

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 578/88

199

~~Ex No.~~DATE OF DECISION 6.1.1992.Shri M.N. Gupta

Petitioner

Shri B.K. Aggarwal,

Advocate for the Petitioner(s)

Versus

Union of India & ors.

Respondent

None


Advocate for the Respondent(s)

CORAM

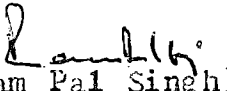
The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? ☒
2. To be referred to the Reporter or not ? yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? ☒
4. Whether it needs to be circulated to other Benches of the Tribunal ? ☒


(I.K. Rasgotra)
Member (A)

6.1.1992.


(Ram Pal Singh)
Vice-Chairman (J)

8

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.578 of 1988

Dated of decision: 6.1.1992.

Shri M.N.Gupta

....

Applicant

Versus

Union of India & Others

....

Respondents

CORAM:

THE HON'BLE MR. JUSTICE RAM PAL SINGH, VICE CHAIRMAN
THE HON'BLE MR. I.K. RASGOTRA, ADMINISTRATIVE MEMBER

Shri B.K.Aggarwal

...Counsel for the applicant

None

...For the respondents

JUDGEMENT

(DELIVERED BY HON'BLE MR.I.K.RASGOTRA,ADMINISTRATIVE MEMBER)

Shri M.N.Gupta has filed this application under Section 19 of the Administrative Tribunals Act, 1985 challenging the order no.A-23020/1/84-Admn. dated 1-5-85 issued by Ministry of Communication fixing the seniority of the applicant in the cadre of Assistants.

2. The relevant facts of the case are that the applicant was recruited as Lower Division Clerk (L.D.C.) in the Ministry of Communication, Department of Posts and Telegraphs on 3.2.1953. He was promoted as Upper Division Clerk (U.D.C.) w.e.f. 15-4-65 and further promoted to the post of Assistant w.e.f.15-11-72 on ad hoc basis vide order no.A-32015/1/72-Admn. dated 6-12-1972. The ad hoc appointment continued till the applicant was allowed to officiate as Assistant on regular basis from 16-6-1973 vide Order no.A-32015/1/72-Admn. dated 17-8-1973. He was confirmed as Assistant w.e.f.28-2-1981 vide Order dated 29-9-83.

Respondent no.2, Shri Janak M. Dadwani, was working in the Ministry of Finance as Assistant when

21

he was transferred and appointed in the Ministry of Communication w.e.f.1-4-1976 vide Order of the Ministry of Communication dated 22-4-1976. He was declared permanent on the strength of Ministry of Finance w.e.f.1-1-1977. The applicant herein contends that respondent no.2 could not have been declared permanent by the Ministry of Finance on its strength as he was not working on the strength and the cadre of the Ministry of Finance. He, therefore, submits that the confirmation of the respondent no.2 in the Ministry of Finance was wrong and illegal when he was working in the Ministry of Communication. Subsequent to the confirmation of respondent no.2 in the Ministry of Finance w.e.f.1-1-1977, respondent no.1, i.e., the Ministry of Communication issued a seniority list of Assistants as on 1-4-1985 in which respondent no.2, Shri Janak M. Dadwani was placed at serial no.79 whereas the applicant figured at serial no.178. The particulars of service of both the respondent no.2 and applicant herein are as under :-

Sl. No.	Name, date of birth & Educational Qualification	Date of continuous appointment in the grade	Date of confirmation in the grade	Remarks
1	2	3	4	5
79	Janak M.Dadwani, 27-5-1935, Matric	18-5-1973	1-1-1977	Respondent No.2
138	M.N.Gupta, 20-6-1932, Matric	16-3-73	28-2-1981	Applicant

The applicant represented against the respondent no.2 having been shown senior to him on 27-7-1989

2 contd...3/-

followed by another representation dated 4-9-86. The said representation was, however, rejected by the Ministry of Telecommunication vide its communication no.P.F.-4014/Admn. dated 10-9-1987 advising the applicant that his seniority "has been correctly fixed in accordance with the provisions of CCS (Seniority of Transferred Officers) Regulations, 1963". The applicants contends that the fixation of seniority of the respondent no.2 is in contravention of the law laid down by the various High Courts and the Supreme Court of India and the Tribunal according to which the seniority of an official has to be determined in a particular grade from the date of initial appointment in that grade without any break including ad hoc appointment. The applicant further contends that order fixing seniority on the basis of date of confirmation instead of on the basis of length of service in the grade has prejudiced his interest in seeking promotion to the next higher grade.

