

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.NO.782/96

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)  
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 17th day of January, 2000

Shri Ajudhia Parkash  
aged 74 years  
s/o late Shri Surjan Dass  
r/o 160, DDA Flats  
Mansarovar Park  
Shahdara  
Delhi - 32.  
retired as UDC from the office  
of erst-while Chief Controller of  
Import and Export  
Ministry of Commerce  
New Delhi. .... Applicant

(By Shri R.R.Rai, Advocate)

Vs. 1

1. Union of India through  
the Secretary  
Ministry of Commerce  
Govt. of India  
Udyog Bhavan  
New Delhi - 11.
2. The Secretary  
Ministry of Human Resource Development  
Shastri Bhavan  
New Delhi - 1.
3. Secretary  
Dept of Personnel  
PG & P, New Delhi. .... Respondents

(By Shri K.C.D.Gangwani, Advocate)

O R D E R (Oral)

By R.K.Ahooja, Member(A)

The applicant joined Indian Army as Sepoy Clerk on 6.2.1950 and was employed in that capacity till 26.8.1955. On 27.8.1955 he joined as Lower Division Clerk (LDC) in the Ministry of Education. He was promoted as Upper Division Clerk (UDC) w.e.f. 30.4.1970 and retired in that capacity on 30.4.1980. The applicant states that the respondents had not fixed his seniority as LDC on his appointment in 1955 in accordance with the rules whereby he was deprived

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of his due promotions at relevant time. He pointed out that this Tribunal in similar cases, i.e., P.K.Datta Choudhury & Others Vs. Union of India & Others, 1991(1) ATJ Vol.10 page 577, decided on 18.3.1991 has already directed that the army service should be counted for the purpose of seniority for promotion. The applicant had also made a representation to the respondents to grant him the same benefit but as no decision was taken by the respondents, he filed an OA No.1718/93 which was disposed of by order dated 18.1.1994, Annexure-A6 in the following terms:

(2)

"We direct the Secretary under the Ministry of Commerce, Government of India to take a final decision in the matter of the petitioner. If the Secretary comes to the conclusion that the representation should be rejected, he shall pass a speaking order and communicate the same to the petitioner within one month from the passing of such order. The petitioner shall communicate to the Secretary concerned, the order, which is being passed by us, by filing a certified copy thereof. He is permitted to transmit a certified copy of this order under registered post Acknowledgment Due. It is made clear that if no final order is passed within the time specified by us, serious view will be taken."

2. The applicant submits that by the impugned order, Annexure-A1, the respondents have rejected his representation stating that there is no case for allowing the benefit of seniority in the Lower Division grade again. The applicant submits that the aforesaid order is not a speaking order and has not been passed in accordance with the directions of the Tribunal. He again reiterates the points raised by him in his representation and relies on the orders of the Tribunal in the case of P.K.Datta Choudhury & Others (Supra) and Shri R.L.Chhibber Vs. Union of India and Others in OA No.1125/86, copy at Annexure-A2.

(2)

3. The respondents in the reply have taken a preliminary objection that the OA is barred by limitation. They state that applicant is seeking relief on a matter relating to 1955 in 1996. On merits, they submit that the applicant had been given his seniority from the date of his joining the army service and all benefits in terms of grant of increments, etc. were given to him. The period of Army service was taken into account for the purposes of qualifying service and pension. They therefore submit that there is no question of counting his army service once again for purposes of seniority.

(3)

4. We have heard the counsel. The learned counsel for the respondents draws our attention to the Memorandum dated 13.9.1961, Annexure-I to the reply which was issued by the Ministry of Education and purports to give the particulars of Grade-II seniority of the persons working as Lower Division Clerks. The name of the applicant appears at S1. No.7 and his seniority has been shown as of 6.2.1950. This is, according to the learned counsel for the respondents, the date from which the applicant joined as Sepoy Clerk in the Army. Therefore he states that the relief sought for by the applicant had already been granted by the Ministry of Education as far back as in 1961 as all service conditions were determined thereafter on the basis of this date of seniority.

