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(JUDGEMENT OF THE BENCH DELIVERED BY
HON'BLE MR. I.K. RASGOTRA, MEMBER(A))

The issue raised in this bunch of applications is: if the military service rendered in the capacity of

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Sepoy Clerk/Havaladar Clerk should be counted for the purpose of seniority in the civil service taken up after having been declared surplus. The above applications filed by reemployed ex-servicemen as per facts given below, raise common issues of law and fact, and we therefore propose to deal with them through this common judgement.

i) OA No. 1346/89 - P.K. Datta Choudhury Vs. UOI

The applicant worked as Sepoy Clerk in Army Ordnance Corps (AOC) from 17.10.1949 upto 10.5.1955 when he was declared surplus. After obtaining a No Objection Certificate from the AOC on being rendered surplus, he got himself registered with the Regional Employment Exchange for a suitable job. He was released from the Army on 10.5.1955 and joined the Civil Service as Lower Division Clerk on the same date in the Ministry of Food. He was declared quasi-permanent as LDC on 1.11.1961 followed by confirmation w.e.f. 1.5.1959. He was promoted as Upper Division Clerk w.e.f. 1.8.1970 and as an Assistant w.e.f. 27.5.1974 when he was working with the Department of Public Enterprises, Ministry of Industry. He retired from Government service on superannuation on 31.3.1989. He submitted a representation to the Department of Public Enterprises for refixation of his seniority in the grade of LDC in the light of the judgement dated 28.5.1987 given by the Central Administrative Tribunal in the case of Shri R.L. Chhibber Vs. UOI & Ors. in OA No. 1125/86 after reckoning the service rendered in the AOC. The representation was, however, rejected by the respondents on 30.1.1989 as according to them the applicant's case was not covered by the decision given in the case of R.L. Chhibber Vs. UOI (Supra) which related to a dispute between ex-Service men for seniority in the civil posts.

OA No. 1357/89 - Janak Ram Vs. UOI

The applicant worked as Sepoy Clerk in AOC from 6.2.1950 upto 27.7.1955 when he was declared surplus.

After obtaining No Objection Certificate he got himself registered with the Regional Employment Exchange for a suitable job. He joined the Civil Service as L.D.C. w.e.f.

27.7.1955 after he was released from the AOC in the Director General Technical Development (DGTD), Ministry of Industry, New Delhi. He was promoted as steno typist w.e.f. 30.1.1957 and confirmed as L.D.C. w.e.f.

1.5.1959. The applicant went on deputation to the National Coop. Union of India and remained there from 1.0.1964 to

30.6.88. He was further promoted as Upper Division Clerk w.e.f. 1.8.1968. Further he was appointed as U.D.C. -

Steno (i.e. UDC's pay plus Rs. 30 as Stenographic allowance) w.e.f. 20.12.1968 and he was promotion as Steno

(Grade-II) on 1.5.1971 but was reverted as Steno (Grade III) w.e.f. 2.12.1972. The applicant joined Mining and

Allied Machinery Corporation Ltd. (a Govt. of India enterprise) on permanent absorption basis as Assistant

Administrative Officer w.e.f. 30.11.1989. On 26.9.1988 he made a representation refixation in the light of judgement

dated 28.5.1987 in R.L. Chhibber v. UOI of his seniority in the grade of LDC. But on 30.1.1989 the Department rejected

the representation as according to them the applicant's case was not covered by the decision given in the case of

Shri R.L. Chhibber Vs. UOI (Supra) which relates to a dispute between Ex-Servimen for seniority in the civil posts.

OA No. 70/89 - Raja Ram Rao Vs. UOI

The applicant worked in AOC as Sepoy Clerk from

19.1.1950 to 8.6.1955 when he was declared surplus and released from AOC. He joined as LDC in the ministry of Food and Agriculture on 9.6.1955 and thereafter was promoted and transferred during the course of employment. He was posted as Assistant in the Office of Chief Controller of Imports & Exports, New Delhi when he retired on superannuation on 28.2.1989. He made a representation dt. 18.8.1988 for refixation of his seniority to the Dy. Chief Controller of Imports and Export for refixation of his seniority as LDC in the light of judgement dt. 28.5.1987 in the case of R.L. Chhibber Vs. UOI (supra) which was rejected on 23.12.1988 after consultation with the Ministry of Commerce and Ministry of Personnel, P.G. & Pensions.

