

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

O.A.NO.1316/88.

Date of decision: 14.10.1993.

Jagdish Lal

Petitioner.

Versus

Union of India
through the Secretary,
Ministry of Defence,
New Delhi & Ors.

Respondents.

CORAM:

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

For the petitioner.

Shri K.L. Bhatia,
Counsel.

For the respondents.

Shri P.P. Khurana,
Counsel.

JUDGEMENT (ORAL)
(By Hon'ble Mr. Justice V.S. Malimath, Chairman)

The petitioner, Shri Jagdish Lal, was appointed as Carpenter in 505 Army Base Workshop on 29.11.1962. In the year 1967, he was transferred to 510 Army Base Workshop. He was confirmed as Carpenter on 4.11.1967. He was thereafter transferred on his request by way of mutual transfer on 12.12.1980 to the Central Ordnance Depot, Delhi Cantonment. He passed the requisite trade test in the year 1981. The next promotional post available to the petitioner who was Tradesman Group 'B' was to the cadre of Chargemen Part-II, promotion to which cadre is governed by the rules framed under the proviso to Article 309 of the Constitution. The said rules prescribe that the said post is the selection post and

could be filled up by promotion of Tradesman Group 'B' with not less than eight years total service and who has passed the trade test. The petitioner having joined service on 29.11.1962 had to his credit eight years of service in the feeder cadre. He had also passed the prescribed trade test in the year 1981. On that basis, the petitioner possessed the requisite eligibility for consideration for promotion to the post of Chargeman Part-II. The petitioner's case was examined along with other similarly situate eligible persons by the DPC. His name was included in a panel of candidates selected for promotion and placed at Serial No.9 vide Annexure-6. The petitioner was promoted by order dated 18.5.84 as a Chargeman Part-II and posted at Agra to which post he joined on 11.6.1984. On 18.8.1984, the petitioner was reverted as Carpenter on the ground that he did not have the eligibility for promotion. Annexure A-2 is the order of reversion. The petitioner challenged the said order in O.A.987/87 On the ground that the petitioner's representation against his reversion was pending, the Tribunal disposed of the said application on 13.11.1987 with a direction to dispose of the said representation within a period of three months. The petitioner was informed by Annexure-1 dated 27.1.1988 that there is no good ground for revoking the order of reversion. It is in this background that the petitioner has approached this Tribunal for relief.

2. Though the petitioner was found eligible and was selected by a duly constituted DPC and promoted as

Chargeman Part-II, the authorities felt that they have committed a mistake in treating the petitioner as possessing the required eligibility. The view taken by the authorities is that the petitioner did not have the required period of eight years of service as Tradesman Group 'B'. For this purpose, they have stated that his service as Tradesman Group 'B' commenced from 12.12.1980, the date on which he stood transferred on his own request. The previous service rendered by the petitioner for nearly 18 years was regarded as having been erased consequent upon the petitioner seeking voluntary transfer. It is this premises of the respondents that is questioned in this case.

3. Shri Bhatia, learned counsel for the petitioner, invited our attention to a Full Bench Judgement of the Central Administrative Tribunal (1986-89), P209 between K.A. Balasubramanian Vs. Union of India ors. The position in that case was similar. The petitioner, who was Lower Division Clerk, having been appointed by Foc-in-C(South), Cochin, in the Navy was transferred under the surplus scheme to the Aviation Electronics Inspection Specification Documentation Authority (Directorate of Technical Development and Production) (Air Force), Bangalore. On his own request, he was transferred from Bangalore to Cochin and posted under the Directorate of Naval Physical and Oceanographic Laboratory (NPOL). In the unit to which he was transferred, the petitioner

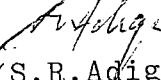
submitted a representation that he had put in twelve years of service by 1982 and that he may be considered for promotion as UDC. His request was rejected on the ground that he having reported to the Laboratory only on 11.5.1981 on transfer on compassionate grounds, he became eligible for regular promotion to the post of UDC on 10.5.1989 only. It is the said decision that was challenged before the Tribunal. The Tribunal examined the scope and ambit of Civil Personnel Routine Orders, CPRO 11/75 containing general principles for determining seniority of various categories of persons employed in central services. There is reference to the earlier CPRO 73/73. It is not disputed that the same order governs the present case as well. In the said decision, The Full Bench has held that the relevant order which denied the benefit of earlier service on transfer on compassionate ground has only a bearing on seniority in the unit to which the person is transferred and that the service rendered in the equivalent post held by him before his transfer in the previous unit would count for the purpose of determining the eligibility for promotion in the unit to which he is transferred. The position is identical in this case inasmuch as the petitioner was transferred on his own request on 12.12.1980. Hence, the service rendered by the petitioner from the year 1967 in the previous unit in the cadre of Trademan Group 'B' has to be taken into consideration for determining the eligibility for promotion to the cadre of Chargemen

Part-II in the unit to which he is transferred. We have, therefore, no hesitation in holding that the petitioner has the prescribed eligibility. In that view of the matter, it has to be held that the reversion of the petitioner from the post of Chargeman Part-II by the impugned order, Annexure A-2 dated 18.8.1984 cannot be sustained. It is, however, maintained by Shri P.P. Khurana, learned counsel for the respondents, that the rule prescribes eight years of total service in the Army Ordnance Corps where the petitioner is now functioning and that, therefore, the service rendered by the petitioner in the Army Base Workshops earlier from the year 1967 cannot count for seniority. It is not possible to accede to this contention. If the petitioner was transferred in public interest from the Army Base Workshop as Carpenter, the service rendered by him would have counted for earning eligibility for promotion in the unit to which he is transferred, namely, Army Ordnance Corps. Thus, it becomes clear that there is no difference in the quality of service rendered by the petitioner as Carpenter in the Army Base Workshop or in the present unit after he is transferred. Clause 11 of the statutory rule does not say that the total eight years of service is required to be earned in the unit of the Army Ordnance Corps. It is, therefore, not possible to accede to the contention of Shri P.P. Khurana, Counsel, in this behalf.

4. Though we are inclined to allow this O.A. following the judgement of the Full Bench, we were at one stage of

the hearing of the proceedings inclined to take the view that the law laid down in the decision of the Full Bench may require further consideration. But having regard to the special facts and circumstances of the case, we consider it appropriate to say that we may await an appropriate case.

5. For the reasons stated above, this application is allowed and the impugned order of reversion dated 18.8.1984 is hereby quashed and the respondents are directed to reinstate the petitioner as Chargeman Part-II within a period of three months from the date of receipt of a copy of the judgement with all consequential monetary benefits flowing from the same. The petitioner shall also be entitled to costs, Advocate's fee of Rs.250/-.


(S.R. Adige)
Member(A)

'SRD'
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(V.S. Malimath)
Chairman