

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No.419 of 1996 decided on 5.1.2000

Name of Applicant : Shri Ved Pal Singh & anr

By Advocate : Shri H.K.Gangwani

Versus

Name of respondent/s Union of India & ors

By Advocate : S/Shri S.K.Gupta & K.B.S.Rajan

Corum:

Hon'ble Mr. Justice V.Rajagopala Reddy Vice Chairman

Hon'ble Mr.R.K.Ahooja, Member (Admnv)

1. To be referred to the reporter - Yes/~~No~~

2. Whether to be circulated to the other Benches of the Tribunal. -No/~~Yes~~

R.K.Ahooja
(R.K.Ahooja)
Member (Admnv)

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Central Administrative Tribunal, Principal Bench

Original Application No. 419 of 1996

New Delhi, this the 5th day of January, 2000

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice Chairman (J)
Hon'ble Mr. R. K. Ahooja, Member (Admnv)

1. Shri Ved Pal Singh, Junior Engineer (C)
CCW. All India Radio, 3rd Floor,
Suchana Bhavan, Lodhi Road, New Delhi.
 2. Shri Jayant Mukherjee, Junior Engineer
(C) CCW, All India Radio, Mandi House,
New Delhi.
- Applicants

(By Advocate - Shri H. K. Gangwani)

Versus

1. Union of India, through the Secretary,
Ministry of Information & Broadcasting,
New Delhi.
2. Directorate General, All India Radio,
Akashwani Bhavan, New Delhi.
3. Ministry of Home Affairs, Through its
Secretary, South Block, New Delhi.
4. Department of Personnel & Training,
Ministry of Home Affairs, South Block,
New Delhi.
5. K. M. Rao, J. E. (Civil) presently A. E. (C)
6. P. K. Gupta, J. E. (Civil) presently A. E. (C)
7. VVVS NV Prasad, J. E. (Civil) presently A. E. (C)
8. P. R. Babu, J. E. (Civil) presently A. E. (C)
9. R. K. Bajpai, J. E. (Civil) presently A. E. (C)
10. G. S. Rao, J. E. (Civil) presently A. E. (C)
11. Narain Singh, J. E. (Civil) presently A. E. (C)
12. A. K. Ohri, J. E. (Civil) presently A. E. (C)

All Junior Engineer (Civil) working as
Assistant Engineers (Civil) with All India
Radio, CCW, through the Directorate General,
All India Radio, Akashwani Bhawan, New Delhi - Respondents

(Official respondents by Shri S. K. Gupta,
Advocate and Respondents 5 and 12 by
Advocate Shri K. B. S. Rajan)

O R D E R

By R. K. Ahooja, Member (Admnv) -

The applicants are Junior Engineers working in
the Civil Construction Wing of Directorate General, All
India Radio. They claim to be senior to respondents 5
to 12, who were redeployed in the Civil Construction
Wing of AIR on being declared surplus in Dandakarnya
Project.

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2. The case of the applicants is that they joined the Civil Construction Wing as Junior Engineers on 23.6.1983 and 16.6.1983 respectively. Respondents 5 to 12 joined the Civil Construction Wing on various dates between 30.7.1988 and 17.8.1988. Applicants 1 & 2 were shown in the seniority list of Junior Engineers at serial nos. 168 and 165 respectively while respondent nos. 5 to 12 were shown respectively at serial nos. 454 to 461. The applicants say that by the impugned order dated 27.6.1995 respondents 5 to 12 have been shown as promoted with retrospective effect from various dates between 1988 and 1992 while the names of the applicants do not figure in the promotion list at all. They submit that they made various representations to the respondents but to no avail. They are now before the Tribunal with a prayer that the action of the respondents denying promotions to the applicants and at the same time considering respondents 5 to 12 for promotion should be declared as bad in law and illegal; the impugned order dated 27.6.1995 be quashed; and the official respondents be directed to consider the applicants for promotion.

3. The official respondents 1 to 4 have stated that due to expansion of Electrical Wing of Civil Construction Wing an Electrical Sub-division was created at Srinagar to take up major works in the region. As a stop gap arrangement, the additional charge of Assistant Engineer (Electrical) was entrusted to one Shri Tarlok Singh, who happened to be the senior most Junior Engineer posted under the Srinagar Sub-division. Action

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was simultaneously initiated to fill up various vacancies of Assistant Engineers by promoting eligible departmental officers as well as by taking officers on deputation from other departments as per the provisions of the Recruitment Rules and one Shri O.P. Gandotra was posted as Assistant Engineer (Electrical) at Srinagar. The current duty charge of Shri Tarlok Singh was simultaneously withdrawn. Shri Tarlok Singh, however, had filed an O.A. No.613/JK/1998 before the Chandigarh Bench of the Tribunal claiming that counting his earlier service in Dandakarnya Project he had rendered 8 years' regular service as Junior Engineer (Electrical) with Diploma in Electrical Engineering and thus he was eligible for promotion to the post of Assistant Engineer (Electrical) but his name had not been considered. In its order dated 18.11.1988 the Chandigarh Bench upheld the challenge and declared that the applicant was entitled to count his previous service before redeployment towards eligibility for promotion to the higher post. After the aforesaid decision of the Chandigarh Bench similar cases were filed before various other Benches of the Tribunal by similarly situated Junior Engineers who had been redeployed under the AIR Construction Wing and as they were successful, their cases had to be considered by the DPC taking into account their previous service before redeployment. Some of the private respondents had also filed such cases and, therefore, they had to be considered for promotion according to law. On the other hand the applicants herein who were direct recruits had not completed qualifying service for being considered for

