

10

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.895/2000

New Delhi, this 25th day of May, 2001

Hon'ble Shri Kuldip Singh, Member(J)

Hon'ble Shri M.P.Singh, Member(A)

1. Amar Singh
6/3, BKS Marg, New Delhi
2. Om Prakash Khanna
61/21, Sector 3, Gole Market
New Delhi
3. Sat Paul
1780, Gulabi Bagh, Delhi .. Applicants

(By Shri B.S. Mainee, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Urban Development
Nirman Bhavan, New Delhi
2. Director General of Works
CPWD, Nirman Bhavan, New Delhi
3. Executive Engineer
UWSD/CPWD
4, Pandit Pant Marg, New Delhi
4. Executive Engineer
Elect. Construction Dn. No.IV
CPWD, Pushpa Bhavan, New Delhi
5. Executive Engineer (Elect)
PWD Ele. Division No.V
Govt. of NCT of Delhi, New Delhi .. Respondents


(By Shri V.S.R. Krishna, Advocate)

ORDER

By Shri M.P. Singh

Three applicants, working as Junior Engineers (JE) in the CPWD, have assailed the order dated 28.3.98 by which their request for extending the benefit of letter dated 22.3.1991 issued by R-1 has been rejected.

2. Brief facts of the case are that the applicants joined service as Sectional Officer (Elect) (SO/E, for short) in Beas Construction Board during 1971-1973. They were declared as Central Government employees by



(11)

the decision of the Supreme Court in the case of Jaswant Singh & Ors., Vs. UOI AIR 1980 SC 115. Accordingly, they were appointed as quasi-permanent Government servants. In 1984, they were declared surplus and were taken on the rolls of Central (Surplus Staff) Cell in the Department of Personnel & Administrative Reforms. Thereafter, they were redeployed in CPWD in March, 1985 as JE in the scale of pay of Rs.425-700 (revised to Rs.1400-2300). CPWD issued notification on 22.3.1991 in terms of which JE/SO(Hort) in CPWD with the entry grade of Rs.1400-2300 on completion of 5 years service will be placed in the scale of Rs.1640-2900 but the benefit of FR 22(1)(a)(i) will not be admissible while fixing the pay in the higher grade as there will be no change in duties and responsibilities. Similarly, after completion of 15 years of total service as JE they will be allowed the scale of Assistant Engineers/Assistant Directors (Hort) (AE/AD(H), for short) i.e. Rs.2000-3500 on fitness basis. Placement in the scale of Rs.1640-2900 was made effective from 1.1.86 while that of Rs.2000-3500 was made effective from 1.1.91. Respondents conducted DPC in 1991 and placed the applicants in the grade of Rs.1640-2900 from that year. Applicants claim that since they have completed 5 years service on 1.1.86, they were entitled to the scale of Rs.1640-2900 from 1.1.86 and the pay scale of Rs.2000-3500 from the date they have completed 15 years service.

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3. In support of their claim, applicants have referred to a large number of OAs filed by similarly placed persons in different Benches of this Tribunal which were decided in favour of the applicants therein. SLP filed by the respondents against the decisions of this Tribunal has been dismissed by the Hon'ble Supreme court. Thereafter the respondents concerned implemented the decisions of this Tribunal as a result of which certain persons junior to the present applicants have been placed in the grade of Rs.2000-3500 ignoring the superior claim of the applicants. Faced with such a situation, the applicants are before us seeking directions to set aside the order dated 28.3.98 and further directions to the respondents to grant them the pay scale of Rs.1640-2900 from 1.1.86 and Rs.2000-3500 on completion of 15 years of service.

4. Respondents have opposed the OA in their counter reply. They have submitted that R-2 had issued a clarificatory OM dated 16.8.1991 stating that JEs re-deployed in the CPWD are not entitled to the past service for getting the benefit of the two higher pay scales given to the CPWD JEs vide the order dated 22.3.1991. The applicants were redeployed in CPWD on closing of the Beas Construction Board and joined CPWD in March, 1985 and had not completed 5/15 years service in CPWD as on 1.1.86/1.1.91 respectively and were treated as fresh entrants in CPWD. The service of the applicants would be counted from the actual date of joining in CPWD (1985). Keeping this in view, the

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applicants cannot be placed in the higher scales of pay of Rs.1640-2900 and Rs.2000-3500 w.e.f. 1.1.86 and 1.1.1991 respectively as claimed by them.

5. In the case of other similarly placed persons viz. K.P. Reddy & Ors., the Supreme Court have given a judgement in favour of Government and have set aside the judgement dated 10.10.96 of CAT, Hyderabad Bench. In the order dated 20.9.1999 in the SLP filed against the CAT's judgement, the Supreme Court have ruled that on question of Law and fact their judgement in case of UOI & Ors. Vs. K.Savitri & Ors. 1998(4) (358) fully applies to this case also. By this judgement, Supreme Court has not allowed the higher pay scales of Rs.1640-2900 and Rs.2000-3500 to K.P.Reddy & Ors. w.e.f. 1.1.86 and 1.1.91 respectively by counting past service.

