

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1333/87
T.A. No.

198.

DATE OF DECISION 3.3.1993

P.J. Vincent

Petitioner

Shri S.C. Gupta, Sr. Counsel
with Shri M.K. Gupta and
Ms Bimla, Kal Kapil.

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Shri A.K. Behra, proxy
for Shri P.H. Ramchandani,
Sr. Counsel.

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. JUSTICE V.S. MALIMATH, CHAIRMAN.

The Hon'ble Mr. I.K. RASGOTRA, MEMBER(A).

1. Whether Reporters of local papers may be allowed to see the Judgement? No
2. To be referred to the Reporter or not? Yes

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN. NO. O.A.1333/87. DATE OF DECISION: 3.3.1993

P.J. Vincent.

... Petitioner.

Versus

Union of India
through
Controller General of Accounts,
Office of the Controller
General of Accounts,
Lok Nayak Bhawan, 7th Floor,
Khan Market,
New Delhi.

... Respondent.

CORAM:

THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A).

For the Petitioner.

... Shri S.C. Gupta,
Sr. Counsel with
Shri M.K. Gupta and
Ms Bimla, K.Kaul,
Counsel.

For the Respondent.

... Shri A.K. Behra,
proxy for Shri P.H.
Ramchandani, Sr.
Counsel.

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice V.S. Malimath,
Chairman)

The petitioner, Shri P.J. Vincent, joined as Commissioned Officer in the Indian Air Force on 26.6.1971. In due course, he was promoted as Flight Lieutenant in the scale of Rs.1100-1550 on 26.6.1977. When he was holding the post of Flight Lieutenant, he was sent on deputation on 3.8.1981 to work in the Indian Civil Accounts Service as Deputy Controller of Accounts which then carried the Senior Time Scale of pay of Rs.1100-1600. When he was so serving

on deputation basis, in his parent department, he secured promotion as Sqdr. Leader w.e.f. 26.6.1984. It is after he secured his promotion as Sqdr. Leader in his parent department, with his consent, he was absorbed in the service of the Indian Civil Accounts on a permanent basis as Deputy Controller of Accounts on 3.6.1985. His seniority in the cadre of Deputy Controller of Accounts consequent upon his permanent absorption has been fixed w.e.f. 26.6.1984, the date on which he was promoted as Sqdr. Leader in his parent department. The case of the petitioner is that his seniority should count from the date on which he came on deputation to the post of Deputy Controller of Accounts on 3.8.1981. The only question for examination in this case is as to whether the petitioner is right in claiming his seniority on his absorption in the cadre of Deputy Controller of Accounts w.e.f. 3.8.1981.

2. So far as the facts pertaining to absorption of the petitioner and determination of his seniority are concerned, they have been placed in the reply and thereafter in the additional affidavit accompanied by certain documents. On a perusal of the reply and the documents, it is possible to understand the steps taken leading to the decision that 26.6.1984 should be regarded as the date for seniority in the cadre of Deputy Controller of Accounts. We shall briefly advert to these documents.

3. Annexure R-A is the letter dated 30.5.1983 written by Shri Ravi Kathpalie, Chief Controller of Accounts, the Head of the Department, to the Joint Controller General of Accounts recommending the case of the petitioner for absorption in the department as Deputy Controller of Accounts.

In the first paragraph of the said letter, it is stated that the petitioner is working on deputation as Deputy Controller of Accounts and that he hopes to become a substantive Sqdr. Leader around June, 1984. The letter contains very appreciative observations about the work and conduct of the petitioner. There is no mention, however, in this case in regard to the actual date from which the absorption take place or in regard to the date from which his seniority should count on absorption. Reference to the impending promotion as Sqdr. Leader around June, 1984 is, however, not without significance. On 30.5.1983 Shri Kathpalie also wrote a letter to the petitioner stating that he would like to recommend his name to Controller General of Accounts for being absorbed in the Indian Civil Accounts Service. He has said that it is not clear as to what pay and seniority would be offered on his absorption. He has further stated that for the present he would like to know whether the petitioner is willing to be absorbed in the ICAS. The petitioner gave a reply on the very same day stating that he would be very happy to get absorbed in the ICAS. On 2.6.1984, the petitioner wrote to the Controller General of Accounts that he is willing to

