

6.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. No. 1501/88

Date of Decision: 21.10.93

Shri B.K. Bharti

.... Petitioner

Vs

Union of India & another

.... Respondents

Coram:

Hon'ble Shri J.P.Sharma, Member (J)

Hon'ble Shri B.K.Singh, Member (A)

For the Petitioner :

Shri K.L. Bhatia, Counsel

For the Respondents:

Shri P.P. Khurana, Counsel D.

JUDGEMENT

Delivered by Shri J.P. Sharma, Member (A)

The applicant at the relevant time of filing his application on August 12, 1988 was employed as Security Supervisor in Delhi Milk Scheme. He had grievance regarding wrong determining his seniority with the consequential denial of benefit of the selection grade in the post of Security Supervisor. He also apprehend an order of termination of service after being declared as surplus in preference to his juniors.

The applicant had prayed for the grant of the following reliefs:

1. The respondents be directed to assign the correct position of the applicant in the seniority list of Security Supervisors according to applicant's date of initial appointment to the post i.e. 14.5.1970.

2. The applicant may be deemed to have been confirmed against the substantive post before 16.10.1976 when his junior Shri Jagdish Chander was confirmed.

3. The applicant may be given selection grade in the post of Security Supervisor with effect from the date his juniors were appointed as such, since 1977 when the Scheme was implemented.

A notice was issued to the respondents who contested the application and filed the reply. It is stated in the reply that the applicant was appointed as Security Supervisor on 5.10.1970 and was placed on probation for a period of two years. He was suspended with effect from 15.1.1972 as disciplinary proceedings were contemplated against him. However, before the proceedings could be concluded the applicant's services were terminated under sub rule (1) of Rule 5 of Central Civil Services (Temporary Services) Rules 1965 with effect from 14.12.1972 without conducting the enquiry after making a payment of one month's pay and allowances in lieu of the period of notice. The applicant filed a Civil Suit before Sub Judge, Delhi who quashed the order of termination of service on technical grounds by the Judgement dated 3.8.1982. A appeal against the said judgement filed by the respondents was dismissed by the Additional District Judge, Delhi by the Order dated 19.11.1983. In compliance with the aforesaid judgement of the Sub Judge, Delhi, the applicant was reinstated with effect from 30.7.1984 and the entire period of termination has been treated as duty under the provisions of FR 54-A and in compliance with Government of India decision No. (4)(2) below Rule FR 54, as his re-instatement in service is on account of technical grounds and not on merits. The applicant, therefore, is not entitled to the benefit of confirmation as by the time he was suspended with effect from 15.1.1972, he has not completed the period of probation. The claim of the petitioner against

the available permanent post after his reinstatement was considered by the Departmental Promotion Committee on 19.3.1988 and the recommendations of the DPC was kept under sealed cover as the disciplinary proceedings were pending against him. The applicant has been under the shadow of series of disciplinary cases from 1985 onwards. As regards the grant of the selection grade the scheme has since been abolished by the Government of India on the acceptance of the recommendations of the Fourth Pay Commission in this regard. The seniority of the applicant has been correctly fixed. The application is devoid of merit. -

The applicant has also filed the rejoinder to the reply filed by the applicant, reiterated the stand taken in the original application.

We have heard the learned counsel for the applicant, and ⁶ counsel for the respondents. Since this is an old case, we propose to dispose it of on merits taking into account the reply filed by the respondents alongwith the annexures.

It is not disputed that the applicant was suspended under Rule 10(i)(a) of the CCS(CC&A) Rules 1965 without proceeding further enquiry the applicant's services have been terminated under Rule 5(1) of CCS Rule 1965 on 14.12.1972. The Sub Judge, Delhi, gave a decree of declaration in favour of the applicant that the order of termination of service is illegal and he continues to be in service on the post of Security Supervisor since 14.12.1972. The appeal against the same was dismissed by the order of the Additional District Judge on November 21, 1983. After reinstatement by the Office Order No.


12

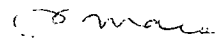
264/88, the applicant has been duly paid the salary for the period he was out of service. Thus the applicant has been fully paid in terms of the money but the applicant wants retention of ^{position} ~~h~~ the seniority list which was issued on 28.12.1984 (Annexure AII). In this seniority list the post of the applicant is at Serial No. 14 and has been shown as temporary and in the remarks column it is written that his seniority will be fixed after approval from the Ministry. The respondents in their counter has specifically stated that when the applicant was suspended in contemplation of the departmental enquiry, he had not completed the period of probation. He was reinstated in service with effect from 31.7.1984. Immediately thereafter the applicant has been under the shadow of series of disciplinary cases from 1985 onwards. The applicant in the rejoinder had not denied this fact. The case of the applicant was also considered by DPC for confirmation on 19.3.1988 and because of the disciplinary proceeding pending against the applicant, the recommendations have been kept in the sealed cover and will be opened after the disciplinary cases against the applicant are decided. Thus, the applicant cannot have any grievance on their account. Unless the applicant is confirmed in his appointment ~~he~~ ^{he} continues to be temporary employee, he cannot get the permanent berth in the seniority list though confirmation is not one of the criterion for being placed in the seniority list but when the rules provides for confirmation then only after confirmation the applicant can earn a place for him on the basis also of temporary or officiating service which has ^{been} ~~to~~ put in without break for a berth in the seniority list. Till the applicant is confirmed in his appointment, his position in the seniority list cannot be asserted, as though who are found fit by

the DPC and gets on lien on the ^{post} ~~position~~ would have a definite place in the seniority list while the position of the applicant shall be fluctuated ^{ing} till he is found fit for confirmation by the DPC. In fact, in case where the ACRs of the employees is not available, or the employee could not discharge any duties on the post by reason of suspension or removal from service and was subsequently reinstated from a back date, in such cases the available ACR or the ACRs of subsequent years after reinstatement would be seen to confer the benefit of that service also which has been deemed to be a continuous service without performing any duties on the post. Since the applicant was reinstated in July 1984, the matter was considered by DPC and has been facing departmental enquiry since 1985 so it cannot be said that the respondents have deliberately did not consider the confirmation of the applicant in his appointment.

As regards the selection grade the applicant cannot claim the same after the recommendations of the Fourth Pay Commission whereby the selection grades were disallowed. Regarding the selection from 1977 that too cannot be considered unless the same is recommended on the basis of his seniority which cannot be decided till the applicant is fully exonerated in the departmental proceedings.

In view of the above facts and circumstances, the applicant has, therefore, no case and the application is dismissed as devoid of merits.


(B.K. Singh)
Member(A)


(J.P. Sharma)
Member (J)

Mittal