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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1125/ 1986.
~~T.A. No.~~

DATE OF DECISION 28th May, 1987.

Shri R. L. Chhibber **Petitioner**

In person **Advocate for the Petitioner(s)**

Versus

Union of India & Others **Respondent**


Mrs. Raj Kumari Chopra **Advocate for the Respondent(s)**

CORAM :

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, Member (A).

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 to be circulated to other Benches? No


(KAUSHAL KUMAR)
MEMBER (A)
28.5.1987.


(K. MADHAVA REDDY)
CHAIRMAN
28.5.87.

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1125/86. DATE OF DECISION: 28th May, 1987.

Shri R.L. Chhibber Applicant.

V/s.

Union of India &
others Respondents.

CORAM: Hon'ble Mr. Justice K. Madhava Reddy, Chairman.
Hon'ble Mr. Kaushal Kumar, Member (A).

(Judgment of the Bench delivered by
Hon'ble Mr. Kaushal Kumar, Member)

JUDGMENT

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who had served in the Army as Havildar Clerk from 6.8.1946 to 2.4.1953 and was later on appointed as L.D.C. on 28.8.1953 in the office of Director General of Supplies & Disposals, Government of India, New Delhi, has prayed that the break in his service between the date of discharge from the Army and his re-appointment as Lower Division Clerk i.e., 4 months and 25 days (from 3.4.1953 to 27.8.1953) be condoned and his seniority in the grade of L.D.C. be refixed with all consequential benefits being allowed retrospectively.

2. The applicant, after having been relieved from the Army after service from 6.8.46 to 2.4.53 being surplus to establishment, was appointed as L.D.C. on 28.8.53 through Employment Exchange in the DGS&D, New Delhi. He was also declared quasi-permanent with effect from 1.7.1954 and confirmed as L.D.C. with effect from 1.5.1959. He was promoted as U.D.C. with effect from 19.1.1970 and posted to CPWD. Later he was promoted as Assistant (Central Secretariat Service) on 5.12.1980. The applicant has referred to

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the case of one Shri Hari Bhagat, who had also served in the Army and was discharged from there on 16.3.1953. Shri Hari Bhagat was also appointed as L.D.C. in the DGS&D, New Delhi on 9.6.1954. Shri Hari Bhagat was allowed to count his Army service towards seniority in the grade of LDC and was confirmed in the LDC grade with effect from 1.5.1957. He was promoted as UDC in 1961 and as Assistant in 1970. The applicant has also stated in para 6(i) of his application that he had given in writing to the authorities that he was prepared to refund the service gratuity of Rs.720/-, which was paid to him by the Army authorities at the time of his release in case his Army service was counted for seniority towards civil pension. He has also pointed out that he and Shri Hari Bhagat had served in the Army in the same capacity and were released from the Army in similar circumstances. While he was senior to Shri Hari Bhagat in the grade of LDC, the latter was given the benefit of Army service towards seniority and made senior to him. The applicant has relied on the instructions contained in Ministry of Home Affairs O.M. No.30/44/48-Appts dated 22.6.1949, according to which seniority in a particular grade should, as a general rule, be determined on the basis of length of service in that grade as well as service in an equivalent grade irrespective of whether the latter was under the Central or Provincial Government in India or Pakistan.

3. The case of the respondents is that Shri Hari Bhagat had more length of service than that of the applicant in the Army. Another plea taken by the respondents in the counter-affidavit is that the precedents of Shri H.R. Guliani and Shri D.N. Chibber are not relevant to the claim of the applicant since these persons were appointed as L.D.C. in the subordinate office not participating in the CSCS. The confirmation of persons in the grade of L.D.C. in the

Central Secretariat Clerical Service was governed by the specific instructions issued in this regard.

