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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: DELHI.

O.A.No.440/88

Date of decision 7.8.1990

Shri Ram Raghubir Sharma

...Applicant

Versus

Union of India & others

...Respondents

CORAM:

Hon'ble Mr. B.C. Mathur, Vice-Chairman(A)

Hon'ble Mr. S.R. Sagar, Member(J)

For the applicant...

Shri R.M. Sinha, Counsel

For the respondents...

Shri M.L. Verma, Counsel.

JUDGEMENT BY: Hon'ble Mr. S.R. Sagar, Member(J).

The applicant, Shri Ram Raghubir Sharma, in this application under Section 19 of the Administrative Tribunals Act, 1985, has prayed for his seniority w.e.f.23.11.1957 in accordance with the judgement of the new Delhi Bench of the Central Administrative Tribunal dated 28.8.1987 delivered by the Bench consisting of Hon'ble Shri S.P. Mukerji, Administrative Member and Hon'ble Shri M.B. Mujumdar, Judicial Member in /

2. Briefly stated, the applicant's case is that he is working as U.D.C. since 25.2.1970. He has alleged that on 10.11.1955, he was appointed as Fieldman(Patwari) and was promoted to the post of Valuation Supervisor(Kanungo) w.e.f. 23.12.1957 which is equallant to the post of L.D.C. in the time scale. Thereafter, the petitioner was appointed as L.D.C. w.e.f. 22.7.1959 in the same office of the Regional Settlement Commissioner, U.P., Lucknow. As a result of reduction in the establishment, the applicant was sent to his lower post of Valuation Supervisor(Kanungo) on 1.3.1960 in the said office. He was retrenched in the said office of Regional Settlement Commissioner, U.P., Lucknow on 29.4.1961 and was served with a notice of retrenchment under rule 5 of the Central Civil Services (Temporary Services) Rules, 1949 stating that the

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services of the applicant were terminated with effect from the date of expiry of one calendar month. The said order further stated that the applicant was, however, granted earned leave (terminal) for 120 days so as to run concurrently with the notice period. Thereafter, the Ministry of Home Affairs decided for relaxation of rules for absorption of surplus employees of the Ministry of Rehabilitation. Because of this relaxation, the applicant was absorbed in an alternative temporary vacancy in the post of U.D.C. for a period of 4 months and consequently the applicant joined as U.D.C. on 1.8.1961. On an application, the Settlement Commissioner (Govt. Built Property), New Delhi, Ministry of Rehabilitation, Govt. of India, appointed the applicant to the post of U.D.C. vide letter dated 13.10.1961 and on being relieved by the Regional Settlement Commissioner, U.P., Lucknow vide his letter dated 20.10.1961, the applicant joined as U.D.C. on 21.10.1961 in the office of the Settlement Commissioner (Govt. Built Property), New Delhi. Subsequently, the applicant was promoted ^{as} Junior Field Officer vide the letter dated 14.12.1961 and thereafter promoted to the post of Field Officer w.e.f. 23.5.1962. In accordance with the decision of the Government of India, the applicant along with other certain persons was transferred to the office of ~~the~~ Land & Development, Ministry of Works and Housing w.e.f. 23.11.1962 as Field Inspector for permanent absorption and was entitled for interse seniority amongst the grade post of Assistant, Assistant Managing Officer and Managing Officer-II as the grade post of Assistant in Land Development office was treated as parallel post of A.M.O. and Managing Officer-II so the various UDCs became juniors to the applicant. On 1.12.1962, a notice under rule 5 C.C.S. (Temporary Services) Rules, 1949 was served upon the applicant by the Land and Development office. That notice made a reference of some D.O. letters also. Before expiry of the period of the said notice, applicant was served further with a notice dated 4.12.1962 asking for the terminal leave if he so desired, and ultimately vide the order dated

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18.12.1962, applicant was reverted to the post of L.D.C. on 11.1.1963. Being aggrieved, the applicant filed a writ petition No.915/B/1963 before the Punjab High Court (Circuit Bench) at Delhi challenging the termination and reduction. The said writ petition was ultimately dismissed on 30.8.1967. The applicant has further stated that there is a dispute regarding interse seniority of the staff of Land and Development office since 1962. In the seniority list dated 23.4.1971, the seniority of the applicant as LDC was shown on 22.7.1959 instead of 23.12.1957 when the petitioner was appointed as Valuation Officer(Kanungo). This was identical to the scale of L.D.C. In the next seniority list issued on 29.11.1971, the seniority of the applicant as L.D.C. was shown as 1.8.1961. On the post of UDCs, applicant was shown at serial No.72 in the seniority list dated 29.5.1972 whereas he was appointed as UDC on 25.2.1970 and many juniors were shown above the applicant. Against arbitrary assignment of seniority, the applicant filed a writ petition before the Delhi High Court vide C.O. No.436 of 1983. The Delhi High Court transferred the Writ to the Principal Bench of the Central Administrative Tribunal. The said writ was dismissed by the Tribunal. Being aggrieved of the judgment, the applicant filed Special Leave Petition to the Supreme Court which is still pending. The another Bench as mentioned earlier decided the question of seniority of LDCs and UDCs vide its judgment dated 28.8.1987. In compliance of the said judgment of the Central Administrative Tribunal, the seniority of the applicant has not been placed at proper place and he has been shown as LDC from 1.8.1961 instead of 23.12.1957. Hence, this application for quashing the aforesaid seniority list and assigning him seniority w.e.f.23.12.1957.