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promotion and hence their names were not considered by the DPC whose recommendations led to the impugned order dated 27.6.1995.

4. We have heard the counsel. The recruitment rules for the post of Assistant Engineer in Civil Construction Wing were promulgated on 28.3.1988. The post is classified as a Group 'B' gazetted in the pay scale of Rs.2000-3500. The mode of filling up the posts is 60% by promotion and 40% by direct recruitment. The promotions are to be made by selection. For promotion the eligibility conditions are (i) Junior Engineers holding degree in Civil Engineering with 5 years regular service in the grade & (ii) Junior Engineers holding Diploma in Civil Engineering with 8 years regular service in the grade.

5. The learned counsel for the applicants cited Govt. of India's instructions compiled in OM dated 3.7.1986 (Annexure-B). Para 4.3.1 thereof reads as follows -

"The surplus employees are not entitled for benefit of the past service rendered in the previous organisation for the purpose of their seniority in the new organisation. Such employees are to be treated as fresh entrants in the matter of their seniority, promotions, etc."

He also drew our attention to the letter dated 4.7.1988 (Annexure-C) on the basis of which offers were made to respondents 5 to 12 for redeployment on their being declared surplus. Para 18 of the aforesaid offer reads as follows :

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"He will not get any benefit of his past service for seniority and that his seniority in CCW/ AIR will be reckoned from the date of joining this Department."

Reliance was also placed on DOPT's OM dated 15.6.1992 (Annexure-D) on the subject of redeployment of surplus staff and counting of past service rendered in the previous organisation. Citing the decision of the Supreme Court in CA No.628 of 1988 Balbir Sardana Vs. Union of India and others decided on 29.1.1992 (Annexure-E), the aforesaid OM states that such employees are to be treated as fresh entrants in the matter of their seniority, promotions, etc. In Sardana's case (supra) their Lordships have observed that "[I]t 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 grievance of loss of their seniority due to the others coming in the midstream". The learned counsel contended that in view of the rules regarding redeployment of surplus staff and the decision of the Supreme Court in Sardana's case respondents 5 to 12 could not steal a march over the applicants.

6. The learned counsel for the official respondents 1 to 4 reiterated that the impugned order had been issued on the basis of the directions of this Tribunal in various OAs Nos. OA613/JK/88, OA 609 CH/88 etc. Some of the private respondents had also approached the Tribunal in separate OAs in which the Tribunal directed that the official-respondents should take into consideration the past service rendered by the

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applicants therein (respondents before us) for the purpose of determining their eligibility for promotion. The official respondents have stated that they had only complied with the aforesaid directions.

7. The learned counsel for the private respondents argued that seniority and eligibility for promotion are two entirely different things. The rules on determining the seniority of redeployed surplus staff do not wipe out the service rendered by the applicant in the relevant grade in the previous department. The applicants would have been entitled to consideration earlier to the private respondents on the basis of their seniority if they had rendered the requisite qualifying service. It was because they had not yet rendered that service that persons who had the requisite qualifying service lower down the seniority had to be considered. The private respondents herein were eligible while the applicants were not and hence on the basis of seniority alone the applicants could not claim prior consideration. This was because there was no provision in the rules that in case juniors were considered the seniors were also to be considered even if they did not possess the requisite qualifying service. The learned counsel pointed out that the Chandigarh Bench in the case of Tarlok Singh (supra) dealt with this very point and had observed as follows :

"....we are not concerned in this case with the seniority of the applicant as such nor has he claimed seniority over such Junior Engineers working under respondent No.2. The critical question which falls for our consideration is whether despite his being junior to the existing Junior Engineers(E) working under respondent No.2, he is still eligible for promotion..... So, we have to concentrate on true construction of the expression '8 years

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regular service in the grade' appearing in the Recruitment Rules adverted to above.....the expression '8 years' regular service in the grade would not imply '8 years' regular service in the grade of Junior Engineer (E) in the Civil Construction Wing of All India Radio". Such a construction will be too narrow and pedantic and there is no reason why it should not include regular service in the grade of Junior Engineer (E) elsewhere in the Government of India..... So, the word 'grade' will appropriately imply status, rank or position in the context of the expression 'regular service in the grade'.

