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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2564/2000

New Delhi this the 26th day of August, 2003.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)
HON'BLE MR. R.K. UPADHYAYA. MEMBER (ADMNV.)

Sukhi Ram Malik
S/o Shri Dalip Singh,
Resident of Village & P.O. Jawan,
Tehsil: Ballabgarh
District: Faridabad (Haryana)

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

-Versus-

1. Indian Council of Agricultural Research
Through: The Director-General,
Krishi Bhawan,
New Delhi-110001.
2. The Director,
Indian Agricultural Research Institute,
Pusa, New Delhi.

(By Advocate: Shri Satish Kumar, proxy for
Shri V.K. Rao)

...Respondents

ORDER (Oral)

By Mr. Shanker Raju, Member (J):

Applicant impugns respondents' order dated 15.9.2000 as well as order dated 4.3.2002 rejecting his request for counting his past military service w.e.f. 6.5.1963 to 20.6.1971 towards seniority. Quashment of the above orders has been sought with further direction to reckon aforesaid period towards seniority with all consequential benefits.

2. Applicant joined Indian Army as Combatant Clerk on 6.5.1963. In the light of Notification issued seeking volunteers for discharge in the category of clerk on compassionate ground, applicant was discharged on compassionate ground on 26.8.1971.

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3. Name of applicant was sponsored for employment as an Ex-service man by employment exchange in Indian Agricultural Research Institute (ICAR) and on written test and viva voce was appointed as LDC on 26.5.1972. Applicant during his military service as a combatant clerk saw action of Indo-Pak War 1965.

4. A representation to count his military service for seniority was made on 30.1.1975. Upon this, Chief Administrative Officer wrote a letter to the ICAR suggesting condonation of break in service for the purposes of seniority. According to the OM dated 7.6.1960, entire military service of one Shri O.P. Parashar has been counted in IARI. ICAR, the cadre controlling authority was requested to confirm the above stand. Applicant in pursuance thereof refunded the DCRG received. By a communication dated 18.1.1978, it was informed that previous service of applicant cannot be counted for seniority. On this, he preferred a representation, taking resort to Memorandum dated 4.12.1959 issued by the Ministry of Defence in consultation with the Ministry of Home Affairs envisages accord of benefit of previous service rendered in the equivalent post in the combatant capacity and treatment of post as equivalent. Applicant sought benefit of the aforesaid. By a communication dated 7.5.1990, military service of applicant has been decided to be counted towards qualifying service for pension on return of the benefits. As no reply has forthcome on his representation, applicant submitted reminders. Being aggrieved a representation was made on 7.3.1994 to the Secretary, ICAR.

5. By a communication dated 24.2.1995 IARI was requested to compare the case of applicant with that of O.P. Prashar and by a letter dated 21.5.1995, ICAR had been requested to condone the break which was of less than one year and seniority be decided as per the Rules. A letter was addressed by the ICAR to the Director, IARI on 30.10.1995 to finalise the case of applicant.

6. Applicant received a communication on 4.4.1997 that his case has been referred to the Secretary, ICAR. The communication for recommending case of applicant for counting his military service was in progress till 1999. On 15.9.2000, his case was closed. Being aggrieved applicant had filed OA No.2564/2000 before this Court. By an order dated 20.11.2001, case of applicant was ordered to be considered by the respondents. In pursuance thereof request of applicant for counting his military service towards seniority has been turned down, giving rise to the present OA.

7. Learned counsel for applicant Shri V.S.R. Krishna contended that contentions put-forth by the respondents that applicant is not an Ex-serviceman as he was discharged from Army on his own request on compassionate grounds, claim for seniority is not in accordance with the Rules. To this, referring to Annexure A-1 where volunteers have been called for discharged as Combatant Clerks, it is contended that applicant applied and was discharged on compassionate grounds due to elimination of surplus and liberalise discharge. Referring to the decision of the Apex Court in *Raj Pal Sharma Vs. State of Haryana*, 1985 (Supp) SCC 72, it is contended that

persons who had been released on compassionate grounds from Military have been observed to be Ex-servicemen and made entitled to all the benefits. Further resort has been taken to the decision of Karnataka High Court in Writ Petition No.7695 of 1976 in T.P. Thomas Vs. Union of India.

8. He places reliance on a decision of the Principal Bench of this court in OA No.1125/86 in R.L. Chhibber Vs. Union of India decided on 28.5.1997 where in similar circumstances of discharge, consequential benefits have been accorded.

