

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

....

O.A. No. 1244/1996

New Delhi this the 19th April, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J)

Hon'ble Shri V.K. Majotra, Member(A)

Shri Pawan Kumar Gupta

S/o Shri Kanwar Sain Gupta
Aged 54 years, Assistant,
Intelligence Bureau, M.H.A.,
Government of India,
New Delhi
Resident of 139, Shakti Vihar,
Near Saraswati Vihar,
New Delhi-110043

.....Applicant

(By: Advocate Sh. M.L. Chawala with Sh. S.L. Lakhapal)

Versus

1. Union of India
Through the Secretary to the
Govt. of India,
Ministry of Home Affairs,
Central Secretariat,
North Block,
New Delhi-110001.
2. The Director,
Intelligence Bureau, M.H.A.,
Government of India,
Central Secretariat, North Block,
New Delhi-110001

...Respondents

(BY: Advocate Sh. V.K. Mehta)

ORDER (Oral)

(Hon'ble Shri V.K. Majotra, Member(A))

The applicant was appointed as L.D.C. with the Central
Ordnance Depot, (COD) Ministry of Defence on 22.4.1963.
Subsequently he was declared quasi permanent on 1.7.1966.
With the permission of COD he appeared in the LDC Grade
Examination held by UPSC in 1968. On being declared
successful in the same he joined as LDC in the Intelligence
Bureau (IB) on 3.3.1979. Thereafter he cleared the the

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Typing test on 28.10.1970. He was made permanent as LDC in I.B. on 1.5.1973. His lien with the COD was terminated on 1.10.1975, Annexure A-4. He was promoted as UDC in I.B. on 20.2.1982 and was given another promotion to the level of Assistant on 11.1.1993, Annexure A-6. According to the applicant since he had rendered 7 years service with the Government of India against a pensionable post before joining I.B. he should have been given benefit of the past service for the purpose of seniority, promotion, etc. He made several representations in this regard. His representation dated 18.10.1995 was rejected vide memo dated 8.12.1995, Annexure A-16 on the grounds that there is no provision in the rules for counting his past service rendered in the Ministry of Defence from 22.4.1963 to 1.3.1970 as LDC, for the purpose of assigning him seniority in the grade of LDC in I.B. The applicant has sought quashing and setting aside of the impugned order dated 8.12.1995, Annexure -A and direction to the respondents to count in the I.B. applicant's past service with COD in the grade of LDC with all consequential benefits .

2. In their counter the respondents have stated that since the applicant had acquired quasi permanent status as LDC in COD and he joined the I.B. with proper permission of COD, he was given benefit of past service for computing qualifying service for pension, carry forward of leave and pay fixation in accordance with instructions contained in CCS (pension) Rules and CCS (leave) Rules. However, in the matter of assigning seniority in the grade of LDC in ^{the} I.B. he has to be treated at par with other LDCs of I.B. and his seniority in the grade of LDC in I.B. has been reckoned

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from the date of his entry in to the cadre of LDC in the I.B. as there are no rules permitting counting of past service. The applicant had been appointed as LDC on the basis of UPSC examination held in 1968 for direct recruitment of LDCs. After joining in the I.B. he has accepted 2 promotions without any demer first to the grade of UDC and then to the higher grade of Assistant in 1982 and 1993, respectively. These promotions were based on seniority list of LDCs issued in 1971, Annexure R-2 to which the applicant did not raise any objection. The respondents have contented that after joining I.B. on the basis of competitive examination, he was governed by the provisions of I.B. Clerical Re-organisation Scheme dated 11.2.1960 and general principles of seniority contained in the MHA OM dated 22.12.1959 which do not provide for counting the past service rendered in an other Government Department for computing seniority in the rank of LDC in the I.B.

3. Applicant has also filed rejoinder.

4. We have heard the Learned counsel of both parties and examined the material available on record.

5. The Learned counsel of the applicant relying on judgement dated 21.2.1989 of the Hon'ble Supreme Court in Civil Appeal number 4133 and 4134 of 1984 (Shri D.P. Sharma and Ors. Vs. Union of India and Ors.) contented that in a similar case the Hon'ble Supreme Court had held that the seniority of the petitioner has to be decided by the principles of length of service i.e. the date of joining the Government service and seniority so regulated

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can not be varied to disadvantage of the petitioner. The Learned counsel for the applicant also pleaded that in the event of the rules and the Scheme being silent on this issue the general principles of seniority would prevail and applicants² past service in the COD should be reckoned for the purpose of seniority and consequential benefits in the I.B.

