

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(6)

O.A. No. 970/86
T.A. No.

199

DATE OF DECISION 8.3.1991.

Shri S.N. Mishra

Petitioner

Smt. Raj Kumari Chopra with
S/S D.R. Gupta, D.S. Jagotra, Advocate for the Petitioner(s)
Harjeet Singh & S.S. Bhalla, Counsel

Union of India through the Secy., Respondent
Min. of Human Resource Dev. & Ors.

Shri M.L. Verma

Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? / No
4. Whether it needs to be circulated to other Benches of the Tribunal? / No

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

The applicant, who has worked in the Archaeological Survey of India for about 36 years, is aggrieved by the wrong fixation of his seniority in the grade of U.D.C. and Head Clerk and has sought for consequential reliefs. He joined government service on 2.12.1954 and retired on attaining the age of superannuation on 31.1.1991. Therefore, a decision on his application will have its impact on the quantum of pension and other retirement benefits to be given to him. On

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2. The posts of U.D.C. and Head Clerk are non-selection posts and promotion is made on the basis of seniority-cum-fitness.

3. By office order dated 18.5.1974, the applicant was promoted as U.D.C. with place of posting at Agra. He did not accept this promotion and requested to defer it till a vacancy became available in Delhi. On 18.5.1974, the applicant wrote to the respondents in this context as follows:-

"I am extremely grateful for your kind letter cited above offering me the post of a U.D.C. in your office at Agra. I was extremely anxious to join the promotion post but unfortunately my adverse family circumstances do not permit me to leave Delhi at present. I, therefore, request the favour of your very kindly keeping this offer open till a vacancy in the grade of a U.D.C. falls vacant at Delhi.

Requesting sympathetic consideration."

4. When a vacancy of U.D.C. arose in Delhi in November, 1975, the applicant was appointed as U.D.C. w.e.f. 29.12.1975. In the meanwhile, the respondents promoted three persons - S/Shri Venugopal Rao, R.L. Verma and S.K. Bali - who were junior to him as UDCs in 1974-75, and were given higher seniority than him.

5. The applicant was promoted as Head Clerk by order dated 13/17.2.1989 w.e.f. 30.6.1988. It was, however, stipulated in the said order that he will

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not be entitled for arrears on account of pay fixation." Had his original seniority in the post of L.D.C. been reckoned, he would have been promoted in 1983 in his turn, when some of his juniors had been promoted as Head Clerks.

6. By order dated 7.8.1990, the respondents promoted the applicant as Works Assistant, Grade I at Headquarters Office, New Delhi. The applicant represented that he was to be promoted much earlier over and above his juniors. The respondents treated this as failure to accept the promotion and passed the following order on 21.12.1990, cancelling the promotion:-

"Consequent upon his failure to accept the promotion and join his duties in Headquarters Office, New Delhi on the post of Works Asstt. Gr. I, the offer made to Shri S.N. Mishra, Head Clerk, O/o the Deputy Superintending Horticulturist, Division No. II, New Delhi vide Office Order No. 171/90-Admn. I dated 7.8.90 is hereby cancelled and he will not be considered for promotion to the post of Works Assistant Gr. I during the period of one year with effect from 28.8.1990."

7. We have gone through the records of the case carefully and have considered the rival contentions. We have also duly considered the numerous decisions cited by the learned counsel for both the parties in support of their respective contentions.¹ The

1. Cases cited on behalf of the respondents:-

1987 (4)SLJ 482; AIR 1990 SC 10; 1989 (11) ATC 137; 1989 (10) ATC 361; 1987 (1) ATLT 122, 133; AIR 1974 S.C. 2271; 1986 (2) ATR 15.

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present application was filed in the Tribunal on 6.11.1986. After the respondents circulated a seniority list of UDCs as on 1.7.1981, the applicant made a representation on 8.3.1983 which was forwarded by the Assistant Superintending Horticulturist to the Chief Horticulturist on 11.3.1983. The applicant made a further representation on 23.12.1983 which was also forwarded to the Director General on 18.12.1984. The last representation made by him on 8.10.1985 remained unanswered. On 15.1.1986, the respondents issued the seniority list of Head Clerks as on 1.1.86, which has been impugned in the present proceedings. In our view, the plea of limitation raised by the respondents is not legally tenable.

