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Central Administrative Tribunal
Principal Bench: New Delhi

OA No.1975/88

New Delhi this the 4th Day of January, 1994.

Shri N.V. Krishnan, Vice-Chairman (A)
Shri B.S. Hegde, Member (J)

Tarsem Singh,
H.No.112, Arjan Nagar,
New Delhi-110029.

...Applicant

(By Advocate Shri O.P. Sood)

Versus

1. Union of India through
the Secretary, Ministry of Defence,
New Delhi-110 011.

2. Director General EME
EME Directorate, Army
Headquarters, DHQ
PO New Delhi-110 011.

3. Commandant,
505 Army Base Workshop,
Delhi Cantt-110010.

...Respondents

(By Advocate Shri K.C. Mittal).

ORDER (Oral)

(Hon'ble Mr. N.V. Krishnan)

The applicant is at present a Turner Grade-II in the establishment of the third respondent - Commandant, 505 Army Base Workshop, Delhi Cantt. He has two grievances viz. (a) that his seniority as Turner has been wrongly fixed w.e.f. 18.10.73 when he was posted under the third respondent and (b) that he ought to have been considered for promotion to Turner Grade-II from 15.10.82 whereas he was promoted to that grade recently.

2. The facts giving rise to these grievances are as follows.

2.1 The applicant was recruited as a Turner by the third respondent's establishment. However,

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he was initially posted to the 506 Army Base Workshop, Jabalpur. At his request, he was transferred to 509 Army Base Workshop, Agra on 11.2.1964 where he was confirmed as a Turner on 1.4.1966.

2.2 Subsequently, the applicant, on his request was transferred to the third respondent's establishment where he joined on 18.10.1973.

2.3 It appears that there was a restructuring of the organisation in 1984. For further promotional avenues for Turner, the establishment was classified in three grades viz. lowest Turner Grade-III held by the applicant, Highly Skilled Grade-II and the Highly Skilled Grade-I. It is in this background that the seniority acquired importance.

2.4 The applicant made a representation on 27.6.88 (Annexure A-2). He mentioned therein that the seniority in the cadre of Turner was 33 in the third respondent's establishment and yet has been bypassed and his juniors have been promoted. He, therefore, requested that he should be considered for promotion for Grade-II when his juniors were promoted.

2.5 He was informed through his office by the impugned Annexure A-3 ⁱⁿter office note dated 3.8.1988 that in accordance with CPRO 73/73 the applicant's seniority has been reckoned from 18.10.1973, i.e., the date of reporting in the third respondent's workshop. He was also informed that his seniority amongst Turners stands at serial No.26 and that he would be considered for promotion as and when he falls in the zone of consideration.

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3. Aggrieved by this note this application has been filed for a direction to the respondents to give seniority to the applicant with effect from the date of appointment as Turner, i.e., 23.5.62 and to consider the applicant for promotion as Turner Grade-II from 15.10.84 with all consequential benefits.

4. The respondents have filed a reply stating that the applicant is governed by the CPRO 73/73 and 11/75 in regard to seniority as these applied to individuals transferred on compassionate grounds on or after 1.7.73. The applicant was transferred to the 505 Army Base Workshop, Delhi from 18.10.73. That apart, it is also contended that the Army Base Workshop is an industrial unit and hence seniority is fixed on unitwise basis. It is also pointed out that before seeking transfer to the third respondent's establishment the applicant has stated that he fully understood that he would lose seniority in the event of his posting to Delhi on compassionate grounds, and, as a matter of fact, he had also given a declaration in this behalf.

5. The matter came up today for final hearing. Sh. O.P. Sood, the learned counsel for the applicant submitted that the applicant was not governed by CPRO 73/73. This is exhibited as Annexure A-4. He points out that it will be clear from ^aperusal of this exhibit that this CPRO 73/73 was extended to class III and class IV employer only from 1.7.73. The applicant was a permanent Turner before this date and was governed by the AI 241/73 (Army Instruction) according to which seniority will count from the date of appointment. He, therefore,

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submitted that even if seniority is not given to him from 23.5.62, as prayed for in the O.A., i.e. the date on which he first joined in 506 Army Base Workshop, Jabalpur, his seniority will count from 1.4.66, i.e., the date on which he was confirmed on the post of Turner while serving in 509 Army Base Workshop, Agra. He further contends that the CPRO 73/73 was published long after he was transferred to the third respondent's establishment and, therefore, even if that order is made applicable to him, it should be made applicable only from the date of publication. A plea to this effect has been raised in para 6.16 of the O.A.

6. The learned counsel for the respondents repelled these contentions.

7. We have carefully considered the rival contentions. It is true that the general rule of seniority is that it should count from the date of appointment in the cadre or grade, unless there is any rule or instruction to the contrary. In the present case CPRO 73/73 which was issued on 1.1.65 and made applicable to only class I and class II posts specifically provided that in regard to the compassionate appointments the seniority will count only from the date of joining in the new unit on transfer on such a ground. This provision was extended class III and class IV by the Ministry of Defence memo dated 29.6.73 (Annexure A-4) w.e.f 1.7.73. It is, therefore, applicable to the applicant's case also, as his transfer on compassionate grounds was made w.e.f. 18.10.73.

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8. We do not find any force in the contention of the applicant that as this memo was published much later it will not take effect until such publication. When the memorandum has been issued by the Government it takes effect from the date of issue or on the date from which it is made effective by that memorandum, irrespective of whenever it was brought to the notice of any individual or office. In that view of the matter, it is clear that the Annexure A-4 became effective from 1.7.73 and the new principles of seniority mentioned therein would apply to the case of all transfers on compassionate grounds made after that date. Therefore, the applicant's case is squarely covered by the Annexure A-4 memorandum. That apart, the respondents have averred and the applicant has not denied that he had already given a declaration that he understood that he would lose seniority on transfer on compassionate grounds and that he had also given a declaration that he would abide by the rules/instructions relating to the seniority and other matters.


9. For these reasons also the applicant has no case to getting seniority earlier than 18.10.73.

10. The learned counsel for the applicant then submitted that a direction should be given regarding his promotion to Turner Grade-II from 15.10.84, as prayed for. That would have been appropriate if the applicant's claim for a higher seniority has been allowed. As we are finding against him on the seniority issue, there is no case for issuing a direction, as prayed for.

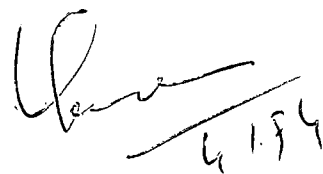
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10. He, however, submitted that irrespective of the seniority matter he is entitled to be considered for promotion from 15.10.84. We reject this plea on the simple ground that if that was the case this application which has been filed on 12.10.88 is hopelessly barred by limitation.

11. In the circumstances, we find no merit in the O.A. It is dismissed. No costs.


(B.S. HEGDE)
MEMBER(J)

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(N.V. KRISHNAN)
VICE-CHAIRMAN