.	S.C.D. Grade I	1320-2040	6 years regular service as SCD Gr.II.

The aforementioned OM provided that appointments to SCD Gr.II and to SCD Gr.I would be by promotion on non-selection (seniority cum fitness) basis subject to passing a Trade Test. Ten existing posts of SCD (Rs.950-1500) would be placed in the aforesaid 3 scales in the ratio of 55: 25: 20 and fresh vacancies would be created only in the scale of Rs.950-1500. Where cadre was too small for purposes of creation of higher grades. The possibility of combining of different cadres and operating it on a nodal basis was also to be considered. Certain modifications liberalising the eligibility period for promotion to SCD Gr.I was introduced by subsequent OM dated 27.7.95 .

4. Applicant's case is that his service in Dandakamaya Project should also be counted for giving him the benefits of the aforesaid scheme.

5. Respondents challenge the OA and only the service rendered by applicant can be considered for purposes of pro the same scheme, and his previous se

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Dandakaranya Project is reckonable only for pay and pensionary benefits as per Govt. guidelines on the subject for which he has already been given stagnation increment and personal pay vide orders dated 15.12.95 and 18.2.84 (Annexure-A XI and A-XII) of amended OA).

6. We have heard applicant's counsel Shri M.P. Saxena and respondents' counsel Shri R.V. Sinha.

7. OPAR's Circular dated 1.4.89 (Annexure-RIII) superseded the earlier Scheme regarding redeployment of surplus staff and introduced a revised scheme. In para 11 of this revised scheme it is stated as follows:

"11.1: No change is contemplated in the present policy that the past service rendered prior to redeployment should not count towards seniority, in the new organisation/ new post which a surplus employee joins after he is redeployed. The same rule will also have to be applied in the case of those readjusted after redeployment. "

8. Again in OPAR's OM dated 15.6.92 which deals with claims regarding benefit of predeployment service for determining seniority in the new cadre on the ground that the redeployment is treated as a transfer in the public interest, reference has been made to the Hon'ble Supreme Court's decision dated 29.1.92 in CA No.628/88 Balbir Sardana Vs. UOI wherein it has been categorically held that past service does not count for determining seniority of the

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redeployed official in the recipient organisation, and the appeal claiming counting of past service by Shri Sardana was dismissed by the Hon'ble Supreme Court. While doing so it was observed thus

"Admittedly, the applicant was to be one of such surplus staff. Instead of terminating the service of the appellant due to becoming surplus

they appointed the appellant afresh All the other benefits were given except the benefit of past service for the purpose of seniority. It is obvious that the surplus staff were appointed as fresh candidates and if seniority is given to them on the basis of their past service, then the existing employees in the department would nurse a grievance of loss of their seniority due to the others coming in the midstream.

As a result the Govt. considered the proposal and the Ministry of Home Affairs have expressly denied the counting of past service towards seniority. This being a policy decision we do not find any compelling reason to direct the Govt. to reconsider the matter and treat the appellant as a continuing officer from the time of his initial appointment till the date of his re-employment."

9. In our view the aforesaid judgment of the Hon'ble Supreme Court squarely applies to the facts and circumstances of the present case, because

there can be no doubt that applicant's appointment in Food Ministry by order dated 29.7.88 was also afresh appointment, like that of Shri Sardana. It is true that the Food Ministry had strongly recommended applicant's case to DP & AR stating that appointing applicant as SCD Gr.I after allowing him to count his past service in Dandakanya Project would not adversely effect the promotion prospects of other Car Drivers, since no body else is in any case eligible, but if DP & AR has declined to give concurrence, in view of the facts and circumstances noticed above, it cannot be said that they have acted illegally or arbitrarily.

10. Applicants' counsel has referred to the Redeployment of Surplus Staff against vacancies in the Central Services & Post Group 'C' Rules, 1967; the Redeployment of Surplus Staff in Central Civil Services & Posts (Supple) Rules, 1989; the CCS (Redeployment of Surplus Staff) Rules, 1990; paras 3.3(iv) and 11.4 of the Revised Scheme for surplus personnel already noticed in para seven above; Swamy's Compilation on Seniority and Promotion of Central Govt. servants, 1994 Edition with particular reference to para 10 on insitu promotion to Group 'C' and 'D' employees and (a), (b) and (c) of the basic features of insitu promotion; together with classification in Finance Ministry's OM dated 20.4.93 and corrigendum dated 27.9.93, as well as C & AG's clarification (3). Reliance has also been placed on AIR 1986SC 1636; 1987 (5) ATC 91; and 1989 (9) ATC 491.

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11. We have been through the aforesaid rules and instructions and rulings cited by applicant's counsel, but in the light of the fact that applicant upon being declared surplus in Dandakaranya Project, was appointed in Food Ministry as a fresh appointment, and DP & AR's (which is the nodal Ministry) specific instructions which are based on the Hon'ble Supreme Court's judgment in Sardana's case (supra), are clear and categorical on the point that past service does not count for determining seniority of the redeployed official in the recipient Organisation, we are not able to find anything in the rules and instructions as well as the rulings cited by the applicants' counsel which advances the applicant's case, and which gives applicant a legally enforceable right to compel respondents to count his past service for determining his seniority in terms of the promotional scheme for Staff Car Drivers.

12. Under the circumstances the OA warrants no judicial interference. However, before parting with this case we observe that in the facts and circumstances of this particular case, having regard to respondents' averment that allowing applicant to count his past service in Dandakaranya Project would not adversely affect the promotion prospects of other Car Drivers, if respondents are inclined to favourably consider applicant's prayer in relaxation of the rules / instructions, nothing contained in this order will operate as a bar to their doing so.

13. The O4 is disposed of in terms of
para 12 above. No costs.

A. Vedavalli
(DR. A. VEDAVALLI)
MEMBER(J)

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(S. R. ADIGE)
VICE CHAIRMAN (A).

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