3. The short issue that emerges for our adjudication in this case is if the respective seniority of the applicant and respondent no.2 should be regulated in accordance with the length of service in the grade including ad hoc service or on the basis of date of confirmation in the grade of Assistant. The applicant has prayed for the following reliefs :-

"(a) The seniority of the applicant on the basis of initial appointment to the grade of Assistant w.e.f. 15-11-1972 be assigned at serial no.79 of the seniority list by quashing the seniority list at annexure A-V thereby placing the applicant above respondent

no.2 with all consequential benefits.

(b) Respondent no.2 be assigned seniority from the date of his initial appointment, i.e., 18-5-1973 below serial no.144 of the seniority list at annexure A-V (page 14 of the paper-book).

(c) The applicant be ordered to be promoted as Section Officer w.e.f.31-12-1979, the date from which the respondent no.2 was promoted on the basis of seniority as given in annexure A-V. "

4. The stand taken by the respondents in their counter affidavit is that in accordance with the scheme of Integrated Financial Advisor, members of the various grades of de-centralised cadres of Central Secretariat Service were initially transferred from the Ministry of Finance cadre to the cadres of other Ministries/Departments as a temporary measure on loan basis (Ministry of Finance, Department of Expenditure O.M.No.F.10(29)-E.Coord./73 dated 6-10-85, annexure R-I). The scheme envisaged disbandment of "Associate Financial Advisor" in the Ministry of Finance by delegating his functions to the Internal Financial Advisor attached to the Ministries/Departments concerned. The scheme, therefore, involved transfer of the staff to the various Departments/Administrative Ministries. A provision to the following effect was made in the said order :-

"Officers of services other than the Central Secretariat Service will be treated as on deputation to the administrative Ministry instead of to the Finance Ministry;

- Officers of the Central Secretariat

12

Service including Grade I and Selection grade will be treated as transferred to the administrative Ministry;

- Members of the decentralized cadres of various grades of CSS will be transferred on loan basis from their present cadre to the cadre of the administrative Ministry on a purely temporary basis. "

The said Office Memorandum also visualised certain changes in the organisational structure in the administrative Ministry and in the Department of Expenditure. It was, accordingly, stated in the said O.M. that " the details of the revised organisational structure in the administrative Ministry out of the posts and personnel to be transferred from Department of Expenditure to the administrative Ministry along with the work will be communicated to the respective Ministries separately. " The above said Office Memorandum was followed by another Office Memorandum no.10(6)-E(Coord)/76 dated 8th February, 1978 which conveyed that the possibility of forming a separate finance cadre for the staff transferred on loan basis from the finance cadre to the cadre of various administrative Ministries/Departments has been considered but it has not been found practicable. " Accordingly, it has been decided in consultation with the Department of Personnel and Administrative Reforms that the members of the decentralised cadres of various grades of Central Secretariat Service/Central Secretariat Clerical Service/Central Secretariat Stenographers Service, presently borne on the cadre of Ministry of Finance and working on temporary loan basis in

2 contd...6/-

the Integrated Finance Divisions of various Departments/ Ministries should be treated as having been transferred on a permanent basis to the cadres of respective Departments/Ministries w.e.f.1-2-1978. " In accordance with the above orders, Shri Janak M. Dadwani, respondent no.2, continued to be borne on the cadre of Ministry of Finance prior to 1-2-1978 and was correctly declared permanent as an Assistant by that Ministry w.e.f. 1-1-1977. The respondents further submit that Shri M.N.Gupta, the applicant herein, was appointed on ad hoc basis w.e.f.15-11-72 to 14-3-73, he was reverted as U.D.C. on 15-3-1973. He was again promoted as Assistant on ad hoc basis for a period of 3 months w.e.f.16-3-1973, and was regularised in the grade w.e.f.16-6-1973. His regular appointment to the grade, therefore, can be considered only from 16-6-1973 and not from 16-3-1973. It is further contended that according to CSS (Seniority of Transferred Officers) Regulations, 1963, a permanent promoted officer shall on transfer rank above the seniormost permanent promoted officer whose date of substantive appointment is later than that of transferred post. The seniority of Shri Janak M. Dadwani, respondent no.2 has, therefore, been correctly fixed above Shri Bhagwant Singh who was confirmed as an Assistant from a date later than that of Shri Dadwani. The seniority was assigned after consulting the Department of Personnel and the applicant, who was confirmed as an Assistant w.e.f.28-12-1981, has no ground for grievance as he cannot claim for reckoning his seniority among permanent Assistants, prior to the date of his confirmation. Even in temporary capacity,

the respondent No.2 counts the seniority w.e.f. 18.5.73 whereas Shri Gupta counts seniority w.e.f. 16.6.73 - the date of his regular appointment as Assistant.

