

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 2185/96

New Delhi this the day of 2nd June 2000

HON'BLE MR. JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE MR. V.K. MAJOTRA, MEMBER (A)

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Jagdish Prasad Sharma
R/o A-34, New Hanumanpuri
Near Bal Jyoti School
Meerut City (U.P)

...Applicant

(By Advocate: Shri G.D. Bhandari)

Versus

1. Union of India

The Secretary
Ministry of Defence
Govt. of India, New Delhi.

2. The General Manager
Ordnance Factory, Muradnagar
Distt. Ghaziabad (U.P.)

3. The Staff Grievance Officer
Ordnance Factory Board
10-A, Auckland Road
Calcutta-1 (W.B)

4. Commandant
510 Army Base Workshop
Meerut Cantt.

...Respondents

(By Advocate: Shri V.S.R. Krishna)

ORDER (Oral)

By. Mr. V.K. Majotra, Member (A)

The applicant is aggrieved by a letter dated 28.10.95 Annexure-A issued by Respondent No.2, whereby it has been communicated to the applicant that his case has been examined in consultation with the Ministry of Finance and his claim for in-situ promotion to Grade-1200-2040 has been turned down. The applicant's appeal dated 8.2.96 Annexure A-3 has been unanswered.

2. The applicant was appointed as a Lower Division Clerk on 19.1.62 in the office of Records, the Punjab Regiment, Meerut Cantt. He was transferred to different units each time at his own request, with the

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result that under the relevant instructions, he has been losing his seniority in the new Unit in the category of LDC each time. The applicant reached the maximum of the scale of Rs. 950-1500 and has been given three stagnation increments, first on 1.1.92, second on 1.1.94 and third on 1.1.96 and has been drawing a pay of Rs. 1575/- p.m. w.e.f. 1.1.96. The Ministry of Finance, Department of Expenditure vide OM dated 13.9.91 issued a scheme to ensure at least one promotion in the service career to each Group 'C' and 'D' employees. Its stipulated the following three conditions:-

- i) He was directly recruited as LDC on 19.1.62.
- ii) His pay on appointment as LDC was fixed at the minimum of scale.
- iii) He was not promoted at regular basis even after one year, of reaching the scale of L.D.C.

3. The applicant submitted several representations for grant of in-situ promotion without any result. According to the applicant, in various establishments/formations of the respondents transferees like the applicant have been granted promotion in-situ reckoning their seniority from the date of their initial appointment and not from the date of their transfer/joining the new establishment. The applicant has contended that the said promotion is a non-functional promotion and it is given after one fulfils the conditions. Such employees continued to retain the original designation and post held in the lower pay scale and their seniority would also be counted only in the lower scale of LDC. His

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non-functional promotion does not involve assumption and shouldering of higher responsibilities of the higher post. The applicant has alleged that the action of the respondents and impugned orders have exhibited discrimination against him by not according him the non-functional promotion. The applicant has also alleged that 14 LDCs under Respondent No.4, who are all similarly situate persons, have been granted the aforesaid benefit and refusal to extend the same benefit to the applicant is discriminatory and violative of the provision of law. The applicant has maintained that it is a settled law that in cases of transfer at own request one loses the seniority to the next higher grade, but his original seniority cannot be ignored in the cadre. Loss of seniority on transfer at one's request cannot entail forfeiture of past service. The applicant has sought setting aside and quashing of respondents' order dated 28.10.95, Annexure-A alongwith letter dated 11.8.94, Annexure 'H' and letter dated 21.2.94, Annexure-F and further sought directions to the respondents to grant the non-functional promotion to him in terms of M.O.F. OM dated 13.9.91 readwith OM dated 25.5.92 and 20.4.93, and fix his pay in Grade 1200-2040 with consequential arrears alongwith interest on arrears till the date of actual payment.

4. In the counter, the respondents have stated that in the office of the Respondent No. 2, no directly recruited LDC prior to the applicant has reached the maximum of the scale as yet and, therefore, the applicant cannot be granted in-situ promotion. According to them persons who are initially appointed

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to a post in one organisation but subsequently transferred to another organisation in the same scale are eligible for in-situ promotion in terms of para 2 (e) of OM dated 13.9.91 viz. from the date of directly recruited person junior to him in the new organisation whose pay was fixed at the minimum of the scale on promotion. Since no one directly recruited LDC junior to the applicant reached the maximum of the scale till he was transferred from the factory, he could not be granted in-situ promotion. The applicant's representations were forwarded to the competent authority for consideration. However, his case was turned down by the competent authority interms of M.O.F. (Pension) OM dated 20.4.93 clarifying that the eligible employees may be considered for in-situ promotion provided all his seniors have been promoted. The applicant has filed a rejoinder as well.