iv) OA No.1356/89 - Khem Ram Vs. UOI

The applicant worked in the Army Ordnance Corps as Sepoy Clerk from 7.11.1949 upto 29.6.1965, when he was declared surplus and released. After obtaining No. Objection Certificate from the AOC on being rendered surplus got himself registered with the Regional Employment Exchange for a suitable job in civil service. He joined the Ministry of Industry as L.d.c. w.e.f. 30.6.1955. He was declared permanent as L.D.C. w.e.f. 1.5.1959 and promoted as U.D.C. w.e.f. 14.3.1969. He was promoted as Assistant w.e.f. 1.5.1978. He retired on attaining the age of superannuation on 31.7.1988 from D.G.T.D. Ministry of Industry. He made a representation on 26.9.1988 requesting for refixation of his seniority as L.D.C. in the light of the judgement dt. 28.5.1987 in the case of R.L. Chhibber but the same was rejected by the respondents on 2.5.1989.

v) OA No. 1355/89 - D.P. Guru Vs. UOI

The applicant worked as Sepoy Clerk from 13.2.1950 to

24.8.1955 in the AOC when he was released from the Army on being rendered surplus. He got himself registered with the Regional Employment Exchange after obtaining No Objection Certificate from the AOC. The applicant joined civil service as L.D.C. in the Ministry of Industry on 24.8.1955 and was confirmed as L.D.C. w.e.f. 1.5.1959. He was promoted as Assistant w.e.f. 6.6.1978 and retired after attaining the age of superannuation on 31.12.88. He made a representation on 26.10.1988 for refixation of seniority as L.D.C. in the light of the judgement dated 28.5.1987 in the case of R.L. Chhibber Vs. UOI. which was rejected by the respondents on 24.11.1988.

(vi) OA No. 1462/89 - Lajpat Rai Bakshi Vs. UOI

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The applicant worked in the AOC as Sepoy Clerk from 28.2.1949 up to 7.1.1955 when he was declared surplus and released. Since he was rendered surplus he registered himself with the Regional Employment Exchange for a suitable job in the civil service after obtaining No Objection Certificate from AOC. He joined as LDC in the office of the Director General & Supplies & Disposals (D.G.S. & D.) on 8.1.1955. He was promoted to the post of UDC in 1968 and confirmed as UDC on 1.4.1975. He was promoted as an Assistant on 5.5.1980 and retired on attaining the age of superannuation on 30.10.1986 from the office of the Union Public Service Commission. He represented on 21.2.1989 for refixation of his seniority in the light of judgement in R.L. Chhibber Vs. UOI (supra). The same was, however, rejected vide order dated 5th July, 1989 by the respondent UPSC in consultation with the Department of Personnel & Training.

2. The applicants' pay as LDC was fixed after granting them increments depending on the length of past

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service in the AOC. All the applicants except Shri Raja Ram Rao OA No. 70/89 have submitted that their pay was fixed after granting them 5 increments in the pay scale of LDC reckoning the Army service for this purpose.

By way of relief the applicants have prayed that the respondents be directed to refix the seniority of the applicants taking into account their past service in the AOC with all consequential benefits regarding confirmation, promotion etc. with retrospective effect in terms of the decision given by this Tribunal in R.L. Chhibber Vs. UOI (supra).

3. Shri Umesh Misra with Shri R.R. Rai appearing for the applicants submitted that the applicants are similarly situated as Shri R.L. Chhibber and, therefore, they should be granted the same benefits which have been made available to Shri R.L. Chhibber in accordance with the judgement of the Tribunal dated 28.5.1987. In support he cited the case of Tota Ram Sharma v. UOI & Ors. 1990

(3) SLJ 181. A disparate treatment to the applicants would infringe the provisions of Articles 14 and 16 of the Constitution of India. The thrust of the plea of the learned counsel was that the benefit of the judgement dated 28.5.1987 should be extended to the applicants, as any other course will be infraction of the constitutional provisions.