6. We have heard the learned counsel for the parties and perused the records available before us.

7. The main grounds taken by the applicants are that their juniors have been placed in the scale of Rs.1640-2900 w.e.f. 1.1.86 and again in Rs.2000-3500 on completion of 15 years and therefore applicants cannot be discriminated, the case of the applicants is covered by the decisions of Bombay, Chandigarh and Principal Benches of the Tribunal, SLP against these having been dismissed by the Supreme Court, and the applicants are entitled for the benefit of these judgements. On the other hand, the counsel for the respondents submit that these judgements are applicable with reference to

14

particular facts and circumstances of each case and therefore cannot be extended to the applicants as a right.

8. Learned counsel for the applicants has also contended that when similarly placed employees have been given the benefit, same should not be denied to other similarly situated persons and should not be forced to approach the Tribunal for seeking the same relief which has been given to other colleagues. He has relied upon the judgement dated 3.1.96 of the Supreme Court in SLP Nos.14005/1992 (Girdhari Lal Vs. UOI). However we find that the issue involved in this case was that of retiral benefit and obviously reliance placed by the counsel would not render any assistance to the applicants herein.

9. In the end, the learned counsel for the applicants has submitted that he is not pressing for seniority but only counting the service rendered by the applicants in Beas Construction Board for the purpose of grant of higher scale in the post of JE in the present office.

10. For proper adjudication of the case, it would be necessary to extract the clarifications given by the CPWD in its OM dated 16.8.1991, which are as under:

"The matter has been considered and it has been observed that according to the instructions contained in the Scheme of re-deployed staff issued by the Government from time to time, the re-deployed staff are treated as fresh entrants in the new offices/organisations for the purpose of fixing their seniority and they are placed below the employees who have already joined the new offices/organisations wherein they count the date of their seniority



from the date of joining/confirmation. The intention behind the policy is that the benefit of past service should be allowed to them where it does not adversely affect the interest of the employees already senior in the office/organisation to which they are re-deployed. It has, therefore, been decided that the Juniors Engineers re-deployed in the CPWD are not entitled to the past service benefit for getting the benefit of the two higher pay scales vide this Directorate OM dated 27.3.91 as the same benefit is not admissible to the CPWD Junior Engineers who are senior to them with less than 5/15 years service.

"The surplus re-deployed Junior Engineers will accordingly get the higher pay scales vide this Directorate OM dated 27.3.91 as mentioned above alongwith their seniors on their completion of 5/15 years service in CPWD as the case may be".

11. We have also gone through the CCS (Redeployment of Surplus Staff) Rules, 1990 and the instructions issued by the DoPT on the subject from time to time. Rule 9 of these Rules and para 11.1 of the Revised Scheme on the subject are relevant for our purpose, which are reproduced below:

"9. Fixation of pay and seniority, counting of previous service for various other purposes and carrying over of lien/classification: The fixation of seniority and pay of the surplus employee and counting of his previous service for various other purposes and carrying over of lien/classification in the new post to which he is appointed on redeployment under these rules shall be regulated in accordance with the instructions issued from time to time by the Government of India in this behalf."

11.0 Benefit of Past Service after Redeployment/ Readjustment, as the case may be:

11.1 No change is contemplated in the present policy that the past service rendered prior to redeployment should not count towards seniority, in the new organisation/new post which a surplus employee joins after he is redeployed. the same rule will also have to be applied in the case of those readjusted after redeployment.

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16

Rule 11.2 of the aforesaid Rules provides that the surplus employees will be treated to have been appointed by transfer in public interest in the matter of admissibility of Joining Time, Jointing Time Pay and Transfer TA for moving to the new post located in a Central Government Department. Rule 11.4 provides that in other service matters, they will be treated as appointed by transfer.

12. In the case of appointment by transfer if a person is appointed to a new organisation, he gets the benefit of seniority in the grade from the date he was appointed to that grade or equivalent grade in his parent department if the transfer is in public interest. The CCS (Re-deployment of Surplus Staff) Rules, 1990 specifically provide that past service shall not count towards seniority. On the same analogy, it can not count for the purpose of granting higher pay scale.

13. In this connection, the learned counsel for the respondents has drawn our attention to the decision of the Hon'ble Supreme Court dated 4.3.1998 in CA No.6201-06/95 (UOI Vs. K.Savitri & Ors.) by which the apex court set aside the orders passed by the Cuttack Bench of the Tribunal in OA Nos.160, 161 and 163/93 and also dismissed the said OAs.

14. Admittedly, it is not in dispute that the applicants were declared surplus and were redeployed in CPWD in March, 1985 and that they are governed by the CCS (Redeployment of Surplus Staff) Rules, 1990 and the



instructions issued by the DoPT on the subject from time to time. Applicants also did not raise any objection to the clarificatory OM issued by CPWD on 16.8.1991 (supra). Therefore they should not have any grievance at this stage when they have accepted the terms of redeployment at the time of joining CPWD and also they cannot be allowed to challenge the OM dated 16.8.1991 after a gap of nearly 10 years. In fact, DoPT have issued another OM on 2.12.1998 incorporating the aforesaid decision of the apex court.

