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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

O.A.290/93.

Date of decision: 03.06.93

K.L. Kochar.

... Petitioner.

Versus

Chief Secretary,
Delhi Administration & Ors. ... Respondents.

CORAM:

THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. B.N. DHOUNDIYAL, MEMBER(A).

For the Petitioner.

Shri D.S. Jagotra, Counsel.

For the Respondents.

None.

JUDGEMENT (ORAL)

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

The short question for consideration in this case is as to whether the service rendered by the petitioner as a Stenographer in the Ministry of Rehabilitation before his retrenchment from the said post can count for seniority after his fresh appointment in the office of the Commandant General, Home Guards of the Delhi Administration.

2. The petitioner was appointed in the Ministry of Rehabilitation w.e.f. 13.12.1955. He came to be retrenched w.e.f. 1.3.1961. He was, however, given terminal leave benefits upto 23.5.1961. He was thereafter given a fresh appointment in another administration, namely, the Commandant General Home Guards, Delhi Administration, w.e.f. 1.11.1961. It is not necessary for us to advert to the other details as the only question for consideration is as to whether the service rendered

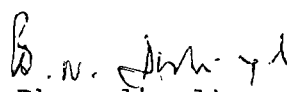
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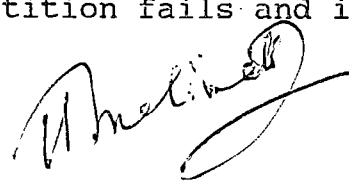
by the petitioner before his retrenchment in the Ministry of Rehabilitation can count for seniority in the new service in the office of the Commandant General, Home Guards under the Delhi Administration, wherein he was appointed for the first time on 1.11.1961. The petitioner has not placed in support of his case any statutory provision or executive order on the strength of which he can claim that the service rendered by him prior to his retrenchment may be added for the purpose of seniority on his fresh appointment in another department. The petitioner who has sought relief has to establish that he has a legal right to which he claims. No foundation is laid on the basis of statutory provision or executive order in support of his claim. The only assertion made by the petitioner is that some others have been given such benefit and that, therefore, he should also be given such benefit. It is well settled principle of law which we have reiterated again and again that the petitioner can enforce his legal rights which he possess. He can not complain of discrimination unless he is able to establish that what was accorded to the others was in accordance with law. If someone has been given some relief in the absence of the statutory provision and contrary to law, that cannot be basis for issuance of a

similar direction in favour of others. What prevails in this country is rule of law. Hence, the Tribunal cannot be called upon to issue a writ in the nature of mandamus invoking Articles 14 and 16 of the Constitution to make a similar mistake which has been committed by the authorities. The question of invoking Articles 14 and 16 of the Constitution, in these circumstances, does not arise. The petitioner stood retrenched from the previous service under the Ministry of Rehabilitation. Nearly five months after his retrenchment, he came to be appointed in another department, namely, the Commandant General, Ho. Guards, New Delhi. There is no hiatus or connection between the two appointments. This is not a case of appointment or absorption of the petitioner in another service nor is this a case of the entire undertaking being transferred to another department. This is a case where the petitioner was employed in an administration and lost the job on retrenchment and he came to be appointed to another service five months later. In the absence of the new administration where he has been appointed, being bound by statutory provision or executive order to count his previous service, we fail to see how his service can be added. When the petitioner was appointed in Delhi Administration along with the others, he would rank

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on the basis of the selection made. If so far as the petitioner is concerned, the previous service rendered by him in another department is counted, he would become senior to others in the Delhi Administration. This would not only affect the rights of the others but would be completely discriminatory and violative of Articles 14 and 16 of the Constitution. This is precisely the principle which has been eloquently laid down in Civil Appeal No. 628 of 1988 between Palbir Sardana Vs. Union of India and Ors, decided on 29.1.1992. A policy decision has since been taken by the Government also to give effect to the said decision by issuing appropriate directions in this behalf vide official Memo No.15/2/88-C.S.III dated 15.6.1992. We have, therefore, no hesitation in holding that the petitioner has no case. This petition fails and is, therefore, dismissed. No costs.


(B.N. Dhoundiyal)
Member(A)


(V.S. Malimath)
Chairman

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