4. We have carefully considered the various contentions and find no reason for not allowing the claim of the applicant to count his Army service towards seniority. Para 6 (k & i) of the counter-affidavit is reproduced below: -

"Para 6(k & i): The particulars of service of Shri Hari Bhagat and those of Shri R.L. Chibber the applicant which are relevant to the issue are given below: -

<u>S/Shri</u> <u>Hari Bhagat</u>	<u>R.L. Chibber</u>
1. Period of service in the Army 2-4-43 to 16-3-53	6-8-46 to 2-4-53
2. Appointment as LDC - 9-6-54.	28-8-53
3. Confirmation of Quasi Permanent status - 1-7-54	1-7-54
4. Confirmation in the Lower Division grade of CSCS - 1-5-57	1-5-59

It will be observed that by reckoning the Army service towards the services in the grade of LDC, Shri Hari Bhagat had more length of service than the applicant. The contention of the applicant that he was senior to Shri Hari Bhagat is belied by the aforementioned facts. "

From the above, it will be seen that whereas in the case of the applicant, the period of service in the Army was from 6-8-46 to 2-4-53, in the case of Shri Hari Bhagat, the period of service in the Army was from 2-4-43 to 16-3-53. We do not see any reason as to why a longer period of service in the Army would entitle an individual for reckoning of his service towards seniority in the civil appointment and not a shorter period of service. The respondents have not been able to show any rule or regulation or administrative instruction of the Government laying down that benefit of service in the Army is determined by the length of service rendered in the Army.

5. Another reason advanced by the learned counsel for the respondents is that since the applicant had not passed the Typing Test, he was not entitled to confirmation as L.D.C. from the date claimed by him. However, it was conceded that the applicant had, in fact, been confirmed as L.D.C. from 1-5-59, even though he had not passed the Typing Test. If relaxation from passing the Typing Test had been given for confirmation from a particular date, it does not stand to reason that the same benefit could not be allowed from an earlier date if the period of service in the Army were to be taken into account.

6. The applicant has produced a copy each of the Office Memorandum No.4252/56-CS(C), dated 18th July, 1956 issued by the Ministry of Home Affairs, Government of India, New Delhi and Office Memorandum No.11/15/72.Estt (D), dated 28th June, 1972 issued by the Cabinet Secretariat, Department of Personnel, Government of India, New Delhi, which specifically indicate that "service rendered in clerical posts (including service rendered as Sepoy Clerk and Havildar Clerk) would count for purpose of seniority in the grade of Lower Division Clerk in the Central Secretariat and Offices included in the Central Secretariat Clerical Service Scheme, provided such service was continuous with service in the grade of Lower Division Clerk." These instructions make it very clear that the service in the Army is to be counted for purpose of seniority, provided it is continuous with service in the grade of Lower Division Clerk. There was a break of 4 months and 25 days (from 3.4.1953 to 27.8.1953) between the date of the applicant's discharge from the Army and his re-appointment as Lower Division Clerk. The applicant was declared quasi-permanent in the post of Lower Division Clerk with effect from 1.7.1954. Obviously the quasi-permanent status was assigned to him after taking into

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account his past service in the Army. We see no reason why a similar dispensation be not allowed for purposes of seniority. The grievance of the applicant is that his past service in the Army has not been counted for purpose of seniority in the grade of Lower Division Clerk unlike a number of others who were similarly placed in the Army and on their reappointment as Lower Division Clerk were given the benefit of their past service in the matter of seniority in the grade of Lower Division Clerk.

7. The applicant is entitled to the relief claimed by him not only on the strength of the precedents cited by him, but also the Government instructions relied upon by him. This position is not controverted by the respondents. The break of four to five months in the continuous service of the applicant in the grade of L.D.C. should not stand in the way of his previous Army service being counted for the purpose of seniority.

8. Accordingly the petition is allowed with the direction that the applicant's seniority will be refixed taking into account his past service in the Army and he will be given consequential benefits in regard to confirmation and promotion with retrospective effect. Refund of the service gratuity paid to the applicant by the Army authorities at the time of his release will be regulated as per the rules on the subject. There shall be no order as to costs.



(KAUSHAL KUMAR)
MEMBER (A)
28.5.1987.



(K. MAHAHA REDDY)
CHAIRMAN
28.5.1987.