get absorbed in the ICAS on a date fixed by the UPSC but in any case not earlier than 1.7.1984 as he expects promotion/ confirmation in his parent department as Sqdr. Leader w.e.f. 26.6.1984. He has pointed out that this would have relevance to his securing an appropriate fixation of his pay at a higher level. He has made it clear that according to the rules, he is entitled to be promoted on completion of six years of service which would fall on 26.6.1971. The office note regarding permanent absorption of the petitioner dated 2.3.1984 has been produced as Annexure R-D. There is discussion in the said note about the date of seniority of the petitioner that could be accorded to him on his absorption. For the sake of convenience, we extract the second paragraph as follows:

"The Flight Lt. scale of pay in the Indian Air Force is Rs.1100-1550 which is slightly lower than the Senior Time Scale. We had a series of discussions in case of Sqdr. Ldr. Kale and the UPSC has always felt that the scales in services should not be treated at par with those of the Civil Services. It may not therefore be possible to consider the scale of Flight Lt. as equivalent to Senior Time Scale. In fact when earlier the case of absorption of another Flight Lt. (S.K. John) was considered by us it was decided that he should be absorbed in Junior Time Scale only. Flt. Lt. Vincent has handed over a letter dated 29th Feb. 84 from the Air Headquarters indicating his likely promotion to the substantive rank of Sqdr. Leader with effect from 26th June, 1984. Once he gets promoted to the rank of Sqdr. Leader, it may be possible to absorb him in Senior Time Scale as in case of Sqdr. Leader Kale.

According to the principle laid down by the DPAR his seniority in STS will be counted from the date of promotion in the parent department viz., 26th June, 1984 and in case it is decided to absorb him in STS he is likely to be ranked below Shri L.C. Singal at Serial No.92 of the ICAS seniority list, as officers upto that position are likely to be promoted to the STS before June, 1984."

The Additional Controller General of Accounts has given a note dated 9.12.1985 in regard to/fixation of seniority of the petitioner on his absorption as Deputy Controller of Accounts. That is the note submitted to the Department of Personnel and Training to help them to take a decision in regard to the fixation of seniority of the petitioner. It is inter alia stated in paragraph 2 as follows:

"..The scale of Squadron Leader (Rs.1450-1800) has been treated as one carrying duties and responsibilities equivalent to that of Senior Time Scale in the ICAS and the UPSC has concurred in this view. It may create administrative embarrassment and imbalances if both the grades, viz. that of Squadron Leader (Rs.1450-1800) and Flt. Lieutenant (Rs.1100-1550) are treated as equivalent to Senior Time Scale. Under the latest orders the promotion from the rank of Flt. Lieutenant to Squadron Leader takes 11 years and if these two scales are treated at par officers of the same cadre with the differences upto 11 years of service would be placed similarly in the seniority list. This may not be a correct proposition. This Ministry is, therefore, not in favour of treating the scale of Flt. Lieutenant as equivalent to that of Senior Time Scale in the ICAS. Apart from the consideration mentioned above, the duties and responsibilities of two grades are not considered similar."

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The reference to the requirement of 11 years to earn promotion to the post of Sqdr. Leader, it was rightly pointed out, is not correct as the period required for earning promotion is only six years. The note, however, emphasised that the Post of Squadron Leader has been treated as one carrying duties and responsibilities equivalent to that of Senior Time Scale in the Indian Civil Accounts Service, that is the post of Controller of Accounts. It is also emphasised that the Union Public Service Commission has concurred in this view. There is also an assertion that the duties and responsibilities of Flight Lieutenant and Dy. Controller of the two grades are not similar. The final order in regard to the determination of the seniority of the petitioner is dated 15.4.1986. It is stated that the petitioner is allotted seniority immediately below Shri S.M. Kumar mentioned at Serial No. 84 of the Seniority List as on 1.4.1985. The date of appointment of Shri S.M. Kumar is 29.8.1983. We find from the seniority list that Shri Subhash Joshi is at Serial No. 85 and his seniority has been taken from 9.1.1985. Though the actual date of seniority of the petitioner is not stated in this order, the stand taken by the respondents is that the date taken for the purpose of seniority is 26.6.1984, the date on which the petitioner became Sqdr. Leader in his parent department. From what we have noticed above, it is clear that the question of absorption as also the fixation of seniority in the cadre of Deputy Controller of Accounts

was a matter of examination at various levels and an ultimate decision was taken to accord seniority to the petitioner from 26.6.1984, the date on which he became Sqdr. Leader and not from 3.8.1981, the date on which the petitioner came on deputation to the Indian Civil Accounts Service.