4. The case of the respondents as set out by Shri M.L. Verma, the learned counsel is that the applications are time barred, as the cause of action arose some time in 1954-55 while the OAs have been filed in 1989. The applicants have also not explained the delay in pursuing the matter in appropriate legal forum, soon after the cause of action arose in 1954/55. The learned counsel

submitted that the delay in such cases cannot be condoned and drew our attention to the judgement of the Allahabad Bench of the Tribunal in the case of Madhav Prasad Chaudhry v. UOI & Ors. 1990 (3) SLJ 528 where it was held that the challenge to the seniority in 1985 fixed in 1981 was barred by Section 21 of the Administrative Tribunals Act, 1985. He further submitted that the applicants had been declared surplus and released from the AOC. They joined the Civil Service on redeployment. The learned counsel contended that past service, in such cases cannot be counted and submitted that his view is supported by the decision of the Principal Bench in Chiranjiv Singh Jat v. UOI & Ors. 1988 (6) ATC 402. He further submitted that the applicants cannot claim seniority and promotion above others who have not been made the necessary parties. The applications are, therefore, bad in law for non-joinder of necessary and proper parties as held in the case of T.R. Gupta v. G.M. Central Rly. & Ors. 1989 (10) ATC 845.

5. Contesting the above submissions, Shri Umesh Misra submitted that the application is not barred by limitation as the cause of action had last arisen in 1987 when the judgement was delivered in the case of Shri R.L. Chhibber (supra). In support of his contention the learned counsel cited the case of M.G. Rajashankar v. Workshop Manager, Central Rly., Bombay 1990 (3) SLJ 123.

The learned counsel further submitted that the decision of the Tribunal in R.L. Chhibber (supra) is not restricted to the fixation of inter-se-seniority between Shri Hari Bhagat and Shri R.L. Chhibber alone but also deals with fixation of seniority of Shri Chhibber after taking into account his past service rendered in AOC thereby conferring on him all the consequential benefits in regard to confirmation and promotion with retrospective effect.

To a query from us whether the applicants had made their representations when they joined Civil Service for assigning them seniority after counting the Military Service, the learned counsel submitted that several representations were made by the applicants and that they, were rejected by the concerned authorities. The learned counsel produced a copy of the memorandum No.A.III(1568)/A-II dated 28.2.1956 issued by the Ministry of Food & Agriculture to Shri P.K. Dutta Chowdhury, Lower Division Clerk, which is extracted below:-

"Sub:- Counting of Military Service for fixation of pay etc."

With reference to his representation dated 13th February, 1956, Shri P.K. Dutta Chowdhury is informed that under the rules, he is not entitled to get any benefit in respect of service rendered by him in the Army for the purpose of fixation of his initial pay as Lower Division Clerk in this office as the basic salary drawn by him in the Army is less than the minimum of the prescribed scale of Lower Division Clerk viz., Rs.55-130. Similarly his service in the Army cannot, for the same reason, be taken into account for purposes of his seniority in the grade of Lower Division Clerks."

It would, therefore, appear that the representations were made by the applicants and the same were rejected by the respective authorities. To a further query that if they have filed the copies of the memoranda of the Ministry of Home Affairs and Department of

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Personnel dated 18th July, 1956 and 28th June, 1972 respectively, the learned counsel submitted that they have not filed copies of these memoranda as these have already been discussed in R.L. Chhibber (supra) judgement.

6. We have heard the learned counsel of both the parties and considered the material on record. We have also perused the Tribunal's judgement in the case of R.L. Chhibber (supra) dated 28.5.1987. The Office Memorandum dated 18th July, 1956 issued by the Ministry of Home Affairs purports to answer the specific queries which seem to have been made by the Defence Ministry by stating that:-

"the undersigned is directed to say that this Ministry have taken a decision to count for the purpose of seniority in the Grade of Lower Division Clerks in the Central Secretariat and Offices included under the Central Secretariat Clerical Service Scheme, all service rendered in clerical posts (including service rendered as Sepoy Clerk and Havildar Clerk) provided such service is continuous with service in the grade of Lower Division Clerks. No general orders on the subject have however, been issued by this Ministry."

The above memorandum makes it clear that no general orders have been issued on the subject by the Ministry of Home Affairs although the Ministry of Home Affairs had taken a decision to count for the purpose of seniority the service rendered in clerical posts (including service rendered as Sepoy Clerk and Havildar Clerk) in the grade of Lower Division Clerks in the Central Secretariat Clerical Service Scheme provided such service is continuous. The Department of Personnel's

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Office Memorandum dated 28th June, 1972 is, however, of greater help. The relevant extract of the said Office Memorandum is reproduced below:-

"However, the controlling authority in the Ministry of Home Affairs dealing with the

Central Secretariat Clerical Service had, in

1956, informed the Ministry of Defence vide

their Office Memorandum Number 4252/56-CS(C),

dated the 18th July, 1956 (copy enclosed) 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 Clerks 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.