5. We have heard the learned counsel of both the parties and examined the material available on file.

6. Learned counsel of the applicant reiterated the points made in the OA. Learned counsel in the OA relied on the ratio in the Full Bench order of Madras Bench of this Tribunal dated 5.10.87 in K.A. Balasubramaniam Vs. Union of India and Ors. The learned counsel of the respondents contended that whereas past service of an employee transferred out to another unit at his own request may be reckoned with for purpose of consideration for regular promotion, the same cannot be done in the matter of extending the benefit of in-situ promotion under the relevant scheme.

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According to him, the past service of such an employee may bring him within the zone of consideration for regular promotion but he would be so low in seniority in the new organisation/unit that he would certainly not get the regular promotion. However, if the past service of such an employee is taken into account for considering him for in-situ promotion, he would get the same much earlier than others who have been in that organisation/unit for several years already. This would lead to heart burning and put the existing officials in that organisation/unit in a disadvantaged position vis-a-vis the applicant. He was of the view that the contention advanced by him is supported by the ratio in the case of K.A. Balasubramaniam Vs. U.O.I. (Supra).

7. Vide M.O.F. OM dated 25.5.92 (Annexure-E) it has been clarified that in-situ promotion is permissible to a person who was initially appointed to a post in one organisation but subsequently transferred to another organisation in the same scale in terms of Para 2(e) of the O.M. dated 13.9.91 viz. from the date a directly recruited person junior to him in the new organisation whose pay was fixed at the minimum of the scale becomes eligible for promotion. Vide another clarification issued by M.O.F. on 20.4.93 regarding the aforesaid scheme Annexure-E-1 it had been clarified that "if a person who was directly recruited to a post in a particular scale of pay and whose pay was fixed at the minimum of that scale is subsequently appointed to another post in the same organisation or same/another post in another organisation in the same scale of pay by transfer or

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otherwise (including deployment after being declared surplus), he may be considered for promotion in situ one year after reaching the maximum of the scale of pay provided all his seniors have been promoted".

8. In the case of K.A. Balasubramaniam Vs. Union of India & Ors., it was held as follows:-

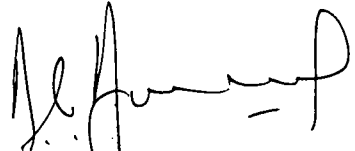
"It was however argued that if service in the other unit is computed, while some of the LDCs placed senior to the transferee LDC in the Cochin unit, would not have completed eight years of service, the newly transferred LDC, although placed as junior, would have completed eight years of service and would therefore become eligible earlier than his seniors for being promoted as UDC. But that is a result flowing from the rule as it stood in 1985. The rule lays down that LDCs with eight years of regular service in the grade are eligible. It may be that some LDCs placed above the applicant in the seniority list, in view of the exigencies of service, may not have completed eight years of regular service as in the present case. But that is a consequence of the special instructions governing determination of seniority. If there were no such administrative instructions, as repeatedly laid down by the Supreme Court, as ordinary seniority in service would have reckoned by length of service they would have been placed as juniors. If we were to give effect to this contention that only service in the unit should be considered for the purpose of determining eligibility, we would be ignoring the specific words "eight years regular service in the grade" of the statutory rules and we would be adding the word "in the unit" to the expression "eight years regular service in the grade". There is no compelling reason to add these words. The addition of these words would deprive persons otherwise eligible the right to be considered for promotion".

9. In our view the clarifications issued vide Memo dated 25.5.92, Memo dated 20.4.93 and the ratio in the case of K.A. Balasubramaniam (Supra) are

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squarely applicable to the facts of the present case. The ratio of the case of K.A. Balasubramaniam is reinforced by judgment of 19.11.93 of the Hon'ble Supreme Court in CA No. 7143 of 1993 (Renu Mullick (SMT) Vs. U.O.I. & Another), reported in (1994) 26 ATC 602. In this light, respondents have been wrong in denying the in-situ promotion to the applicant vide Memo dated 28.10.95 Annexure-A.

10. In the result, this application is allowed setting aside and quashing the respondents' order dated 28.10.95 Annexure-A, Annexure-H dated 11.8.94 and Annexure-F dated 21.2.94. There will also be a direction to the respondents to consider the claim of the applicant to grant non-functional promotion to the applicant in terms of M.O.F. OM dated 13.9.91 clarified by O.M. dated 25.5.92 and 20.4.93 and fix the pay of the applicant in Grade 1200-2040 with consequential arrears. There shall be no order as to costs.


(ASHOK AGARWAL)
CHAIRMAN


(V.K. MAJOTRA)
MEMBER (A)

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