4. Shri Gupta, Senior Counsel appearing for the petitioner, invited our attention to the guidelines accepted by the respondents themselves regulating determination of seniority consequent upon absorption of a deputationist. The relevant guideline has been extracted at Annexure A-7 and reads as follows:

"The case under consideration relates to the fixation of seniority of certain officers who have been taken initially on deputation to the Indian Civil Accounts Service. The proposal of the Department is contained in the notes from page 1/ante. In this connection reference is invited to the orders at Flag 'B'. We may accordingly advise the Department that the seniority of officers should be fixed in the grade in which they have been initially taken on deputation from the date on which the officer has been continuously on deputation in the grades concerned or the date on which the officer would have been given the regular promotion under the Next Below Rule in his parent cadre whichever is later.

Sd/-
(J.K. Sharma)
Director (E)
28.10.1980"

The respondents admit that these are the guidelines that regulate determination of seniority of deputationists absorbed permanently in service. The contention of Shri Gupta, learned counsel for the petitioner, is that the guideline mandates the authority to count the petitioner's

seniority from the date on which he came on deputation in the particular grade.

5. The stand taken by the respondents' counsel Shri Behra is that the petitioner's counsel would have been right in his contention only if the petitioner was on deputation in a post equivalent to the one which he was holding in the parent department. The petitioner, in the parent department on the date of deputation, was not holding the post equivalent to the post of Deputy Controller of Accounts. It is only if the petitioner had come on deputation in an equivalent post that the first part of the guideline would come into operation entitling the petitioner to count his seniority from the date of continuous officiation on deputation. As the petitioner came on deputation to occupy a higher post of Deputy Controller of Accounts, it is the contention of the respondents that the petitioner would not be entitled either to absorption or to count his seniority in the cadre of Deputy Controller of Accounts until he got promotion in his parent department as Sqdr. Leader, as a post equivalent to the Deputy Controller of Accounts. That, according to the respondents, happened in this case when the petitioner was promoted in his parent department as Sqdr. Leader on 26.6.1984. From the manner in which the case of the petitioner has been dealt with to which we have adverted to earlier, it is obvious that that is the consistent stand of the respondents. Merely because the respondents

have taken such a decision in regard to the absorption and determination of his seniority, it was contended by Shri Gupta, learned counsel for the petitioner, that the same cannot be accepted as a right as it is contrary to the relevant guidelines and the rules regarding absorption in service. It is well settled principle of law that for the purpose of seniority what can be taken into consideration is service in an equivalent post. A portion of the length of service rendered by an official in an inferior cadre cannot be counted for the purpose of determining seniority in the superior cadre. This principle has been emphasised by the Supreme Court in AIR 1987 SC 2291 between K. Madhawan and another Vs. Union of India & Ors. wherein it is observed in paragraph 21 of the judgement as follows:

"21. We may examine the question from a different point of view. There is not much difference between deputation and transfer. Indeed, when a deputationist is permanently absorbed in the CBI, he is under the rules appointed on transfer. In other words, deputation may be regarded as a transfer from one government department to another. It will be against all rules of service jurisprudence, if a government servant holding a particular post is transferred to the same or an equivalent post in another government department, the period of his service in the post before his transfer is not taken into consideration in computing his seniority in the transferred post. The transfer cannot wipe out his length of service in the post from which he has been transferred. It has been observed by this Court that it is a just and wholesome principle commonly applied where persons from different sources are drafted to serve in a new service that their pre-

existing total length of service in the parent department should be respected and presented by taking the same into account in determining their ranking in the new service."

