

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1998/90
T.A. No.

199

DATE OF DECISION 10.11.1994

<u>Jai Bhagwan</u>	Petitioner
<u>Shri Jog Singh</u>	Advocate for the Petitioner(s)
<u>Versus</u> <u>Dir. of Sugarcane Development</u> <u>& Anr.</u>	Respondent
<u>Shri P. H. Ramchandani</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice S. C. Mathur, Chairman

The Hon'ble Mr. P. T. Thiruvengadam, 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
- 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 ? Yes

(S. C. Mathur)
Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.1998/90

New Delhi, This the 10th Day of November 1994

Hon'ble Shri Justice S.C.Mathur,Chairman

Hon'ble Shri P.T.Thiruvenadam,Member(A)

Shri Jai Bhagawan
L.D.C.
Dept of Sugarcane Development
Ghaziabad
U.P.

...Applicant

By Shri Jog Singh, Advocate

Versus

1. Director of Sugarcane Development
C.G.O.Complex
Hapur Road Chungi
Ghaziabad(U.P)
2. Union of India
Through its Secretary
Ministry of Agriculture
Krishi Bhavan
New Delhi 110 001.

...Respondents

By Shri P H Ramachandani, Advocate

ORDER

Hon'ble Shri P.T.THIRUVENGADAM,Member(A)

1. The applicant was initially recruited as a Clerk(General) on 11.6.1968 in the 'Corps' of Electrical Mechanical Engineering(Army). He was further promoted as Naik(Clerk) and Havildar(clerk-paid acting). He was discharged from active Army service on 4.6.1985 on medical grounds but was declared fit for civil service. The applicant was sponsored by the Directorate General of Resettlement, Ministry of Defence to the Director, Directorate of Sugarcane Development and was appointed to the latter's office on 1.10.87. Subsequently on 1.9.88 the applicant

Was promoted to the post of UDC in the Sugarcane Development Directorate initially on trial basis for a period of 3 months. He was continued as UDC till March 1990 when by office order 11/90 dated 6.3.90 he was ordered to be reverted to the post of LDC. This OA has been filed challenging this reversion order and for issue of direction to promote the applicant to the post of UDC retrospectively from the date of his reversion with consequential benefits.

2. The learned counsel for the applicant claims that the service of the applicant in Army in posts equivalent or higher than LDC should be given due credit and the applicants seniority decided accordingly. In support of this claim orders passed by this Bench of the Tribunal in OA No.1346/89,1357/89, 10/89, 1356/89,1355/89 and 1462/89 on 18.3.91 were relied upon. In the common order the applicants in these OAs were allowed the benefit of seniority taking into account their past service in the Army. While allowing the applications the Tribunal had reproduced relevant portions from the office memoranda No.4252/56 - CS(C) dated 18.7.56 issued by the Ministry of Home Affairs, Govt of India and No.11/15-72Estt(D) dated 28.6.72 issued by the Cabinet Secretariat, as under:-

"the undersigned is directed to say that this Ministry have taken a decision to count for the purpose of seniority in the Grade of Lower Division Clerks in the Central Secretariat and offices included under the Central Secretariat Clerical Service, Scheme all service rendered in clerical posts

(including service rendered as Sepoy Clerk and Havildar Clerk) provided such service is continuous with service in the grade of Lower Division Clerks. No general orders on the subject have however, been issued by the Ministry." (From OM of 1956)

"However, the controlling authority in the Ministry of Home Affairs dealing with the Central Secretariat Clerical Service had, in 1956, informed the Ministry of Defence vide their office Memorandum Number 4252/56-CS(C) dated the 18th July, 1956 (copy enclosed) that service rendered as Sepoy Clerk and Havildar Clerk, would count for purpose of seniority in the grade of Lower Division Clerks 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. No general orders on the subject, were, however, issued by the Ministry of Home Affairs and, as such, this Department is not aware whether any such benefit was allowed to Lower Division Clerks serving in offices not participating in the Central Secretariat Clerical Service Scheme.

