

(13)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No. 2503/97

Date of Decision: 15.12.98

H.U.Khan

..... Applicant

(By Advocate: Sh.N.Ranganathsamy)

VERSUS

Union of India & Ors.

..... Respondents

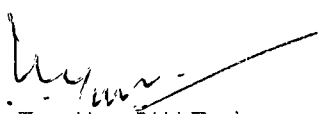
(By Advocate: Sh. R.P.Aggarwal)

CORAM

Hon'ble Shri T.N.Bhat, Member (J)

Hon'ble Shri S.P.Biswas, Member (A)

1. To be referred to the Reporter or not? *Yes.*
2. Whether it needs to be circulated to other Benches of the Tribunal? *Yes.*


(T. N. BHAT)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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OA No. 2503/97

New Delhi, this the 15th day of December, 1998

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

In the matter of:

Shri H.U. Khan
Upper Division Clerk
C/o CWE (Air Force)
Palam,

Delhi Cantt.-110010.

(By Advocate: N. Ranaganathsamy)

.... Applicant

Vs.

1. Union of India, through Secretary
Ministry of Defence,
South Block,
New Delhi-110011.

2. Engineer-in-Chief,
Engineer-in-Chief's Branch,
Army Headquarters,
DHQ PO, New Delhi-110011.

3. Chief Engineer Western Command
Chandimandir-134107.

4. Chief Engineer Air Force (WAC),
Jalandhar Cantt-144005.

5. Commander Works Engineer (Air Force)
Palam,

Delhi Cantt.-110010.

(By Advocate: Sh. R.P. Aggarwal)

.... Respondents

ORDER

delivered by Hon'ble Shri T.N. Bhat, Member (J)

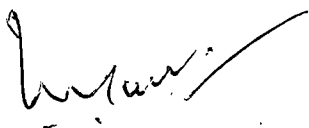
The question that falls for determination in this OA filed by the applicant under Section 19 of the Administrative Tribunals Act is as to whether an employee transferred on his own request and placed at the bottom of the seniority list in the new unit can claim seniority with reference to his initial date of appointment/posting in the old unit.

Signature
15.12.98

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2. The applicant was appointed as LDC on 18.4.72 in the Punjab Regimental Centre, Meerut Cantt and was later posted to the office of Garrison Engineer (Project) Bareilly under Chief Engineer, Central Command, Lucknow on 1.9.72 under the surplus/ deficiency scheme. He was further posted to the office of Garrison Engineer (MES), Bareilly under Chief Engineer, Central Command, Lucknow and remained posted there up to 17.6.80. Thereafter the applicant was posted to the office of Engineer-in-Chief's Branch, Army Headquarters, New Delhi under the Chief Engineer, Western Command, Chandimandir at his own request.

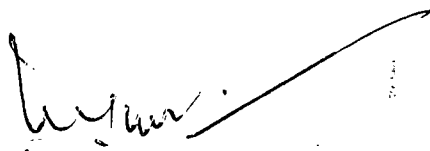
3. In the month of September 1995 the applicant was promoted as UDC while he was serving with Garrison Engineer (Air Force) Suratgarh and his pay and allowances against the post of UDC was allowed w.e.f. 19.12.94. However, by the impugned order dated 28.8.97 the Chief Engineer, Western Command, Chandimandir has reverted the applicant from the post of UDC to the post of LDC on the ground that his seniority had wrongly been reported by the Zonal Chief Engineer as 18.4.72 while his seniority should have been counted from the date of reporting to the Western Command, i.e., 18.6.80. Prior to the aforesaid order a show cause notice had been given to the applicant as to why he should not be reverted to the post of LDC as his case for promotion had been considered on the basis of wrong seniority. The applicant submitted his reply and after considering the same the impugned order dated 28.8.97 was passed.



4. The applicant assails the impugned order mainly on the ground that his past service in the Central Command had correctly been counted while granting promotion to him in 1995. It is further contended by him that the instructions contained in CPRO 73/73 having been made applicable to the personnel serving in MES w.e.f. 16.12.85 only past cases could not have been reopened. The applicant has given the instances of four people who had been allowed to retain their original seniority and were granted promotion in their own turn.

