

Central Administrative Tribunal
Principal Bench, New Delhi.

O.A.No.452/95

New Delhi this the 22th Day of August, 1995.

Hon'ble Sh. J.P. Sharma, Member(J)
Hon'ble Sh. B.K. Singh, Member(A)

(through Sh. B.S. Charya, advocate)

versus

1. Union of India,
Ministry of Defence,
Government of India,
South Block, New Delhi.
(through its Secretary)
 2. The Officer Incharge,
Army Ordnance Corps Records,
Post Box No.3, Trimulgherry Post,
Secunderabad-500 015. Respondents

(through Sh. H.K. Gangwani, advocate)

ORDER (ORAL)

delivered by Hon'ble Sh. J.P. Sharma, Member(J)

The applicant was initially employed as Carpenter in the Army Ordnance Depot and was posted in 1961 in Dehradun and then he was shifted in the same capacity at E.M.E. Station Workshop, Jabalpur in the year 1962 where he continued till August, 1978. On compassionate ground he sought transfer and in August, 1978 he was posted at the Ordnance Depot, Shakurbasti. He continued to work there and qualified trade test for the post of Chargeman Grade-II in the year 1981. As a result he was given promotion on 3.2.1984 to Chargeman Grade-II and was posted at Agra. He was again transferred on administrative grounds to Delhi as Chargeman Grade-II to Ordnance Depot, Shakurbasti. It appears that the applicant was served with an order that as he was known about the order dt. 3.2.84 was

ل

erroneous on the basis of wrong counting of seniority and also directed the recovery of excess payment and perks of the promotional post. The applicant filed O.A.No.810/89 by which the recovery was stayed and it was directed that the applicant shall make a representation to the respondents and thereafter decide the same and till then the applicant should not be reverted. The decision was given by the Tribunal in the form of direction by the order dated 21.03.94. The respondents thereafter passed the impugned order on 13.2.95 reverting the applicant to the post of Carpenter upholding the order proposing reversion dated 13.3.89. In this order it is also mentioned that the applicant shall be treated as Carpenter w.e.f. February, 1984 and the order of promotion to the post of Chargeman Grade-II and subsequent order of confirmation as Chargeman II was also cancelled. The applicant filed the present application in March, 1995 and the prayer for interim relief was not favourably considered and was adjourned till the reply is filed by the respondents.

On notice the respondents filed the reply contesting the claim preferred by the applicant on a number of grounds. It is stated that the applicant can earn seniority in the grade of Carpenter only w.e.f. 19.8.1978, his transfer on compassionate ground has reduced his seniority and was placed at the bottom of the seniority list maintained at AOD Shakurbasti. Since the applicant could not reach his turn inspite of having passed the trade test of Chargeman Grade-II in the year 1980 he could not be granted promotion which will be available to him on his turn as per seniority list on

J

joining AOD Shakurbasti w.e.f. 1978. The applicant in the original application has also referred to certain decisions of the Tribunal in OA-1316/88 Jagdish Lal Vs. U.O.I. decided on 14.10.93 and OA-1336/89 Lakhmi Chand Vs. U.O.I. & Ors. decided on 25.3.94 by the Principal Bench. It is averred in the original application by the applicant that these applicants in the aforesaid original applications were also Carpenter and also suffered loss of seniority by getting transferred to Delhi from the other units to AOD Shakurbasti where they joined in the year 1979 and 1980 though after the joining of the applicant in AOD Shakurbasti. Both the applicants were granted the relief prayed for and their reversion to the post of Chargeman was on the similar points that they did not reach their turn on the basis of the reduced seniority was quashed and they were restored to the post of Chargeman Grade-II on the basis of the original order of promotion alleged to be given by the respondents erroneously. The respondents have referred these judgements in the reply stating that both these applicants belong to different units. As regards Jagdish Lal he belongs to Delhi Cantonment and Sh. Lakhmi Chand belongs to the same unit of Shakurbasti. The stand of the respondents is that there has been wrong calculation of seniority of these applicants of the aforesaid O.As. and including that of the applicant and those applicants in the aforesaid O.As. could not bring forth the facts as such the decision was arrived at. We find in the case of Lakhmi Chand in OA-1336/89 which was decided by this very Bench, none appeared on behalf of the respondents and the case was decided on the basis of the submissions made by the learned counsel.

Jc

for the applicant and on the basis of available record. The contention raised by the learned counsel for the applicant was solely considered on the basis of the earlier judgement delivered in the case of Jagdish Lal OA-1316/88 by the Principal Bench by the order dt. 14.10.93. In any case both the cases were decided on the basis of the decision given by the Full Bench in case of KA Balasubramaniam (Full Bench 1989 Edition P. 209). In that case the Full Bench took the view that for eligibility the earlier service in the grade shall also give weightage and inspite of the reduced seniority by transfer to another unit. Though in the judgement of Jagdish Lal, the Bench decided the case with certain reservations regarding the decision of the Full Bench but ultimately the Bench agreed fundamentally with the ratio that the eligibility shall not be reduced by virtue of reduced seniority. For promotion to the post of Chargeman Grade-II as per Recruitment Rules, 8 years regular service is required and the applicant had already entered into service in the year 1961 so he took the trade test in 1980 on completion of 8 years service

Heard the learned counsel for the respondents at considerable length and we desired some information regarding the centralised seniority of the Carpenters which normally they should maintain as promotion to Chargeman is centralised. However, Sh. Gangwani on instructions from the departmental representative present alongwith him could not give better details nor cited the said seniority list to show that the turn of the applicant (Tara Singh) could not reach and that there are certain persons who are senior

J

(9)

-5-

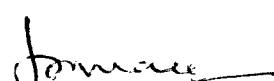
to said Sh. Tara Singh in the AOD Shakurbasti. A vague averment has been made in the counter which is not substantiated either by citing the name of such person or by any document in support thereof. In view of this fact, we are in full agreement with the decision given in OA-1316/88 and in OA-1336/89.

In the conclusion, the original application is allowed and the impugned order dt. 13.2.95 is quashed and the applicant shall be deemed to be a confirmed chargeman grade-II and his due date of promotion shall be 3.2.84. The applicant shall be entitled to all benefits of arrears of pay and for consideration for the higher post for promotion as per recruitment rules. If the applicant has not been paid any salary as Chargeman Grade-II after passing of the impugned order or if the applicant has not received the same in that case the applicant shall be entitled to that salary with allowances as per rules. The original application is disposed of accordingly but without any order as to costs. The respondents to comply with the directions in three months from the date of receipt of the copy of this order.


(B.K. Singh)

Member(A)

/vv/


(J.P. Sharma)

Member(J)