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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH: DELHI

O.A.NO. 1757 OF 1988.

DATE OF DECISION: 12-9-1991.

B.D.Sharma.

.. Applicant.

Vs.

Union of India and others.

.. Respondents.

Shri K.L.Bandula, Counsel for the applicant.

Shri K.C.Mittal, Counsel for the respondents.

CORAM:

Hon'ble Mr.G.Sreedharan Nair, .. Vice-Chairman.

Hon'ble Mr.S.Gurusankaran, .. Member(A)

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J U D G M E N T

Hon'ble Mr.S.Gurusankaran, Member(A):

Briefly stated, the case of the applicant is that he joined 5, Bihar Regiment as a Painter on 12-12-1963 at Mathura and was transferred to 56, A.S.P, Air Force, Faridabad on 10-9-1973 on compassionate ground. One Shri Wilson John, in the trade of FMT(A), who joined as F.M.T.(A), No.1 BRDAF Station Kanpur on 21-1-1963 was also transferred to 56, A.S.P Airforce, Faridabad on 31-12-1975 against existing regular vacancy in that trade in the public interest. The applicant has stated that it was understood that Shri John's transfer was made under the surplus/deficiencies scheme. Based on the recommendations of the Anomalies Committee, the Highly Skilled Grade-II ('HSG-II' for short) in Rs.330-480 and HSG-I in Rs.380-560 were introduced under Government of India orders dated 15-10-1984 for common category jobs in which the trades of Painter and FMT(A) are included. The percentages introduced for HSG-I, HSG-II and skilled grades are 15%, 20% and 65% respectively. The applicant has submitted that as per AIR Head Quarters orders dated 29-4-1986, regarding seniority in Group 'C' and 'D' civilians, the date of

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joining the new unit will be the date for seniority, since the seniority is unit-wise. The orders further lay down that in the case of transfer on administrative grounds, orders should clearly state about the benefit of seniority with prior sanction of Air Headquarters. The applicant has contended that Shri John's transfer orders did not contain such a certificate. Since the applicant joined the present unit on 10-9-1973 and Shri John on 31-12-1975, he has claimed that he is senior to Shri John as per Rules. The applicant and Shri John passed the trade test together on 20-8-1985. Vide order dated 11-10-1987 (Annexure-VIII), the applicant was upgraded to the scale of Rs.330-480 from 15-10-1984 and Shri John to the scale of Rs.380-560 from 15-10-1985. The applicant has alleged that ^{though} ~~since~~ he is senior to Shri John, he has been denied promotion to HSG-I. He has also alleged that even otherwise, he should have been promoted to HSG-I after one year service in HSG-II from 15-10-1984. He has, therefore, filed this application praying for promotion to HSG-I from 15-10-1985 with all consequential benefits of seniority, pay fixation, arrears of pay etc.

2. The respondents have stated in their reply that the applicant is not entitled to the reliefs asked for by him as the promotions of Shri John and the applicant have been ^{made} strictly as per Rules. They have pointed out that while the applicant joined on 12-12-1963 in grade Rs.85-128, Shri John joined on 21-1-1963 in grade Rs.110-155 and as such Shri John was always in a higher grade than the applicant. They have submitted that since the applicant and Shri John belonged to different trades, normally there is no question of comparing their inter-se seniority. Further, since Shri John was transferred in public interest, he did not loose seniority. The respondents have pointed out ^{that} the different trades like FMT(A), Painter etc. have been clubbed together only to have the benefit of 3 grades structure viable. It has been sub-

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mitted that since Shri John was already working in a post equivalent to HSG-II grade i.e., Rs.330-480, he was promoted to HSG-I from 15-10-1985 and the applicant who was in skilled grade of Rs.260-400 was promoted to HSG-II from 15-10-1984. They have also denied that for promotion from HSG-II to HSG-I, the minimum service has been reduced from 3 years to one year.

3. We have heard both the parties and perused the records. The ~~only~~ issues involved in this case are: (i) Whether Shri John was transferred in public interest and did not lose seniority in his FMT(A) trade? (ii) Whether Shri John was working from 1981 in the scale of Rs.330-480 and the applicant in the scale of Rs.260-400? and (iii) When the trades are combined for making the 3 structure grades and per centages viable whether the method followed by the respondents in giving the promotions is correct?

4. Regarding the first point, the applicant himself has admitted that Shri John was transferred in public interest and this is clear from Annexure-IV produced by the applicant himself. In fact this letter has been issued on 31-12-1975 and while this letter may not clearly indicate the position regarding Shri John's seniority, as laid down in a much later order dated 29-4-1986, it is well understood that a person transferred in public interest does not lose seniority. Even though the applicant has stated that that he understood that Shri John was transferred under the surplus/deficiencies scheme, he has not produced any evidence to support his surmise. Further he has not prayed for the relief that the orders promoting Shri John to HSG-I from 15-10-1985 should be set aside and not made Shri John as a ^{party} necessary to this case. In any case, it is beyond the jurisdiction of this Tribunal to go into the validity of an order in 1975 in view of the question of limitation.

5. Regarding the second question, we find that the

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respondents have stated that Shri John joined earlier to the applicant and that too in a higher grade. Further, vide Annexure-I, the applicant has been advised that the FMI(A) trade, in which Shri John was working, was GP-I trade from its inception and it was in the pay scale of Rs. 330-480 from 15-10-1981 equivalent to HSG-II, while the applicant was only working as Painter in the scale of Rs. 260-400. Even though this has been denied by the applicant, he has not produced any proof to show any facts to the contrary, ^{hence this issue has to be found against} and the applicant ~~has to fail~~.

6. Once it is accepted that Shri John was in a higher grade than the applicant, we do not find any irregularity in giving Shri John HSG-I grade, since in cases where such trades are combined, the inter-se seniority will be determined by the grades in which the persons are working, ^{and} ~~and~~ the length of service in the grade, when they are working in the same grade. We ^{also} ~~also~~ cannot accept the contention of the applicant that he should have been promoted to HSG-I from 15-10-85, as the minimum service condition has been reduced from 3 years to 1 year. From the clarification issued vide para (d) of the letter dated 3-7-1986 (Annexure-I), it is clear that the relaxation of 3 years to 1 year was done only as an one time exemption for promotion from skilled to HSG-II. Further, since ^{derived} ~~desired~~ only one post of HSG-I was ~~desired~~ on the basis of the percentages and it was occupied by Shri John, the applicant has not established as to against which vacancy of HSG-I he could have been promoted.

7. In the result, we find no merit in the application and accordingly, the application is dismissed.

Mandana
12/9/1991
MEMBER (A)

[Signature]
12-9-1991
VICE-CHAIRMAN.