The learned counsel pointed out that the orders of various Benches of this Tribunal on the basis of which the private-respondents had been considered and promoted by the impugned order dated 27.6.1995 have become final as either the SLPs filed against them by the respondents had been dismissed by the Supreme Court or no appeals were filed against the said orders.

8. We have carefully considered the aforesaid arguments advanced on behalf of various parties. In our view the question of seniority and promotions cannot be entirely separated as seniority even in selection posts determines the zone of consideration and promotions are on merit with due regard to seniority. DOPT's OM dated 3.7.1986 also makes it clear that surplus employees are not entitled for benefit of the past service and such employees are to be treated as 'fresh entrants' in the matter of their seniority, promotions etc. The decision of the Supreme Court in Sardana's case (supra) also lays down that past service is not to be counted unless it was a case of deputation or appointment on ground of taking over of one unit by another unit in public interest. The Supreme Court in its latest judgment in the case of Union of India and others Vs. K. Savitri

and others, JT 1998 (2) SC 347 has set the matter beyond any doubt. In the case of K.Savitri the Supreme Court was dealing with a writ directed against a decision of the Cuttack Bench of the Tribunal. The Supreme Court observed as follows :

"10. In that view of the matter, since the past services of redeployed surplus employee cannot be counted for his seniority in the new organisation, equally the past experience also would not count as the so-called past services rendered will not be service in the grade.....The Tribunal, therefore, was wholly in error in directing that the past services of the employees should be counted for granting them the benefit of seniority and experience for promotion in All India Radio. In the aforesaid premises, the impugned orders of the Central Administrative Tribunal, Cuttack Bench in Original Application Nos. 160, 161 and 163 are set aside and those OAs are dismissed and these appeals are allowed but in the circumstances there will be no order as to costs. (emphasis supplied)

Based on the decision of Sardana's case (supra) and the decision of the Supreme Court in K.Savitri (supra) the Govt. of India have since also issued fresh instructions in their OM No. 15/3/98-CS.III dated 2.12.1998 stating that the past service of redeployed staff cannot be counted for seniority and promotion in the new organization.

9. It is clear thus that the ratio laid down by the Tribunal in various decisions in OAs No. 613-JK/1988, 609/CH/98 including the one on the basis of which the private respondents were directed to be considered for promotion taking into account their past service is no longer valid. The learned counsel for the private respondents, however, argued that the orders of the Tribunal therein were on the basis of the Supreme Court judgment in K. Madhavan and another Vs. Union of

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India and others, (1987) 4 SCC 566 and K.Madhavan's case held the field till the decisions in the cases of Sardana and K.Savitri were pronounced. Thus, even though the impugned orders were issued in 1995 i.e. after the decision in Sardana in 1992, the cases of the private respondents were to be considered as in 1988 and, therefore, their promotions could no longer be disturbed. We are inclined to agree with the learned counsel. The private respondents have been considered for promotion by the review DPC on the basis of the directions of this Tribunal which have become final. In some cases the SLPs filed against the orders of the Tribunal had also been dismissed by the Supreme Court. Therefore, a subsequent interpretation given by the Supreme Court in the cases of Sardana and K.Savitri cannot deprive respondents 5 to 12 of the benefit of the decisions of the Tribunal in their favour.


10. The question that arises is as to what relief is possible in the case of the applicants. The applicants were not eligible to be considered in 1988 since they did not have the requisite qualifying service on that date. It was contended before us that they should then be considered from the date they completed the qualifying service. We notice, however, that the applicants were holding the seniority position at no.168 and 165 while respondents 5 to 12 were at the serial nos.454 to 461. If we allow the OA and direct the respondents to also consider the applicants herein for promotion it will open the flood gates for litigation by those senior to the private respondents herein. Prima facie it would appear that nearly 300 persons will have

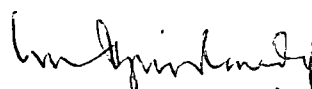
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thus to be considered for promotion. Clearly, this number of vacancies will not be available to consider as many persons. We are not inclined to give a direction that supernumerary posts in such a large number should be created to accommodate the applicants and other similarly placed with all the attendant financial implications. In these circumstances it becomes necessary to find a solution which will provide a reasonable via media. In our view this can be done only by ensuring that once the applicants herein are promoted as Assistant Engineers they will be entitled to the protection of their seniority vis-a-vis the private respondents in the grade of Junior Engineers and also to the protection of their pay vis-a-vis the private respondents.

11. In the result we partly allow the O.A. The official respondents are directed that as and when the applicants are considered for promotion as Assistant Engineers they will be entitled to be placed in the seniority list of Assistant Engineers above respondents 5 to 12 and on such promotions the pay of the applicants as Assistant Engineers will also be fixed taking into account the consequential increments gained by respondents 5 to 12 as Assistant Engineers. However, the applicants will not be entitled to any payment of arrears on account of such notional fixation of pay.

12. In the facts and circumstances of the case the parties shall bear their own costs.


(R.K. Ahooja)
Member (Admnv)


(V. Rajagopala Reddy)
Vice Chairman (J)