The guideline which requires the date of continuous officiation on deputation to be taken into account for the purpose of determining seniority would be attracted only if the post which was held in the parent department before deputation is equivalent to the post on which the petitioner came on deputation and appointed as Dy. Controller does not mean that the post which he held in his parent department as Flight Lieutenant is an equivalent. That depends on the duties, responsibilities and all other relevant factors.

6. We should first advert in this behalf to the statutory provisions to which our attention was drawn by Shri Gupta regulating deputation and permanent absorption of the deputationist. Rule 21 of the Indian Civil Accounts (Group 'A) Recruitment Rules, 1977 reads as follows:

"Appointment by transfer or on deputation:

(1) The Government may, in special cases, and in consultation with the Commission, take by transfer in public interest, an officer from any other cadre in the Government to the Service.

(2) The Government may, take on deputation for specified periods, officers of the appropriate grade from other departments of Govt. including the Indian Audit and Accounts Service for holding posts in the service".

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Relying on sub-rule(2) of Rule 21, it was submitted that when the petitioner came on deputation from the post of Flight Lieutenant in the Air-Force to the post of Deputy Controller of Accounts with the respondents, it was because he was in the appropriate grade in the parent department. He further submitted that the very fact that the petitioner came on deputation from the post of Flight Lieutenant and appointed to the post of Deputy Controller of Accounts, the equivalence of the two posts stands established. It is necessary to point out that the post of Flight Lieutenant carried the scale of Rs.1100-1550 whereas the post of Deputy Controller of Accounts carried the scale of Rs.1100-1600. Though there is no definition of the expression 'appropriate grade' in the Rules, as the two scales are comparable it is reasonable to say that the grade of Deputy Controller is the appropriate grade to that of the Flight Lieutenant. The scheme of Rules 21 makes a distinction between the deputation for specified period and permanent absorption by transfer. Whereas sub-rule (2) deals with the deputation for a specified period, sub-rule (1) deals with the permanent appointment on transfer basis.

The conditions for two processes are different. It is enough for the authorities to be satisfied for the purpose of sub-rule(2) that the deputation for the specified period is being made of the officer of the appropriate grade. But as far as permanent transfer contemplated by sub-rule(1) is concerned, there are special conditions to be specified. The first condition is that it should be in consultation with the

Commission and the second condition is that the transfer is necessitated in public interest. As deputation for a specified period is not likely to affect the rights and interests of the other employees in the service to which the deputationist comes, all that is required to be satisfied is that the person coming on deputation is in the appropriate grade. No serious examination regarding equivalence of the two posts is required to be made for the purpose of operating sub-rule (2) of Rule 21 to make appointment on deputation basis for a specified period. After the deputation for a specified period expires, the official has to revert back to the parent department. But when appointment is made by transfer he becomes a regular member of that service. The very expression 'transfer' implies that it has to be an equivalent post. Under sub-rule(1) of Rule 21 the authority has to examine as to whether the person was holding an equivalent post justifying his transfer and appointment. That is why care is taken to ensure that these matters are examined by an expert body like UPSC. If there is no equivalence, the UPSC cannot give it concurrence for transfer. The authorities have to be satisfied that the person who is being transferred was holding a post equivalent to which he is being transferred. So far as deputation for a specified period is concerned equivalence is not a necessary precondition. It is enough if the grade is appropriate. A person may be appointed on deputation for a specified period to a post higher than the one held by him in the parent department. This is however not possible when appointment is made on permanent transfer basis. It is only to an equivalent post that

appointment on transfer can be made unless there is a specific provision to the contrary.

7. Hence, the essential question to be decided is as to whether the post of Flight Lieutenant held in the parent department on the date on which he came on deputation is equivalent to the post of Deputy Controller of Accounts to which post he was appointed on deputation. If he was appointed on a higher post, he would not be entitled to count his seniority from the date on which he came on deputation in the respondents' service. From the material which has been placed before us, we find that the respondents have consistently proceeded on the basis that the post of Flight Lieutenant in the Indian Air Force is not equivalent to the post of Deputy Controller of Accounts though both the posts carry approximately the same scale of pay. It is well settled that in the matter of determining equivalence, the scale of pay is least of the considerations. The duties and responsibilities are matters of importance for determining equivalence. The respondents have taken the stand that they have all along regarded the post of Flight Lieutenant as inferior to the post of Deputy Controller of Accounts. They have relied upon the case of Shri Kale who was similarly holding the post of Flight Lieutenant in the Indian Air Force when he was appointed on deputation basis as Deputy Controller of Accounts. When he was functioning as Deputy Controller of Accounts, he was promoted as Sqdr. Leader. It is thereafter that he came to be absorbed as Deputy Controller of Accounts. The question of determining his seniority was examined and he was accorded seniority not from the date on which he came on