9. In so far as the plea that case of O.P. Prashar was not similar and the fact that seniority of candidates with war service appointed to Central service has been discontinued after revised seniority orders in MHA's OM dated 20.12.1959, seniority is to be accorded from the date of initial recruitment treating the combatant as direct recruit. As Prashar was appointed earlier to the Circular, his case cannot be compared with that of applicant. In this regard by taking resort to OM dated 4.12.1959, it is contended that on appointment in civil post benefit of previous service rendered in the equivalent post should be given if the nature of duties are similar. This according to the learned counsel covers the case of applicant as he was a combatant clerk and was appointed as LDC in IARI on an equivalent post, the service rendered in Army shall have to be reckoned for seniority. Referring to Govt. of India's instructions for seniority contained in OM dated 22.12.1959 and referring to Clause-3, it is stated that instructions described in Para-1 of the OM have been

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cancelled but there is no reference in Para-1 as to OM dated 4.12.1959, as such despite general principles for determining seniority, the seniority to be assigned treating the post equivalent in civil service of military service has not been cancelled and was in vogue. Accordingly, seniority should have been assigned to applicant. He places reliance on the decision of Apex Court in Ram Pal Sharma (supra) as well as the decision of Principal Bench in P.K. Dutta Chowdhary Vs. Union of India and others in OA No.1346/89 decided on 18.3.1991 where similar issue has been dealt with and seniority has been accorded reckoning the past service in Army with all consequential benefits. It is stated that on all fours, this aforesaid decision applies to the case of applicant. The case of Prashar where similar benefits have been given even on his compassionate discharge applies mutatis mutandis to applicant and as similarly situated and the fact that OM dated 20.12.1959 has not superseded OM dated 4.12.1959 any discrimination is an anti thesis to principles of equality and is violative of Articles 14 and 16 of the Constitution of India.

10. Lastly, it is contended that the respondents have treated the military service as qualifying service for pension, there ^{is} ~~is no~~ justification not to reckon it towards seniority. It is in this backdrop stated that the only benefit which the applicant would get is without disturbing others, his promotion as UDC notionally with increase in his pensionary benefits. This would not disturb the seniority and other rights of other similarly circumstance.

11. On the other hand, respondents' counsel vehemently opposed the contentions and stated that after OM of 22.12.1959, decision to reckon war service towards seniority has been discontinued. A reasoned order has been passed in pursuance of the directions of the court denying applicant the benefit of military service.

12. We have carefully considered the rival contentions of the parties and perused the material on record.

13. In our considered view discharge on compassionate grounds cannot be an impediment for grant of benefits to applicant or would not divest away his status ^u ~~as~~ ex-serviceman. The decision of Apex Court in Raj Pal Sharma's case (supra) clearly states that merely because persons released from Army Service on compassionate grounds cannot constitute one class to have unreasonable classification. As such, those released from military service on compassionate grounds cannot be disentitled and are to be held as ex-military servicemen. In this view of the matter the issue is no more res integra applicant is to be treated as ex-servicemen.

14. Regarding seniority vide OM dated 4.12.1959 it has been decided in consultation with Ministry of Home Affairs while determining seniority of government servants to accord them benefits of previous service rendered in the same or equivalent post and as applicant was holding post of combatant clerk he cannot be deprived of seniority as LDC in civil service which is an equivalent post.

15. In so far as general rules of seniority laid down vide OM dated 22.12.1959 from the perusal of the same it does not transpire that the same has been issued in supersession of OM dated 4.12.1959. What has been cancelled are memos referred to in para 1 of the OM dated 4.12.1959, which does not include 4.12.1959. As the aforesaid OM has not been superseded it is still in vogue and according to it the military service on equivalent post cannot be ignored for seniority and has to be reckoned for seniority. The High Court of Karnataka in Thomas's case (supra) relying upon the aforesaid circular accorded benefit of seniority. Case of applicant in all fours covered by the aforesaid decision.

16. Moreover, a similar controversy has been dealt with in a case of discharge of a Clerk from Army on compassionate grounds, directions have been issued in Chhibber's case (supra) to count this period towards seniority with all consequential benefits. The aforesaid decision has been relied upon in P.K. Dutta Chowdhary's case (supra) which covers the aforesaid controversy. The grounds reflected in the order passed by the respondents on representation are unfounded, misconceived and are contrary to the rules in vogue and also contrary to the established law the same cannot be sustained.

17. In the result, for the foregoing reasons, OA is allowed. Respondents are directed to count the military service of applicant towards seniority. In that event applicant would be considered notionally for the next promotion from the date of his juniors so promoted and in that event he would be entitled to all consequential

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benefits except back wages. However, applicant would be entitled to revision of pension and other terminal benefits in accordance with law. Aforesaid directions shall be complied with within a period of three months from the date of receipt of a copy of this order. No costs.



(R.K. Upadhyaya)
Member (A)



(Shanker Raju)
Member (J)

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