5. The respondents have contested the OA by filing a detailed counter in which it has been averred that the impugned order was passed after proper consideration of the reply submitted by the applicant to the show cause notice. It is further contended that according to CPRO's 11/75 and 73/73 the applicant had lost his seniority and was required to be placed at the bottom of the seniority list. According to the respondents when the applicant's case was forwarded by the concerned unit the original date of appointment of the applicant in the Central Command was wrongly shown while the fact that he had been transferred to Western Command on compassionate grounds in 1980 was not mentioned. This mistake was discovered later as several persons who were senior to the applicant in the new unit had wrongly been denied promotion.

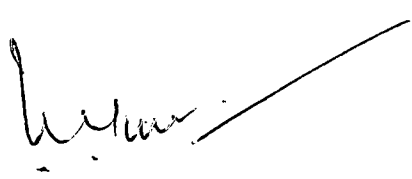
6. The applicant has also filed rejoinder reiterating the averments made in the OA.



7. We have heard the learned counsel for the parties and have examined the documents filed by them in support of their respective contentions.

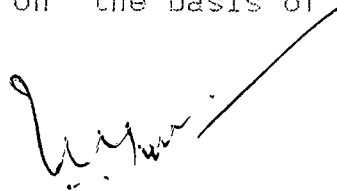
8. Although a specific plea was taken by the applicant in the OA that CPRO 73/73 could not apply in the case of the applicant as the same was made applicable to MES personnel only from the year 1985, the learned counsel for the applicant did not raise this plea during the course of his arguments. The only contention made by the learned counsel for the applicant is that according to several judgments of the Apex Court as also a Full Bench judgment of the Tribunal the period of service put in by the applicant in the Central Command could not be ignored while considering his case for promotion. The learned counsel for the applicant in this regard placed reliance on K.R.Mudgal vs. R.P.Singh (AIR 1986 SC 2086) Scientific Advisor to Raksha Mantri and another vs. V.M.Joseph reported in JT 1998 (4) SC 20, and the judgment of the Apex Court in Union of India vs. C.N.Poonnappan (AIR 1996 SC 764). He also cited before us the Full Bench judgment of the Tribunal in K.Balasubramaniam's case, reported in 1987 (4) ATC 805. The learned counsel for the respondents, in reply, states that these judgments go against the applicant and support the contention raised by the respondents in the instant case.

9. We have carefully gone through the judgments cited by the learned counsel for the applicant and we find ourselves in agreement with the contentions of the respondents' counsel.



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10. In C.N.Poonnappan (supra) the Apex court has laid down the law that when a person on transfer from one unit to another on compassionate ground is placed at the bottom of the seniority list in the transferred unit his service at the place from where he was transferred does not get wiped out. It has further been held that the service put in at the old unit has to be counted towards experience/eligibility for promotion in the unit where he is transferred. This judgment of the Apex Court was delivered to resolve the difference of opinion amongst the Benches of the CAT. While the Madras Bench of the Tribunal had taken the view that though on transfer on compassionate grounds the employee loses his seniority and is placed at the bottom of the seniority list at the transferred place, but for the purpose of promotion his earlier service in the unit from where he was transferred is not completely wiped out and the said service has to be treated as experience for the purpose of his eligibility for such promotion and if he is found eligible then the matter of promotion has to be considered on the basis of seniority at the transferred place. The Bangalore Bench of the Tribunal, on the contrary, had held that an employee who is transferred on compassionate grounds cannot have his earlier service at the place from where he was transferred counted even for the purpose of eligibility and experience. It is significant to note that while approving and upholding the view taken by the Madras Bench the Apex Court held that the service rendered in the unit from where the official is transferred on compassionate grounds would count only for the purpose of eligibility and that the matter of promotion would be considered on the basis of the seniority at the place to



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which the official is transferred. In other words, so far as the question of seniority is concerned the seniority in the new unit to which the official is transferred would be the governing factor.