15. In a similar case, the Hyderabad Bench of the Tribunal in its judgement dated 10.10.96 in OA No.1169/96 has given the following directions:

"The pay of the applicants as JE in CPWD has to be fixed in the pay scale of Rs.1640-2900 in accordance with the rules on the date they have completed five years of service from the date of their joining in Dandakaranya Project or from 1.1.86 whichever is later. They are also entitled for fixation of their pay following the extant rules in the grade of Rs.2000-3500 after completion of 15 years of service from the date of their joining in Dandakaranya Project"

The Hyderabad Bench in its judgement has relied upon the judgement of the Bombay Bench of the Tribunal dated 19.7.95 in OA No.866/93. In the present OA, the applicants are also relying on the judgement of Bombay Bench in OA No.866/93 (Para 4.11 of the OA). An SLP was filed against the judgement of Hyderabad Bench (supra). The SLP was allowed by the Hon'ble Supreme Court and the impugned judgement was set aside. The Supreme Court has held as under:




18

"Learned counsel for the parties concede that on question of law and fact, the judgement of this Court in UOI & Ors. Vs. K.Savitri & Ors. (1998(4) SCC 358) fully applies and covers this case. Following the reasons laid down in the said case, we allow this appeal and set aside the impugned judgement".

16. The present OA is covered in all fours by the ratio arrived at by the Hyderabad Bench of the Tribunal which has been set aside by the Hon'ble Supreme Court. The apex court has observed that since the fact and question of law in the case of Hyderabad Bench are similar to the one in the case of UOI & Ors. Vs. K. Savitri & Ors. the judgement of the Tribunal has been set aside. In the case of the Civil Appeal Nos.6201-06/1995, the Supreme Court has held that the past services of the redeployed staff cannot be counted for 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. While setting aside the judgement of the Cuttack Bench of the Tribunal dated 27.5.1994 and 27.10.1994 in OA Nos.160, 161 and 163/1993, apex court has observed that the Tribunal was wholly in error in directing that the past service of the employees should be counted for granting them the benefit of seniority and experience for promotion in the All India Radio.

17. It appears that while filing SLP against the judgement of Chandigarh Bench of the Tribunal dated 28.11.96 in OA No.739/94, facts relating to rules position might not have been brought to the notice of the Hon'ble Supreme Court and hence that SLP was dismissed. However, in the case of K.Savitri, which is a



19

later judgement of the Hon'ble Supreme Court, the rules position regarding re-deployment of surplus staff has been discussed in detail and order has been passed setting aside the judgement of the Tribunal. Moreover, if the contention of the learned counsel for the applicant is accepted, the applicants will get higher scale of of JE i.e. Rs.1640-2900 in the year 1986 and that of AE (Rs.2000-3500) in 1991, whereas persons who have joined in 1984 and are senior to the applicants will get the scale of Rs.2000-3500 on personal promotion in the year 1999 after completing 15 years service. This does not hold any logic when senior persons get the scale of AE 8 years after the juniors.

18. Apart from this, the Scheme of grant of higher scale vide letter dated 22.3.91 provides that JE/SO(H) who could not be promoted to the post of AE/AD(H) in the scale of Rs.2000-3500 due to non-availability of vacancies in the grade of AE/AD(H) will be allowed the scale of Rs.2000-3500 on a personal basis after completion of 15 years of total service as JE/SO(H). This personal promotion will be given on fitness basis. As and when regularies vacancies in the cadre of AE/AD(H) arise, the JEs/SOs enjoying personal promotion will be adjusted against these vacancies, subject to observance of normal procedure. In the matter of fixation of pay, they will get the benefit of FR 22(I)(a)(i). The benefit of FR 22 (I)(a)(1) is given to a government servant when he is promoted or appointed carrying duties and responsibilities of greater importance than those attached to the post held by him. In other words, the applicants if allowed to count their

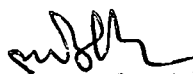


20

past service will get personal promotion to the grade of AE even much before their seniors who have not put in 15 years of service in the grade of JE. It is perhaps because of this reason that the respondents have issued the clarificatory order dated 16.8.91, as reproduced in para 10 above.

19. In view of the aforesaid reasons and law settled by the apex court in the case of K.P.Reddy and K.Savitri (supra), the present OA cannot be allowed and is liable to be dismissed. Moreover, the various judgements of the Tribunal relied upon by the applicants will not render any assistance to them because of the judgements of the apex court in the cases of K.P. Reddy and K.Savitri (supra).

20. In the light of the above discussions, the OA is devoid of any merit and is therefore dismissed. No costs.


(M.P. Singh)
Member(A)


(Kuldip Singh)
Member(J)

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