6. The Learned counsel of ^{the} respondents expressed that the instant case is neither a case of transfer nor of deputation from one department to another. It is a straight case of fresh direct recruitment in the I.B. and therefore the applicant is not entitled to the benefit of past service for the purpose of seniority in the I.B. The respondents have given cogziance to his past service for the purpose of computing qualifying service for pension and entitlement for leave under the relevant Pension and Leave Rules, respectively but not for the purpose of seniority, promotion, etc. The learned counsel of the respondents drew our attention to the Intelligence Bureau Clerical Service Re-organisation Scheme dated 11th February, 1960, (R-1). Under the scheme the applicant's service i.e. LDC is considered as B Grade (II) category recruitment to which is made on the results of examination to be conducted by UPSC. Candidates appointed on the basis of UPSC examination have to remain on probation for one year and have to pass Typing Test. In this scheme there is no provision for filling up such post through transfer, deputation or promotion.

7. The learned counsel of respondents has also taken exception to the fact that though the seniority list relating to the LDC in I.B. was issued on 9.3.1971, the applicant did not make any representation against the same and had availed

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himself of two promotions on the same basis. According to the learned counsel ~~x~~ of the respondents, if the seniority allocated to the applicant is interefered by the Court at this stage, it will unsettle the issue of seniority of LDCs which had been settled several years ago and would also adversely affect the rights accrued to a large number of persons who have not been impleaded in the present case.

8. We have gone through the case of Sh. D.P. Sharma and Ors. supra carefully. We find that the facts of the present case are clearly distinguishable from those of ^{the case} that in the case of Sh. D.P. Sharma supra the appellants had been declared as surplus in Lower Defence Installation and they came to be posted/transferred to the Armed Forces Head Qtrs. / inter service organisation as LDC 'in the public interest'. In the present case the applicant was working as LDC in the COD, Ministry of Defence and through competitive examination held by UPSC for direct recruitment for the post of LDC joined IB. The case of officials declared surplus and absorbed from one organisation to another office under the same Ministry in the public interest is entirely different than the instant case. Therefore in our considered view the ratio of the aforesaid judgement is not applicable to the facts of the present case. From the provisions of the Intelligence Bureau Clerical Service Re-organisation Scheme the applicant's case is a clear case of fresh appointment as LDC in I.B. through direct recruitment. It is unrelated to his past service for the purpose of seniority. We are in agreement with the learned counsel of the respondents that since instructions contained in CCS (Pension) Rules and CCS (Leave) Rules permit

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counting of past service for limited purpose of computing qualifying service for pension and carry forward of leave and pay fixation respectively according relevant benefits to the applicant is quite in order. However, since neither any rule nor the provision of the aforesaid scheme provide for reckoning of the past service for the purpose of seniority there is no question of granting benefits of past service for the purpose of seniority, promotion etc. We find that action of the respondents is also in accordance with the DOP&T OM dated 22.12.1959 on the subject (Annexure R-3). In the rejoinder applicant has unsuccessfully tried to give an impression as if appointment as LDC in I.B. has been a case of transfer from one Government office to another. It is a case of direct recruitment. Forwarding his application (COD) by previous employer/ to take the UPSC examination does not change the nature of his recruitment in the I.B. The applicant has also not explained the delay satisfactorily in challenging the seniority list of 1971 and having availed himself of two promotions on the basis of the same seniority in the meantime he can not be allowed to challenge the seniority which had been settled way back in 1971.

9. Having regard to the above discussion and reasons, we do not find any merit in this original application, which is dismissed accordingly. No costs.

V.K. Majotra
(V.K. MAJOTRA)
MEMBER (A)

Lakshmi Swaminathan
(SMT. LAKSHMI SWAMINATHAN)
MEMBER (J)