

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.865/1996

New Delhi, this the 17th day of November, 2003

Hon'ble Shri Kuldip Singh, Memmber (J)
Hon'ble Shri S.K. Naik, Member(A)

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Rakesh Chandra
House No.67, Baljato
Old City Bareilly (UP)

.. Applicant

(Shri R.C. Verma, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Defence, New Delhi
2. Engineer-in-Chief
Army Hqrs., New Delhi
3. Chief Engineer
Bareilly Zone, Station Road
Bareilly
4. Commander Works Engineers (MES)
Bareilly Cantt (UP)
5. Garrison Engineer No.1(MES)
Bareilly Cantt (UP)

.. Respondents

(Shri M.K. Bhardwaj, Advocate)

ORDER

Shri S.K. Naik

By virtue of this OA, the applicant had earlier challenged order dated 1.5.95 passed by Respondent No.4 vide which he was reverted from the post of Electrician HS-II to that of Electrician(SK). The OA was dismissed by this Tribunal vide order dated 3.3.2000 with the following observation:

"3. Under the circumstances, if respondents were compelled to revert applicant after it was brought to their notice that he had been wrongly promoted because of incorrect reckoning of his seniority, and his seniority would have to be determined in terms of Memorandum dated 29.6.73 and after giving him an opportunity to show cause against the reversion, which they did, it cannot be said that they have acted illegally or arbitrarily so as to warrant judicial interference."

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2. This order was challenged by the applicant before the Delhi High Court through CWP No.382/2000 and the High Court while setting aside the aforesaid order of the Tribunal, remitted the case back with the following observations:

"Petitioners short case is that Tribunal had failed to deal with all the pleas raised by him. According to him CPRO 73/73 read with CPRO 11/75 and memorandum dated 9.6.73 were not applicable to his case and that pursuant to Respondents letter No.79040 dated 8.10.86 an undertaking was to be obtained from him on being transferred on compassionate grounds that he would forego the benefit of his previous service. His movement order was also to incorporate this condition. But in this case none of these requirements was satisfied.

We have examined the Tribunal order which has summarily dismissed petitioner's OA without dealing with the issues raised by him. The impugned order accordingly becomes unsustainable and is set aside.

Petitioners OA No.865/96 shall revive and be considered and disposed of afresh. It shall be open to parties to supplement their pleadings before Tribunal.

Parties to appear before Tribunal on 15th January, 2003."

That is how this OA is again before us. The applicant thereafter has filed additional affidavit giving detailed background of the case and the respondents have also filed their reply contesting the case. The short controversy that needs to be resolved in this case is whether the applicant is entitled to have the benefit of his previous service on his transfer to the other organisation for the purpose of seniority and further promotion to the next higher grade.

3. We have carefully gone through the material available on record and heard the learned counsel for the parties at length.

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4. To understand the case properly, it would be pertinent to give a brief background of the case. During May, 1985, a panel of Switch Board Attendants (SK) for promotion to Switch Board Attendant Highly skilled Grade II was drawn and circulated to Garrison Engineer vide letter dated 1.5.1985 for circulation amongst the individuals. Garrison Engineer, Bareilly on 22.5.1995 intimated that the date of appointment of the applicant as Switch Board Attendant was 22.2.68 instead of 22.6.68 and confirmed that the other particulars were correct but due to an oversight neither GE, Bareilly nor the applicant pointed out the fact that the applicant joined at Bareilly after seeking transfer on compassionate grounds on mutual basis on 10.9.1979 from Palam, Delhi. On the face of fact not coming to notice, the seniority of the applicant for promotion was reckoned from 1968 whereas it should have been reckoned from 10.9.79, the date of his joining Bareilly as per CPRO 73/73 as clarified by CPRO 11/75. In the result, the applicant was promoted wrongly as Switch Board Attendant HS-II w.e.f. 16.10.85. When, however, this fact after being detected came to notice, a show cause notice was served on the applicant. as to why his seniority not be changed. Since the reply of the applicant was not found satisfactory and that he was inadvertently and wrongly promoted as he was not senior enough in Bareilly area to be promoted, he was reverted to the post of Switch Board Attendant(SK) vide order dated 1.5.95 which is under challenge in the present OA.

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5. According to applicant's counsel the principles of seniority embodied in CPRO 73/73 and CPRO 11/75 are not applicable in this case but have been wrongly interpreted by the respondents. That apart in the movement order dated 7.9.79 there was no condition whatsoever to the effect that applicant would be deprived of his seniority in the previous unit for the purpose of promotion. On the other hand, respondents' counsel maintain that provisions of CPRO 73/73 read with CPRO 11/75 are very much applicable in applicant's case as he was transferred on compassionate grounds at his own request and in that event he lost his previous seniority in CWE, Bareilly area for the purpose of promotion/confirmation as per rules and there was no necessity to include the aforesaid condition in the movement order.

6. Perusal of CPRO 73/73 read with CPRO 11/75 reveals that "seniority of the individuals adjusted or transferred on compassionate grounds on or after 1.7.73 will be determined in accordance with the revised principles of seniority. In other words those adjusted/transferred on or after 1 July, 73 will not get the benefit of their previous service on their reporting to the new units". It is not in dispute at either side that the applicant's transfer was on mutual basis at his own request and on compassionate grounds. Thus, applicant's counsel has not been able to convince us as to how the aforesaid provisions of the Government are not applicable in his case.

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7. In so far Delhi High Court's observation that "pursuant to Respondents letter No.79040 dated 8.10.86 an undertaking was to be obtained from him on being transferred on compassionate rounds that he would forego the benefit of his previous service" is concerned, we find that the said letter is actually dated 19.6.86 and that while it reiterates the policy decision taken in terms of CPR 73/73 read with CPR 11/75 only provides that "in order to avoid representations at a later stage and undertaking to the effect may be obtained from the individual before he applies for transfer on compassionate rounds". While the applicant was transferred by the order dated 7.9.79, the provisions of letter dated 8.10.86, after issued after a lapse of 7 years, cannot be taken advantage⁴ by the applicant, while the fact remains that the applicant was transferred at his own request on compassionate grounds. Therefore, applicant's contention in this regard cannot be rejected. The judgments cited by the applicant during the course of arguments are distinguishable and would not render any assistance to him.

8. In the result, in view of what has been discussed above, we find no merit in the present application and the same accordingly is dismissed. No costs.

Naik
(S.K. Naik)
Member(A)

Kuldeep
(Kuldeep Singh)
Member(J)

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