No general orders on the subject were, however,

issued by the Ministry of Home Affairs and, as

such, this Department is not aware whether any

such benefit was allowed to Lower Division

Clerks serving in Offices not participating in

the Central Secretariat Clerical Service

Scheme.

2. In this connection a copy of Unstarred

Question Number 614 by Shri Sanda Narayanappa

and of the reply given to thereto in the Rajya

Sabha on the 25th May, 1972, is enclosed. To

enable this Department to fulfil the assurance

given in the reply to the Rajya Sabha Question,

it is requested that this Department may kindly

be informed whether a similar benefit as laid

down in the Ministry of Home Affairs Office

Memorandum dated the 18th July, 1956 referred

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to above was given to ex-Servicemen absorbed as Lower Division Clerks, prior to the 22nd December, 1959, in Offices under the Ministry of Finance etc. which are not included in C.S.C.S. and, if so, whether such a benefit was given by the cadre authorities on volition or in consultation with the Ministry of Home Affairs (now Department of Personnel). The required information may be given in the proforma enclosed."

It is obvious from the above that the service rendered in the Army as Sepoy Clerk and Havaladar Clerk would count for purpose of seniority in the grade of Lower Division Clerks in the Central Secretariat and Offices included in the Central Secretariat Clerical Service Scheme provided such Army Service was continuous with service in the grade of Lower Division Clerks. Thus the position explained by the Ministry of Home Affairs which was then the controlling authority dealing with the Central Secretariat Clerical Service can be construed as having statutory force. No material has been produced before us if any follow up action by issuing a general circular after considering the position in response to

Department of Personnel's Office Memorandum dated 28th June, 1972 was taken by the said Department. This is however not material in these cases as the applicants before us belong to the Central Secretariat Clerical Service Scheme.

A point was made by the learned counsel for the respondents that since the applicants had been rendered surplus, their service cannot be counted in accordance with the Statutory Rules. The Statutory Rules regarding

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Redeployment of Surplus Staff issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training are not applicable to the surplus ex-servicemen. That Scheme is applicable only to non-gazetted staff, Ministerial and non-Ministerial identified as surplus as a result of the studies made by Staff Inspection Unit of the Ministry of Finance and the Administrative Reforms in the Ministry of Personnel. In fact the 'surplus staff' covered by the Scheme is defined in that Scheme as:-

"the Central Civil Servants (other than those employed on ad-hoc casual, work-charged or contract basis) who--

(a) are permanent or quasi-permanent or, if temporary, have rendered not less than five years regular continuous service, and

(b) have been rendered surplus along with their posts from the Ministries/Departments/Offices of the Government of India as a result of --"

Even the judicial pronouncement in Chiranjiv Singh Jat v. UOI & Ors. (supra) cited by the learned counsel of the respondents relates to a Government Servant who had been rendered surplus from Civil Service and later provided another job on redeployment.

We are also not persuaded to accept that the case is barred by limitation. It is apparent that the representations made by the applicants, assigning them seniority by counting their past Army Service were rejected by the respondents. In that view of the matter, the matter having ended there, got resurrected only with the decision in the case of R.L. Chhibber v. UOI (supra)

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by the Tribunal on 28.5.1987. The cause of action can, therefore, be said to have been arisen only from 28.5.1987. Further the financial loss to the applicants being of recurring nature cannot be barred by limitation.

In view of the facts and circumstances of the case, as discussed hereinbefore, we are of the view that the applicants are entitled to the same reliefs as provided to the applicant in Shri R.L. Chhibber v. UOI

(supra) case. Accordingly, the applications are allowed with the direction that the applicants seniority in all the six OAs listed above shall be refixed, taking into account their past service in the Army. They shall be given the consequential benefits in regard to confirmation and promotion with retrospective effect. The refund of service gratuity, if any, received by the applicants from the Army Authorities at the time of release, shall be regulated as per the relevant Rules.

There will be no order as to costs.

(I.K. RASGOTRA)

(KAMELESHWAR NATH)

MEMBER (A) 18/3/1991

VICE-CHAIRMAN