5. The applicant has filed a rejoinder reiterating his case. Shri B.K.Aggarwal, learned counsel for the applicant drew our attention to the following judicial pronouncements in support of his case:-

- i) 1987(1) SLJ p.218 Mansukh Balmiki Vs. Union of India & others.
- ii) 1967 AIR SC 52, Mervyn Continhe & others Vs. Collectorate of Customs, Bombay & others.
- iii) 1987 AIR (1) CAT p.219, Shri Rajay Basi Vs. P.M.G. Orissa Circle & others.

6. We have considered the above judicial pronouncements and we find that they are either distinguishable or not relevant to the issues before us.

7. We have heard the learned counsel for the applicant and perused the record of the case carefully. Shri Jagjit Singh, learned counsel for the respondents, was not present in the Court although we sent for him if he were available in the premises. He was however, not available. We, therefore, had no alternative but to proceed with the case on the basis of the counter filed by the respondents. After carefully considering the matter, we are of the view that the respondent No.2 was initially transferred on loan basis in accordance with a policy decision of the Government. The policy decision was to dismantle the structure of Associate Finance in the overall interest of the efficiency of administration. Thus,

2

the officers of the decentralised cadres were initially transferred on a loan basis to the various Ministries where they were to be integrated with the Integrated Financial Adviser. The Government, in the meanwhile, were considering whether such transferred personnel could be constituted to form a separate cadre. Since this was not found feasible, the concerned persons who were initially transferred on loan basis as a temporary measure, were finally transferred to the respective cadres in the Ministry/Department concerned. It is not in dispute that Shri Dadwani, respondent No.2 was initially transferred on loan basis temporarily to the Assistants' cadre in Ministry of Telecommunication. He was deemed as finally transferred to the cadre of respondent No.1 and 2 only after the O.M. dated 8.2.1978 was issued. Shri Dadwani was thus deemed to have been transferred on a permanent basis w.e.f. 1.2.1978. Before the decision to transfer the affected staff in the Ministry of Finance was taken to the respective cadres, however, Shri Dadwani was confirmed w.e.f. 1.1.1977 in the cadre of Ministry of Finance as he was borne on that cadre at that point of time. Confirmation in the Ministry of Finance, therefore, cannot be found fault with cadre as that was the Controlling Ministry of that time. The inter-se-seniority of the Assistants transferred from one cadre to another is governed by the CSS (seniority of Transferred Officers) Regulations, 1963. We reproduce below here rule 4, which is relevant to the issue before us:-



(4) A member of the Service appointed to the Assistants' Grade of any cadre after the appointed day shall, on his transfer to another cadre, be assigned seniority vis.a.vis officers appointed to that Grade after the appointed day in the new cadre as follows, namely:-

- i) A direct recruit shall be assigned seniority vis.a.vis permanent officers of the Grade in the new cadre as if he were a direct recruit allotted to the cadre on the results of the same competitive examination from which he has been recruited.
- ii) A promoted officer who had been or is included in the Select List for the Grade in the old cadre shall, on his transfer to another cadre, be assigned seniority vis.a.vis officers appointed to that Grade in the new cadre after the appointed day as follows, namely:-

- a) if he is a permanent officer, he shall rank just above the senior-most permanent promoted officer included in the Select List of the new cadre whose date of substantive appointment is later than that of the transferred officer.


- b) if he is temporary officer, he shall, rank just above the senior-most temporary officer included in the Select List of the new

cadre in the same year, whose length of approved continuous service in the Grade is less than that of the transferred officer.

- (iii) A promoted officer not included in the Select List for the Grade in the old cadre shall be assigned seniority below all such temporary officers of the Grade in the new cadre who have rendered longer of the same length of approved continuous service in the Grade."

Since Shri Dadwani, respondent No.2, had been confirmed in the parent cadre before the permanent transfer was given effect to w.e.f. 1.2.1978, his seniority is to be regulated in accordance with rule 4(2)(a) above. The inter-se-seniority of the applicant and respondent No.2 has accordingly been fixed correctly and according to the rules. The length of service principles holds the sway only in cases where there are no rules to regulate the seniority.

2. 8. In view of the above facts and circumstances, we do not find ^{any} merit in the application, which is, accordingly, dismissed, with no order as to costs.


(I.K. RASGOTRA)
MEMBER (A)


(RAM PAL SINGH)
VICE-CHAIRMAN

6.1.1992.