3. The application has been resisted by the respondents. Besides the legal pleas that the application is barred under

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rule 20 and 21 of the Administrative Tribunals Act, 1985, and by the principles of resjudicata the respondents have contended that the post of Valuation Officer(Kanungo) and the L.D.C. were not identical scales. The applicant was reverted to the post of Kanungo w.e.f.1.3.1960 and that his services were terminated on 1.5.1961 under rule 5 of the Central Rules Services (Temporary Services) Rules, 1949. Thereafter, the applicant was offered a temporary post as UDC on 27.7.1961 for a period of four months, then his services would have been automatically terminated after the expiry of the aforesaid period. The applicant was appointed as Field Inspector from 23.5.1962. His appointment as UDC and subsequent promotion being irregular, he was under notice for retrenchment. Hence, he was given termination notice. He was, however, appointed as L.D.C. on humanitarian grounds w.e.f.11.1.1963 and, therefore, the question of his interse seniority does not arise. The applicant moved the Hon'ble Delhi High Court in C.W. No.915/D/63 against termination order under rule 5 but his writ petition was dismissed on 30.8.1967. Similarly, his another writ was heard and dismissed by the Tribunal by its order dated 20.4.1987. Subsequently, however, the Tribunal vide its judgment dated 28.8.1987 in the petitions of Swadesh Dhir and Net Ram Gupta etc. restored the Government decision dated 9.3.1971 according to which the permanent staff will rank senior to the temporary staff in their respective grades and on the basis of the said judgment, the seniority list was prepared and circulated on 25.2.1988 placing the petitioner at appropriate place. The application has no merit and is liable to be dismissed.

4. The applicant has filed the rejoinder to the counter affidavit of the respondents and has thereby reiterated allegations already made in his Original Application.

5. We have heard the arguments of the Counsel for both the parties. It appears from the relief claimed by the

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applicant that he claims seniority in the post of L.D. C. w.e.f. 23.12.1957. Annexure-I to the application is a circular dated 25.2.1988 wherein the applicant is shown at Sr. No. 27 and his date of appointment as L.D.C. is mentioned as 1.8.1961. According to the applicant, it should have been 23.12.1957 instead of 1.8.1961. The applicant has, therefore, prayed that this list dated 25.2.1988 be set aside. It has, therefore, to be seen as to whether the applicant is entitled to the seniority w.e.f. 23.12.1957 and whether, the circular dated 25.2.1988 regarding seniority list is in contravention of the judgment of the Tribunal dated 28.8.1987 and is required to be set aside.

6. During the course of his arguments, the Learned Counsel for the applicant admitted that against the termination order the applicant filed a writ petition in the Delhi High Court which was dismissed. He, however, submitted that the order of termination was in respect of post of UDC. He has further submitted that his services were terminated from 1.12.1962. In the seniority list, Annexure-I, the appointment as LDC is shown as on 1.8.1961. According to him, the respondents considered the applicant in continuous employment as LDC since 1.8.1961 and that being so his termination order dated 1.12.1962 had not adversely affected appointment of the applicant and continuation of service on the post of LDC. For the reasons discussed hereafter, we are unable to agree with the Learned Counsel for the applicant on this point.

7. The applicant has filed a photo copy of the judgment of the Tribunal in T-875/85 dated 20.4.1987. This is pages 21 to 26 of the application. A perusal of this judgment will show that the applicant himself filed this writ petition in the Delhi High Court which came up for hearing before the Tribunal under section 29(1) of the Administrative Tribunals Act, 1985 and that the same was decided on 20.4.1987. It was observed that the writ petition No.915/D/63 was dismissed and the termination order was upheld by the Delhi High Court and, therefore, the applicant could not be taken to ...6/-



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be continue in service from the date prior to 1.12.1962 - the date of termination order. The relevant portion of the judgment is extracted below:-


" That Writ Petition was dismissed and the termination order was upheld. The petitioner did not take the matter in appeal and, therefore, that judgment of the High Court became final and binding on him and the Respondents. The High Court held that the petitioner was appointed as a temporary Field Inspector and no exception could be taken to the termination of the services on 1.12.1962. Once that order has become final it is not open for the Tribunal to sit in judgement over that order. Nor can the order ~~was~~ of termination be questioned now before the Tribunal Collaterally or by way of another petition. Even the High Court which had entertained this Writ petition, which is now before us on transfer, could not have ignored its earlier order which had become final; that being so much less can this Tribunal do so. So long as the order of termination dated 1.12.62 stands, it is not open to the petitioner to claim that he continued as a Field Inspector from the date of his initial promotion in 1962 until today. That promotion came to an end on 31.10.62 when he was reappointed as Field Inspector. The claim of the petitioner that he should be promoted on the basis of his initial promotion to the post of Field Inspector and that the further promotion should be awarded to him on that basis with consequential benefits can not, therefore, be upheld. "