8. The applicant received the order dated 23.5.74 concerning his promotion to the post of U.D.C. on 13.6.1974. In the order of promotion, it was not stipulated that if he did not accept the promotion or sought to defer it till a vacancy arose in Delhi, he will be superseded by his juniors. He requested the respondents to keep the offer open till a vacancy in the grade of U.D.C. fell vacant at Delhi. The records indicate that the respondents impliedly acceded

1. Cases cited on behalf of the applicant:-

1989 (2) SLJ 632; 1989 (1) SLJ 534; ATC 1987 (2) 862; ATC 1990 (13) 630; ATC 1987 (2) 460; ATC 1989 (11) 486; ATC 1987 (3) 645; ATC 1989 (2) 833; ATC 1987 (2) 454; ATC 1987 (2) 153; and ATC 1987 (5) 514.

to his request. The applicant has stated in MP-313/91 that during 1974, a vacancy of U.D.C. fell vacant in Delhi consequent upon the retirement of Shri Kuldip Chand Sharma, the then U.D.C. at New Delhi. Instead of adjusting the applicant against the said vacancy at Delhi, the respondents transferred one, Shri D.N. Sharma, from Dehra Dun to Delhi. The above averment has not been controverted by the respondents. In view of this, we are of the view that the action of the respondents in promoting S/Shri R.L. Varma and S.K. Bali in 1979 with retrospective effect from 15.1.1975 and giving them higher seniority than the applicant, who was promoted in November, 1975, is not legally sustainable. Similarly, the promotion of S/Shri Varma and Bali as Head Clerks w.e.f. 31.5.1985 and giving them higher seniority than the applicant who was promoted as Head Clerk w.e.f. 30.6.1988, is not legally sustainable. In the facts and circumstances of the case, the action of the respondents in denying the arrears on account of pay fixation due to promotion as Head Clerk by the impugned order dated 13.2.1989, is also legally untenable.

9. As the applicant has already retired from service on attaining the age of superannuation, he will be

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entitled to only notional promotion and refixation of pay from the dates his juniors were promoted as UDCs and Head Clerks. The applicant will not, however, be entitled to arrears of pay and allowances, on such notional promotion.

10. The action of the respondents in cancelling the order of appointment of the applicant as Works Assistant, Grade I dated 7.8.1990 by order dated 21.12.1990, is arbitrary and illegal. In our view, the respondents would not be entitled to cancel an order of promotion of a Government servant without giving him a show-cause notice. The fact that the applicant continued to agitate his seniority claims, would not justify cancellation of his promotion to a higher post.

11. In the light of the foregoing discussions, we partly allow the application and dispose it of with the following orders and directions:-

(i) The applicant must be deemed to have been promoted as Head Clerk with effect from 31.5.1985 on a notional basis, when Shri R.L. Varma was promoted as Head Clerk. Though the applicant will not be entitled to arrears of pay and allowances on such notional promotion, he would be

entitled to the benefit of refixation of his pay on that basis with effect from 31.5.1985 for the purpose of fixation of pay in the post of Works Assistant, Grade I as also for computing his pension and other retirement benefits.

(ii) We set aside and quash the impugned order dated 21.12.1990 whereby the respondents purported to cancel the order of promotion of the applicant as Works Assistant, Gr. I dated 7.8.1990. We hold that the applicant would be deemed to have been promoted as Works Assistant, Grade I w.e.f. 7.8.1990. He would also be entitled to arrears of pay and allowances from 7.8.1990 to 31.1.1991 and other consequential benefits, including the refixation of his pay in the post of Works Assistant, Grade I, also keeping in view the directions in (i) above. The pension and other retirement benefits of the applicant should be computed on the above basis.

(iii) The respondents shall pay to the applicant the arrears of pay and allowances directed in (ii) above as well as release the

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pension and other retirement benefits

as directed in (i) and (ii) above,

within a period of two months from the

date of receipt of this order.

(iv) The parties will bear their own costs.

D. K. Chakravorty 87879/
(D. K. Chakravorty)
Administrative Member

P. K. Kartha 8/3/91
(P. K. Kartha)
Vice-Chairman (Judl.)