11. In scientific Advisor to Rakshamantri (supra) also the same view has been reiterated and it has been held, on the basis of the earlier view expressed in C.N.Poonappan that where an employee is transferred from one unit to another on compassionate grounds and is placed at the bottom of the seniority list the service rendered by him at the earlier place from where he was transferred should be counted towards experience and eligibility for promotion. So far as the question of seniority is concerned that question was not answered in the said case. On the other hand, it was held that eligibility is different from seniority.

12. The judgment in K.R.Mudgal (supra) also does not support the applicant's contention raised in the instant OA. All that was held in the aforesaid judgment was that a petition challenging inter-se-seniority after 18 years of issuance of the first seniority list would deserve to be dismissed on grounds of laches as satisfactory service conditions postulate that there should be no sense of uncertainty amongst the Government servants created by filing of writ petitions after several years. In the instant case no seniority list appears to have been drawn nor has any seniority list been called in question. The case is simply one of wrong permission

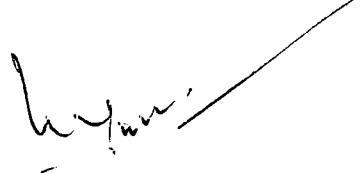
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granted to a person who according to the Government instructions was junior to those who were ignored at the time of granting promotion.

13. As regards the Full Bench judgment of this Tribunal in K.A.Balasubramanian vs. Union of India, that case related to a person appointed as LDC who was later declared surplus and accommodated in another organisation on compassionate grounds. The relevant statutory recruitment rules provided that LDCs with 8 years service in the grade were eligible for promotion as UDCs subject to seniority-cum-fitness. A similar condition of 5 years service was prescribed for promotion through departmental competitive examination. It was held by the Full Bench that the service rendered in the old organisation prior to absorption/accommodation of the official in the other organisation would count for the purposes of eligibility for promotion though the same would not count for seniority (emphasis supplied). Thus, instead of helping the applicant in the instant case the Full Bench judgment goes against him.

14. The learned counsel for the respondents has placed reliance on Gursharan Singh Vs. Union of India & others reported in (1995) 29 ATC 109 which is a judgment rendered by the Apex Court. In that case an official working in the defence department who was transferred on compassionate grounds had been given seniority of his original unit even after his transfer on compassionate grounds to the new unit and he was accordingly placed senior to the appellant before the Apex Court. The Apex Court held that by virtue of the instructions dated 1.7.73

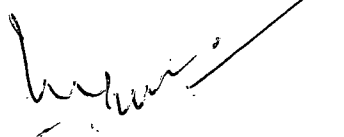


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(CPRO 73/73) the appellant in that case was entitled to seniority over the transferee. In that case as well a person who had come on transfer to a new unit on compassionate grounds was granted promotion to the next higher post while ignoring the appellant in the case and this was done on the basis of seniority given to the transferee on the basis of his service in the original unit. The Apex Court allowed the appeal quashed the order of the Tribunal and upheld the judgment of the trial Court quashing the said promotion. This judgment of the Apex Court squarely covers the point in controversy in the instant case.


15. Another Division Bench of this Tribunal in Mahesh Gahatyar and others vs. Union of India and others, reported in 1998 (3) SLJ (CAT) 268 has expressed the same view. After discussing all the previous judgments on the subject including K.A. Balasubramanian, C.N. Poonappan and Gursharan Singh (supra), the Bombay Bench of the Tribunal in the aforesaid case held that in the case of an employee transferred on compassionate grounds his past service can be counted only for the purpose of eligibility and not seniority and that even if such an employee, after counting his past service was found eligible he would be considered for promotion only if he came within the zone of consideration as per the seniority in the new unit.

16. In view of these clear pronouncements from the Apex Court and the Tribunal the action of the respondents in ordering reversion of the applicant has to be upheld as the applicant had admittedly lost his

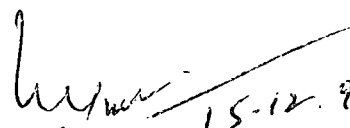


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seniority in the old unit on his transfer on compassionate grounds to the Western Command in 1980. Viewed as such, this OA deserves to be dismissed. We, accordingly, dismiss this OA, but without any order as to cost.


(S.P. BISWAS)
Member (A)

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15-12-98.
(T.N. BHAT)
Member (J)