8. In the next following paragraph of the said judgment, position regarding continuity in service in the lower rank of L.D.C. ~~was~~ ^{was} also ~~to be~~ clarified. The relevant portion of the judgment is extracted below:--

" It was next argued that in view of D.O. letter No.42/137/62-SCS(AV) dated 29/30th November, 1962 addressed by the Jt. Secretary, Ministry of Works and Housing, the petitioner should be deemed to continue in service in the lower rank of L.D.C. without any break. The order of the High Court did not take this D.O. Letter into consideration, and, therefore, the claim of the petitioner based on this D.O. letter may be considered afresh by the Tribunal. We are unable to agree with this contention. "

9. The above will show that the Delhi High Court as well as the Tribunal in the Writ Petitions filed by the applicant, ~~it~~ ^{have} already ~~been~~ decided that so long as the order of termination ~~stands~~ ^{stands} any claim of seniority ^{is} on the footing that he was appointed as Field Inspector on 23.5.1962 cannot ^{be} upheld. That being so, the applicant cannot be held to have been in continuous service from the date earlier to the date of his termination.

10. It has been argued that the respondents vide letter dated 25.2.1988(Annexure-A) and page 17 of the application) have them-

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selves shown 1.8.1961 as date of appointment as L.D.C. without giving any effect to the termination order. No doubt, termination of the applicant's services took place on 1.12.1962 and the applicant cannot be said to be continuing in the service from earlier date but the respondents by showing the date of appointment of the applicant as 1.8.1964, have treated the applicant in service continuously w.e.f. 1.8.1961. This does not, however, give ^{any} ~~the~~ right to the applicant to say that there was no termination of his service and that he continued in service w.e.f. the date (10.11.1955) of his appointment as Fieldman (Patwari) or 23.12.1957 on which date he was promoted, to the post of Valuation Officer (Kanungo).

11. The Learned Counsel ^{has} laid much emphasis on the judgment dated 28.8.1987 delivered by Central Administrative Tribunal in the cases of Shri Swadesh Dhir & Others aforesaid. We have gone through the judgement in the said cases. It appears that two cross writ petitions ^{were} ~~were~~ filed before Delhi High Court under Article 226 of the Constitution of India on 8.4.1982 by Swadesh Dhir and Others and on 2.12.1982 by Net Ram Gupta & etc. The petitioners in the first case filed by Swadesh Dhir were UDCs and were transferred from the office of the Chief Settlement Commissioner to the Land and Development Office between 1.1.1963 and 1.4.1963. The petitioners Shri Net Ram Gupta and etc. in the ^{and} ~~same~~ case, ~~they~~ were original employees of the Land and Development office. The common question to be decided was whether the employees in the first case should count their previous service under the Chief Settlement Commissioner for the purpose of seniority for the officials of similar grade in the Land and Development office. It was found that the petitioners in the first case were not surplus staff and they were transferred from the office of Chief Settlement Commissioner to the Land and Development office for absorption in public interest. It was further found that the petitioners in the first case would have still continued in the office of the Chief Settlement Commissioner if they had not been transferred to Land & Development office.

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As the petitioners in the first case had continuity of service and they were not retrenched in the office of the Chief Settlement Commissioner, on their transfer from the office of the Chief Settlement Commissioner, to the Land and Development office in public interest they were allowed to count their past service for the purpose of seniority in the Land and Development office. The applicant in the instant case has himself shown in para 7 of his application that he was retrenched in the office of ^{Regional} Divisional Settlement Commissioner, U.P., Lucknow on 30.4.1961. Besides, ^{already} as has ^{herebefore} been discussed ^{decided} hereto as well as in the earlier judgment of the Tribunal, ⁱⁿ the case of the applicant, ~~himself~~, there was no continuity of service in view of the termination order dated 1.12.1962. The position of the applicant is, therefore, quite different and his case is not similar to the case of Swadesh Dhir aforesaid. Applicant is not, therefore, entitled to count his previous service for his seniority.

12. In view of the above, we are unable to agree with the contention of the applicant that ^{he is entitled to} his seniority w.e.f. 23.12.1957 on which date he was promoted to the post of Valuation & Supervisor (Kanungo) which is ^{said to be} equivalent to the post of L.D.C. in the time scale. Consequently, application deserves to be dismissed and is hereby dismissed with no order as to costs.

S.R. Sagar
 (S.R. SAGAR) 7.8.90
 MEMBER (J)

B.C. Mathur
 (B.C. MATHUR) 7.8.90
 VICE CHAIRMAN (A)