

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(4)

O.A. No. 253/89

New Delhi, this 4th day of March, 1994.

Hon'ble Shri S.K.Dhaen, Vice Chairman (J)

Hon'ble Shri P.T.Thiruvengadam, Member (A)

Shri D.R.S.Yadav
s/o Shri Parshadi Singh Yadav,
H.No.B-31, Gali No.2,
West Chander Nagar, Delhi-51.
(By Shri R.P.Oberoi, Advocate)

..Applicant

Vs.

Union of India: through

1. Secretary,
Ministry of Human
Resource Development &
Dept. of Culture,
Shastry Bhawan, New Delhi.

2. Director General,
Archaeological Survey of India,
Janpath, New Delhi.
(By Shri ML Verma, Advocate)

..Respondents.

ORDER

Hon'ble Shri P.T.Thiruvengadam, Member (A)

The applicant had joined service as Sepoy
clerk in Army Ordnance Corps under the Ministry
of Defence on 24-5-63. He served in that capacity
upto 2-7-1970 and was discharged from service on
medical grounds due to disability which was a
permanent disability from service in operational
area and he was awarded medical category EEE and
released from the army. The applicant had registered
under the rehabilitation scheme of ex-servicemen
for civil appointment against vacancies reserved
for ex-servicemen in equivalent grades. However,
he was offered only the post of a peon in the
Ministry of Defence which post he accepted on
31-12-1970. He continued in this post till 26-12-75
in the same capacity as a peon excepting for the
period from 1-11-1973 to 30-10-74 when he was

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promoted as an ad hoc LDC in the same office. On 27-12-1975, the applicant was appointed in the Archaeological Survey of India (ASI in short) as Works Assistant Grade III on being nominated by the Department of Personnel & Administrative Reforms on re-deployment basis. He has been working in this department from this date and had been representing for fixation of seniority in the grade of Works Assistant Grade III taking into account the service rendered by him in the equivalent grade of L.D.C-both in the army and in the Ministry of Defence prior to his joining the Department of ASI and for promotion on the basis of seniority as claimed. It is his case that his last representation dated 10-8-87 was turned down by respondent No.2 vide letter dated 9-2-1988 stating that the applicant's request had been re-examined in consultation with the Department of Personnel & Training and it is regretted that the request cannot be acceded to. This O.A. has been filed for quashing this letter dated 9-2-1988 and for a direction for fixation of seniority taking into account the service rendered by him as L.D.C in army and Ministry of Defence before joining the Department of ASI with the award of consequential benefits.

2. The applicant could not produce any instructions specifically covering his case and is mainly relying on the orders passed by this Tribunal in the following cases:-

(i) O.A.1125/1986 decided on 28-5-87
(Sh.RL Chibber Vs. UOI & Ors.)

(ii) ATJ 1991(1)CAT 577 (P.K.Dutta Chaudhary Vs Union of India & Ors.).

(iii) O.A.No.1301/1992 (Sh.Anirudh Roy Vs. Union of India and O.A.1309/92 (Shri Shiv Singh Vs. Union of India & Ors.) decided on 30-3-93.

The above O.As have been decided mainly on the basis of provisions in the Office Memorandum No.4252/56-CS(C) dated 18-7-56 issued by the Ministry of Home Affairs and O.M. No.11/15/72-Estt(D) dated 28-6-72 issued by the Cabinet Secretariat (Department of Personnel) which indicate that "Service rendered in clerical posts (including service rendered as Sepoy Clerk and Havildar Clerk) would count for purpose of seniority in the grade of Lower Division Clerk in the Central Secretariat and Offices included in the Central Secretariat Clerical Service Scheme, provided such service was continuous with service in the grade of Lower Division Clerk." The applicants in the above mentioned O.As were functioning in the clerical capacity in army before being rendered surplus and were re-appointed again as Lower Division Clerks in various departments. In most of the cases the re-appointment was ^{done} taken without any break. However, there was a short break of a few months in one or two cases between the dates of being rendered surplus and the dates of re-appointment in another department.

3. The applicant in this case, who was working as Sepoy Clerk, was discharged from army service on medical grounds and was re-appointed in Defence Ministry after a gap of six months and that also in the capacity as a peon which is in a lower grade. From 31-12-70 to 26-12-75 the applicant continued as a peon but for a period of about a year during 1973-74 when he was promoted an ad hoc L.D.C. At the time of re-employment in the Department of ASI as Works Assistant Grade III, he was functioning as a peon in the Defence Ministry. Thus the provisions of O.M. dated 28-6-1972 referred to in the above O.As and which provisions are

applicable only for those clerks re-deployed from army as L.D.Cs in Central Secretariat and offices included in the Central Secretariat Clerical Service Scheme provided such service was continuous with service in the grade of L.D.C, cannot be extended to this case. The ld. counsel for the applicant argued that the applicant's posting as a peon was ~~done~~ as a ^{done} step gap arrangement pending locating a vacancy ^{equivalent} in any ~~higher~~ grade of Sepoy Clerk and the applicant had to accept a lower grade post in view of his financial condition. It is difficult to extend the provisions of the O.M. dated 28-6-72 in this case since the re-deployment as a clerk has been from a lower post. Even for an employee working in the same department on reversion on re-promotion the seniority in the higher grade normally counts only from the date of re-promotion if such reversion is due to non-availability of the post in the higher grade.

4. The applicant then tried to place reliance on the instructions regarding seniority issued in the year 1949. Extracts from this O.M. read as under:-

"Extract from O.M.No.30/44/48-Apts, dated 22-6-1949 from the Ministry of Home Affairs to all the Ministries of the Govt. of India, etc.

Sub:- Seniority of displaced Government Servants who have been absorbed temporarily in service under the Central Govt.

1. x x x

2. The question of seniority of Assistants in the Secretariat was recently examined very carefully in consultation with all the Ministries and the Federal Public Service Commission and the decision reached are incorporated in para 8 of the instructions for the initial constitution of the grade of Assistants, as extract of which is attached. It has been decided that this rule should generally be taken as a model

in framing the rules of seniority for other services and in respect of persons employed in any particular grade seniority should, as a general rule, be determined on the basis of the length of service in that grade as well as service in an equivalent grade irrespective of whether the latter was under the Central or Provincial Government in India or Pakistan. It has been found difficult to work on the basis of comparable posts or grades and it has therefore been decided that "Service in an equivalent Grade, should, generally be defined as service on a rate of pay higher than the minimum of the time scale of the grade concerned. The seniority of persons appointed on permanent or quasi-permanent basis before the 1st Jan. 1944, should, however, not be disturbed."

It is difficult to accept this contention since the above O.M. was issued to cover the cases of displaced government servants in the context of seniority.

5. The case of one Mohd. Wali who was given the benefit of war service for the purpose of seniority vide letter No.F.3-7/68-Adm-II dated 22-1-1977 was then referred to by the 1st. counsel of the applicant. In the reply filed by respondents it has been stated that this case is not on all fours with the case of the applicant. In the circumstances, of this case, this O.A. is dismissed. No costs.

P.J.JL

(P.T.THIRUVENGADAM)
Member (A).

S.K.
(S.K.DHAN)

Vice Chairman (J)