In this connection a copy of Unstarred Question Number 614 by Shri S. N. Narayanan and of the reply given thereto in the Rajya Sabha on the 25th May, 1972, is enclosed. To enable this Department to fulfil the assurance given in the reply to the Rajya Sabha Question, it is requested that this Department may kindly be informed whether a similar benefit as laid down in the ..4/-

Ministry of Home Affairs Office Memorandum dated the 18th July, 1956 referred to above was given to ex-servicemen absorbed as Lower Division Clerks, prior to the 22nd December 1959, in offices under the Ministry of Finance etc which are not included in C.S.C.S and, if so, whether such a benefit was given by the cadre authorities on volition or in consultation with the Ministry of Home Affairs (now Department of Personnel). The required information may be given in the proforma enclosed." (From OM of 1972)

3. It is argued that the benefits extended in the OAs referred supra should be extended to the applicant in this case. We however, note that the OM of 1956 stipulates continuity in service between the Army service and the subsequent civil service. All the applicants in the OAs which were decided on 18.3.91 satisfied the conditions of continuity in that on release from the Army they immediately joined civil service without any break either on the same date of release or on the very next date. In the case of the applicant in this OA there was a break between the release from the Army on 4.6.85 and the subsequent absorption in the Directorate of Sugarcane Development on 1.10.87. There was a gap of 2 years and 4 months. Hence the benefits of 1956 OM which stipulates continuity in service cannot be extended in this case. On perusal of office memorandum dated 28.6.72 it would appear that the benefit of Army service is envisaged only where ex-servicemen got absorbed prior to 22.12.59. We do not propose to go into this aspect since even based on the

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1956 C.M we have held that the applicant is not eligible for the counting of the Army service.

The learned counsel for the applicant then relied on the orders passed by the High Court of Judicature Karnataka in WP No.7695/1976 decided on 31.1.77.

The High Court had gone into the question of seniority of discharged Army personnel who are appointed as civilians in the same Ministry.

Reference was made to the Ministry of Defence No.10(1)63/6039/D Appts letter dated 1.6.63 which related to employment of persons released from combatent posts in civil posts under the Ministry of Defence. Since the facts in the present OA are distinguishable the orders passed by the Karnataka High Court do not help the case of this applicant.

4. Reference was then made to the orders passed by this Bench of the Tribunal on 28.5.87 in the case of Shri RL Chhibber Vs Union of India in OA 1125/85. It is a case where there was a break of 4 months and 25 days between the release of Shri Chhibber from the Army Service and before he joined the civil side. However, the respondents had granted quasi permanency to Shri Chhibber in less than a year of joining the civil side post. The Tribunal held that "obviously the quasi permanency status was assigned after taking into account the past service in the Army". The Tribunal felt that there was no reason to deny a similar dispensation for the purpose of seniority. In the case before us quasi permanency/has not been shown to have been granted and also the break between two services is considerable.

5. The learned counsel for the respondents explained the background to initial promotion as ad hoc and why the applicant was subsequently reverted. Applicant was placed on probation for a period of 2 years at the time he was re-employed in the Directorate of Sugarcane Development on 1-10-1987 in the post of L.D.C. The next post in the chain is that of Upper Division Clerk (UDC) and for promotion to this post recruitment rules stipulate 3 years service in the grade of Lower Division Clerk (LDC) and such service has to be regular service. When vacancies in the grade of UDC arose in the year 1988 and such vacancies had to be filled temporarily, applicant was appointed to one of the posts even though he was still on probation in the lower post. But the promotion orders mentioned that the applicant was being promoted on trial basis and also that the appointment would not confer any right to the post of UDC and the appointment as UDC on trial basis was extended from time to time till he was reverted by the impugned order dated 6-3-90. The reversion had to take place since audit authorities had taken objection to the promotion not being as per rules. Apart from this during the trial period the applicant's work, conduct and performance had not been satisfactory. Certain Memos had to be issued to the applicant on 30-1-90 and 7-2-90 pointing out certain omissions and commissions and warning him.

6. The learned counsel for the applicant contended that the audit objection regarding the promotion to the applicant has since been dropped. This position was not accepted by the other side. We do not find it necessary to go

into this aspect. It was further argued on behalf of the applicant that he has been promoted after holding a regular test against limited departmental quota and also two of his juniors had also been promoted (Shri Rana and Shri Ghosh) and have been continued without reversion.

7. The respondents however argued that no formal test was conducted as the applicant was not eligible for regular promotion but there was a test only for assessing the applicants' *prima facie* suitability for the post of UDC. As regards the promotion of Shri Rana, it has been mentioned in the reply that Shri Rana was appointed as LDC on 24-2-84 whereas the applicant was appointed only on 1-10-1987. Even Shri Ghosh was redeployed as LDC with effect from 15-1-87 through Central Surplus Cell on transfer without any break in service.

8. Further grounds like the applicant having a *earned/creditable* record in army, the applicant was promoted against a regular vacancy and during his promotion as UDC and even after reversion his work had been appreciated, are not material to the disposal of this O.A.

9. In view of the above, O.A. is dismissed as being devoid of merits. No costs.

P. J. JAI

(P.T. THIRUVENGADAM)
Member (A)

A. MATHUR

(A.C. MATHUR)
Chairman.