deputation as Deputy Controller of Accounts but from the date on which he stood promoted as Sqdr. Leader in the parent department. In other words, the post of Sqdr. Leader in the Indian Air Force was treated as equivalent to the post of Deputy Controller of Accounts in the respondents' service though the post of Sqdr. Leader carried a much higher scale of pay of Rs.1450-1800. Determination of seniority as per the records which have now been placed before us was made in consultation with the UPSC. UPSC has concurred with the opinion of the department that the seniority of the petitioner should be counted as from the date of appointment to the post of Sqdr. Leader in the parent department as the said post was found to be equivalent to the post of Deputy Controller. Though we do not have all the materials that were placed before the UPSC which were taken into consideration before it gave its concurrence, there is no good reason to believe that the UPSC did not apply its mind to all the relevant aspects in regard to the equivalence of the two posts. We have also the expert opinion of the superior officer viz., Additional Controller General of Accounts which has been produced as Annexure 'G', the relevant portion of which we have extracted earlier. He has opined that the post of Sqdr. Leader carries duties and responsibilities equivalent to that of Senior Time Scale in the ICAS (Dy. Controller) and the UPSC has concurred with ^{the} ~~this~~ this. From ^{on} these materials, it is seen that ^{both} ~~on~~ the occasions when Kale's case was examined as also when the petitioner's case

was examined by the UPSC, the view taken was that the seniority should count from the date on which they became Sqdr. Leaders on the ground that it is ~~that~~^{the} post which is equivalent to the post of Deputy Controller of Accounts. We have also material before us to show that in the case of Shri S.K. John also, a similar approach was made. Shri John was a Flight Lieutenant and when the question of his being absorbed came up for consideration before the respondents, it was decided that he should be absorbed in the Junior Time Scale only and not in the Senior Time Scale applicable to the Deputy Controller of Accounts. We are satisfied from these materials that the respondents have consistently taken the view on the advice of the UPSC that the post of Flight Lieutenant in the Indian Air Force is not equivalent to the post of Deputy Controller of Accounts and it is the post of Sqdr. Leader which is equivalent to the post of Deputy Controller. There is no good reason to interfere with the decision of the respondents taken on the advice of an expert body like the UPSC.

8. We are inclined to take the view that the petitioner was also quite conscious of this position when he gave his consent for absorption. On the date on which his consent was asked, the department was apprised about the expected promotion of the petitioner as Sqdr. Leader w.e.f. 16.6.1984. That fact has been prominently adverted to in the letter written by Shri Kathpalia, the Chief Controller seeking concurrence for absorption of the petitioner as a Deputy Controller. The petitioner gave his consent without demur. He subsequently made a request to absorb him with effect from the date after his getting promotion

as Sqdr. Leader. It would lead to a very incongruous situation if we accept the petitioner's contention. The petitioner was holding the post of Flight Lieutenant when he came on deputation. In his parent department, Sqdr. Leader is admittedly a promotional post which he could earn after putting six years of service as Flight Lieutenant. If the petitioner's contention is accepted, it would lead to the situation of the service rendered by the petitioner in the feeder cadre as well as the promotional cadre being treated on par for the purpose of determining his seniority. This would lead to absurd results besides offending the equality clause.

9. As we have held that the post of Flight Lieutenant is not equivalent to the post of Deputy Controller, the petitioner is not entitled to count his seniority from the date on which he came on deputation. He would be entitled to count his seniority only from the date he came to hold the equivalent post as Sqdr. Leader. That being the position, the respondents have accorded the correct seniority to the petitioner taking 26.6.1984 as the date of seniority.

10. For the reasons stated above, this petition fails and is accordingly dismissed. No costs.


(I.K. RASGOTRA)
MEMBER(A)

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(V.S. MALIMATH)
CHAIRMAN