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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 810/89

New Delhi this the 21st day of March, 1994

CORAM :

THE HON'BLE MR. JUSTICE V. S. MALIMATH, CHAIRMAN
THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

Tara Singh S/O Batan Singh,
Chargeman Part-II Cadre,
Ordnance Depot, Shakurbasti,
R/O WZ-75-D, Santgarh,
Tilak Nagar, New Delhi.

... Applicant

By Advocate Shri B. S. Charya

Versus

1. Union of India,
Ministry of Defence,
Government of India,
New Delhi
through its Secretary.
2. The Office Incharge,
Army Ordnance Corps Records,
Post Box No.3,
Trimulgherry Post,
Secunderabad - 500015.

... Respondents

None for the Respondents

O R D E R (ORAL)

Hon'ble Mr. Justice V. S. Malimath -

We are not inclined to interfere in this case as all that is required to be done is to issue a show cause notice. It is no doubt true that the show cause notice does not give the required particulars to enable the petitioner to effectively reply the notice. But that lacuna is now met by the appropriate stand taken by the respondents in their reply. We shall, therefore, make the position clear in regard to what the petitioner is required to show cause and an appropriate decision taken.

2. On the facts, there is no dispute that the petitioner was a Carpenter and stood transferred on compassionate grounds on his own request w.e.f. 19.8.1978. Though his service commenced in that cadre w.e.f. 1.11.1962, he could count for the purposes of seniority in the department to which he was transferred only from 19.8.1978. Though he was pushed down in seniority in the department to which he was transferred w.e.f. 19.8.1978 while being placed at the bottom of the seniority as on that date, so far as his eligibility is concerned which is eight years' experience in the feeder category, it is obvious that the benefit of service rendered by the petitioner prior to 19.8.1978 from 1.11.1962 has to be taken into consideration. ^{Though} the petitioner loses his seniority in the department to which he was transferred, he did not lose the benefit of service rendered by him prior to 19.8.1978 for the purpose of eligibility for promotion in the department to which he was transferred. This position is well settled by the decision of the Full Bench of the Tribunal in K. A. Balasubramanian vs. Union of India & Ors. reported in Full Bench Judgments (CAT) (1986-1989) p. 209. It is enough to extract the headnote for our purpose :-

✓ *Applicant joined regular service at Bangalore in 1977, transferred on own request to Cochin in 1981 and accorded bottom seniority as per rules - Rules provided for 8 years regular service in grade as eligibility condition for promotion - Plea as previous service was not counted for seniority, it could not be counted for selection also- Held this interpretation will be against the rule and the previous service cannot be ignored.*

3. The clear effect of the pronouncement in K. A. Balasubramanian's case is that the petitioner must be regarded as eligible in the department to which he was transferred w.e.f. 19.8.1978 for promotion to the cadre of Chargeman Pt. II. That he was eligible by itself is not enough. His turn according to his seniority in the new department must reach before his suitability for promotion can be considered. For that purpose his seniority in the department to which he has come on transfer has to count only from 19.8.1978 treating him as the person being placed at the bottom of the seniority list on that date in the department to which he has come on transfer. If taking the seniority of the petitioner on that basis his turn has reached, he cannot be denied promotion on the ground that he was not eligible for promotion to the cadre of Chargeman Pt. II. We hold that he had the eligibility qualification as on 19.8.1978. The only question that survives for consideration after considering the cause shown by the petitioner to the show cause notice is as to whether the petitioner's turn in the department to which he came with loss of seniority has reached. On the date on which his turn is reached, his claim cannot be turned down on the ground that he did not have the eligibility. It is on that basis that the petitioner may like ^{to reply} to the show cause notice issued by the respondents within a period of one month from this date. The respondents shall take into consideration the cause shown by the petitioner taking into account

the law laid down by the Full Bench in K. A. Balasubramanian's case (supra) as explained by us in the preceding paragraph. Until such a decision is taken the petitioner shall not be reverted from the post of Chargeman Pt. II in which post he has continued on the strength of the interim orders made during the pendency of these proceedings.

4. With these directions, this application is disposed of. No costs.

S. R. Adige
(S. R. Adige)
Member (A)

/as/

V. S. Malimath
(V. S. Malimath)
Chairman