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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI
CP-291/97 alongwith
MA. NO. 2367/97 & 481/98
In
O.A. No 1507/88

New Delhi, this the 21st day of May, 1998.

Hon'ble Member Shri T.N. Bhat, Member (J)
Hon'ble Member Shri S.P. Biswas, Member (A)

Shri Prithvi Singh
S/O Shri Ram Singh Verma
L.D.C., HQ C.W.E.,
Meerut Cantt
R/O B-333 Clock tower
Hari Nagar,
New Delhi.

Petitioner
(By Advocate: Shri G.D. Bhandri)

Versus

1. Shri Ajit Kumar
Secretary
Ministry of Defence,
Govt. of India
South Block New Delhi.
2. Lt. Gen. N.R. Khanna
Engineer In Chief
Army Headquarters
Kashmir House
New Delhi-11001
3. Maj. Gen. S.S. Karki
Chief Engineer
Engineering Branch
HQ Central Command
Lucknow-2.

Resopondents
(By Advocate: Shri M.L. Verma)

O R D E R

(By Hon'ble Shri T.N. Bhat)

The petitioner herein had filed OA NO. 1507/88 which was disposed of by a Division Bench of this Tribunal on 20th October, 1993 with the following directions, as contained in para (3) of the judgement:

" For the reasons stated above, this application is allowed and the impugned order Annexure A-1 is hereby quashed. The respondents are directed to consider

the case of petitioner for promotion to the cadre of UDCs as and when it becomes due in accordance with the rules in question treating the petitioner as having earned eligibility on completion of eight years of service taking into consideration the service rendered by him in the units or departments in which he was serving before he was transferred twice on his own requests. No costs."

1. The applicant was later promoted as UDC by the order dated 11/2/98 which order was issued in pursuance to the aforesaid judgement. This contempt petition had been filed even before the order of promotion was issued and the applicant's grievance was that despite a clear direction from the Tribunal the respondents had failed to give him promotion. The petitioner is also not satisfied with the order dated 11/2/98, as, according to him, he was entitled to promotion from a much earlier date.
2. The MA 2367/97 is filed by the petitioner with the request that he may be exempted from filing certified copy of the judgement/order dated 20th October, 93.
3. ~~MA~~ MA 481/98 has been filed after the applicant's ~~order~~ order of promotion dated 11/2/98 had been issued by the respondents. By this MA the applicant sought permission to place on record certain additional documents. He also raised some additional grounds, more particularly those relating to Shri S.P. Goyal and some other persons who, according to the petitioner, were junior to him, but had been promoted as UDC's prior to the date of the petitioner's promotion, that is, 11/2/98.
4. In reply to the CP as also in the reply to the aforesaid MA No 481 the respondents have taken the plea that the applicant was not considered to be senior enough to merit his consideration prior to the year 1997-98 as he did not come within the zone of consideration, even though he was eligible after taking into account his past service rendered in another Unit. It is further

contended by the respondents that none of the applicant's juniors in the new unit was promoted before the applicants promotion on 11/2/98.

5. We have heard the learned counsel for the parties at length and have also perused the documents filed by them in support of their respective contentions.

6. The point at issue in OA 1507/88 was as to whether the previous service rendered by the applicant before his transfer to two new units would count for the purpose of eligibility, as the respondents had in their order dated 13/7/88, which was impugned in the OA, held that the previous service rendered by the applicant could not be counted. The Division Bench of the Tribunal by the order dated 20th October, 93 held that the service rendered by the applicant in the Units where he had been working before his transfer would have to be counted. However, the Tribunal clearly kept the question as to whether the petitioner's case would fall for consideration for promotion considering the number of vacancies and the zone of consideration open. This is clear from the following words used in Para 2 of the judgement ibid:-

" As to whether the petitioners case falls for consideration for promotion would depend upon the number of vacancies and as to whether having regard to the number of eligible persons and the vacancies he comes within the zone of consideration are all matters which have to be investigated and a decision taken thereon."