5. We find, on perusal of the records, that undoubtedly the applicant was given the benefit of his seniority with reference to the date of his entry in

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the Army service in respect of fixation of his pay at the time of entry as LDC in Central Secretariat Clerical Service and also with reference to determining his retiral benefits in terms of qualifying service as well as pension. However, the said date of seniority has not been taken into account for purposes of his promotion as UDC and as an Assistant. Annexure-A11 is a copy of the Memorandum dated 8.3.1957 issued by the Ministry of Education which states as follows:

(14)

"As regards counting of his previous service for the purpose of seniority he is informed that he has been allowed the benefit of his past service in the Army from 6.2.50 to 26.8.55 for fixation of seniority in \*the grade of Lower Division Clerk. The same will, however, neither count for the purpose of appointment to the Central Secretariat Clerical Service at its initial constitution nor for promotion to the grade of Upper Division Clerk. He will also get no benefit of his past service either for quasi-permanency or for grant of two additional increments." (Emphasis supplied).

6. Clearly therefore the benefit of Army service was given to the applicant only in terms of pay fixation and retiral benefits and not for the purpose of determining his eligibility for promotion as UDC and to the higher ranks. We also find from the orders issued by the respondents in regard to the applicants in P.K.Datta Choudhary's case (Supra) that relief was afforded on the basis of their date of appointment in the Army service in relation to certain directly recruited LDCs whose date of appointments were even later than that of the applicant before us. For instance Office Order No.70/1993 issued on 30.3.1993 consequent upon the judgment delivered by the Tribunal relates to Shri Raja Ram Rao who was also working in the Ministry of Commerce w.e.f. 1970. He

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had joined as LDC and was given the benefit of seniority w.e.f. 19.1.1950 when he joined the Army. (15)

The reference for purpose of his promotion in compliance of the directions of this Tribunal in P.K.Datta Choudhury's case (Supra) was said to be one Smt. Sushila Kumari who was appointed as LDC w.e.f. 2.9.1950. As per the Office Order No.70/1993, the respondents thereafter considered the case of Shri Raja Ram Rao with reference to the dates on which promotions were granted to Smt. Sushila Kumari.

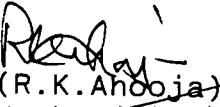
7. We find that the date of seniority of the applicant taking into account his Army service is 6.2.1950. This is a date prior to the date of appointment of Smt. Sushila Kumari which is 2.9.1950. If the applicant had been given the benefit of his seniority for purpose of promotion also, he would have been also entitled to the same benefits as already granted to Shri Raja Ram Rao. We find that the similar reliefs were also granted to Shri D.P.Guru as per Annexure A-4 to the OA. Considering Annexure A-11 dated 8.3.1957 which stipulated that the Army service of the applicant will not count for purpose of promotion in the Central Secretariat Clerical Service and also the fact that the applicants in P.K.Datta Choudhury's case (Supra) were given the benefit of refixation of pay and promotion with reference to the case of Smt. Sushila Kumari who joined service as LDC w.e.f. 2.9.1950, we are of the view that the applicant is also entitled to similar benefit.

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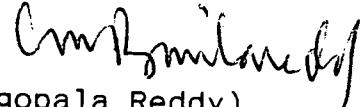
8. In regard to the plea of the learned counsel for the respondents that the relief sought for by the applicant is barred by limitation, we find that the Tribunal in the case of P.K.Datta Choudhury had in answer to the same objection held that the financial loss to the applicant was of a recurring nature, and therefore would not be barred by limitation. In this particular case, the applicant had already filed an earlier OA No.1718/93 and the same was disposed of with directions which have been extracted above. Therefore, there cannot be any bar of limitation in the present case.

(b)

9. In the result, the OA is allowed. The respondents are directed to refix the seniority of the applicant taking into account his past service for purpose of promotion with retrospective effect. The applicant will however be entitled for payment of the arrears only from the date of filing of his first OA No.1718/93. These orders will be complied within the period of four months from the date of receipt of a copy of this order. No costs.

  
(R.K. Alooja)  
Member (A)

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(V.Rajagopala Reddy)  
Vice Chairman (J)