7. While allowing the OA and quashing the order impugned therein the Tribunal gave a direction to the respondent to consider the case of the petitioner for promotion as and when it becomes due in accordance with the relevant rules, treating the

petitioner as having eligibility of completion of eight years of service taking into consideration the service rendered by him in the Units or departments in which he was serving before he was transferred twice on his own requests. That being the direction of the Tribunal we cannot accept the plea of the learned counsel of the petitioner that the respondents had committed contempt by not granting promotion to the applicant with effect from the date when he acquired eligibility. Unless the petitioner shows that he fell within the zone of consideration along with others but even so he was ignored, the respondents cannot be held guilty of contempt. As already mentioned, the respondents have emphatically denied that any person junior to the applicant in the Unit in which he is presently working was granted promotion before the applicant.

8. A perusal of the Tribunal's judgement order dated 20th Oct, 93 reveals that the applicant was transferred to GE(P), Meerut on mutual consent basis in Feb, 1985. Thus those persons who were working in that Unit prior to Feb, '85 had become senior to the applicant. The applicant has annexed to the CP a chart relating to certain persons who, according to the applicant, were junior to him but who have been promoted prior to Feb, 1998. We have carefully gone through this chart, but we find that all the persons shown therein had joined GE(P), Meerut prior to the applicant's date of joining. These persons had been appointed in the Unit, namely, GE(P), Meerut sometime in the year 1963 as L.D.C. ~~and~~. This would not by itself be sufficient to prove that they would be junior to the applicant who had initially joined as LDC in 1962 but was transferred twice to other units on his own request. However, during the course of the arguments the learned counsel for the petitioner laid much emphasis on the promotion of one Shri S.P. Goyal who according to the applicant had joined as

LDC on the same date as the applicant. This person was promoted as UDC in the month of March, 81 and the learned counsel for the petitioner had urged before us that the applicant also was entitled to be considered for promotion from ' March, 81 onwards. In making this contention the learned counsel for the petitioner had conveniently forgotten to take note of the fact that the said Shri S.P. Goyal had continued to serve in the old unit while the applicant sought transfer on his own request not once but twice and eventually joined the new unit, namely, GE(P) Meerut sometime in Feb, 85. Therefore, by no stretch of reasoning can the case of the applicant be equated with that of Shri S.P. Goyal. In our view what the applicant seeks is not only eligibility after taking into account the past service rendered by him in another unit, but also seniority on the basis of his initial date of joining in the previous unit. This certainly was not the direction given by the Tribunal in its judgement/order dated 20th Oct, 1993. On the contrary, it was specifically stated that the promotion would depend upon the number of vacancies and the fact as to whether the name of the applicant would come within the zone of consideration. The applicant could have claimed promotion if he had succeeded in establishing that somebody junior to him in the new unit had been granted promotion which is not the case. At best he could perhaps claim seniority from the ' year 1976 when he was transferred to Delhi. The persons named in the Chart annexed to the C.P. as Annexure "D", as already mentioned, had been appointed as LDCs in the year 1963 and they continuously worked in the Unit in which they were initially appointed. They were accordingly promoted as UDC in the year 1981 to 1985. The petitioner erroneously relies upon the entries under the column "Date of promotion as UDC" in Annexure-D as the relevant data for determining the seniority of those persons vis-a-vis the date of appointment/joining of the applicant by transfer on his own request. His date of joining on

transfer has to be compared with the dates of joining of the persons mentioned in the chart as LDCs and not as UDCs. These persons, against whom the applicant claims seniority, had initially joined in 1963 while the applicant could claim seniority at best from the year 1976.

9. We also do not find any merit in the contention that ~~since~~ ^{since} the applicant had acquired eligibility w.e.f. 1970 he also should have been considered against all vacancies arising after that year. As held by the Tribunal in its judgement this question would depend upon the number of vacancies, the number of eligible persons and the zone of consideration.

10. For the foregoing reasons we find no merit in this contempt petition which is accordingly dismissed. The notice issued ~~to~~ ^{to} the respondents is hereby discharged, MA Nos. 2367/97 & 481/98 also stand disposed of accordingly. *u*

Biswas
(S.P.- Biswas)
Member (A)

Umesh 21-5-98
(T.N. Bhat)
Member (J)

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