

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 2250
T.A. No.

1990

DATE OF DECISION 1st December, 1994.

Shri O.P. Sharma

Petitioner

Shri D.C. Vohra

Advocate for the Petitioner(s)

Versus

Union of India through the

Respondent

Foreign Secretary, Min. of External Affairs

Shri N.S. Mehta

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. To be referred to the Reporter or not? Yes

2. Whether it needs to be circulated to other Benches of the Tribunal? Yes

(S.C. MATHUR)

CHAIRMAN

1.12.1994.

DATE OF DECISION

(3)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI .

O.A. No. 2250/1990.

New Delhi this the 1st day of December, 1994.

CORAM :

HON'BLE SHRI JUSTICE S.C. MATHUR, CHAIRMAN
HON'BLE SHRI P.T. THIRUVENGADAM, MEMBER (A)

O.P. Sharma
S/O Shri Parma Nand
R/O 40-Z Ram Nagar,
Paharganj,
New Delhi 110055.

.... Applicant.

(By Advocate Shri D.C. Vohra)

Versus

Union of India
through the Foreign Secretary,
Govt. of India,
Ministry of External Affairs,
South Block,
New Delhi 110011

.... Respondent

(By Senior Standing Counsel Shri N.S. Mehta)

ORDER

Shri Justice S.C. Mathur -

The applicant's claim in this Application under Section 14 read with Section 19 of the Administrative Tribunals Act, 1985 is that his period of service in the army while the two emergencies proclaimed under the Constitution were in operation deserves to be added to the period of service in the civilian employment which he took up after release from the Army for the purpose of counting his seniority in the civilian employment. The period which the applicant claims to be deserving of addition has been stated to be from 26.10.1962 to 10.1.1968 (first emergency period) and from 3.12.1971 to 27.3.1977 (second emergency period) totalling 7 years 8 months and 14 days. The alternative claim is that in any case the period from 3.12.1971 to 27.3.1977 has to be added, if the earlier period is to be ignored on

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account of lack of continuity.

2. The facts which are either admitted or undisputed or which have been established from the record are as follows:-

3. The country was under two spells of emergency.

The first spell commenced on 26.10.1962 and ended on 10.1.1968.

The second spell commenced on 3.12.1971 and ended on

27.3.1977. The applicant joined the ministerial establishment of the Indian Army on 21.8.1965 when the first spell of emergency was in operation. This date is mentioned in the certificate of service filed by the applicant as

Annexure A-2 to his O.A. He sought premature retirement which is apparent from Annexure B to the O.A. The request for premature retirement was accepted and he was discharged from the Indian Army on 20.2.1982. Thereafter he served as

Clerk under the Punjab Government from 21.2.1982 to 10.6.1984.

While he was serving under the Punjab Government, advertisement was issued by the Staff Selection Commission for recruitment to the post of Lower Division Clerk in the Central Government.

This advertisement, as alleged by the applicant in his affidavit dated 25.11.1994 filed after the conclusion of the arguments, was issued in June, 1981. The applicant appeared at the examination held in February, 1982. The result of the examination was declared in March, 1984. The applicant was selected and he joined the Ministry of External Affairs on 11.6.1984 as Lower Division Clerk.

4. In support of his claim that the applicant is entitled to add the aforesaid two periods to his period of

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service in the Ministry of External Affairs for purposes of seniority, the learned counsel for the applicant has not relied upon any rule, Government order or Office Memorandum. He has merely relied on certain authorities rendered by their Lordships of the Supreme Court, the Central Administrative Tribunal and certain High Courts.

5. The applicant's claim has been contested on behalf of the Government on the plea that seniority is to be determined with reference to statutory rules and in their absence, Government instructions and since the applicant is not relying upon either, his claim for addition of the period is wholly misconceived.

6. We find merit in the submission of the learned counsel for the Government. It is settled law that where there is a statutory rule prescribing the manner of determining seniority, the seniority will have to be determined in the manner prescribed in the rule and in the absence of such a rule, seniority will be determined on the basis of instructions issued by the Government through orders or office memoranda, and in the absence of both, on the basis of continuous officiation in the grade. Judgments of the Supreme Court are binding upon all authorities in India, including the Government of India and the Central Administrative Tribunal. We may accordingly immediately proceed to consider the judgments of the Supreme Court cited by the learned counsel.

7. The first authority cited by the learned counsel is EX-CAPT. A.S. PARMAR AND OTHERS Vs. STATE OF HARYANA AND OTHERS (AIR 1986 SC 1183). This case is based on Punjab Government National Emergency (Concessions) Rules, 1965. These Rules, it appears, provided for adding the period of military service during the emergency period to the period of service in civil employment for the purpose of counting seniority. The Rules framed by the Punjab Government will obviously not govern employees of the Central Government. We have already observed hereinabove that statutory rules will prevail. This case is, therefore, of no assistance to the applicant.

8. AIR 1981 SC 1082 - EX-CAPT. RANDHIR SINGH DHULL Vs. S.B. BHAMBRI AND OTHERS. is also a case based on the aforesaid Punjab Rules. This authority is also accordingly irrelevant for the purposes of the present case.

9. Having appraised the judgments of the Supreme Court, we may now come to the judgments of the High Courts. Copy of the judgment rendered by the High Court of Punjab and Haryana in Civil Writ Petition No.5184 of 1985- Hem Raj Gupta and others Vs. Punjab State Electricity Board and others decided on 10.7.1990 has been filed as Annexure-1 to the applicant's rejoinder. This judgment is also based on Punjab Government National Emergency (Concessions) Rules, 1965 and the judgments of the Supreme Court referred to hereinabove. For the reasons already discussed, this judgment is irrelevant for the purposes of the present case.

10. In T.P. THOMAS Vs. UNION OF INDIA AND OTHERS, Writ Petition No.7695 of 1976, decided on 31.1.1977 by the High Court of Karnataka, benefit of Army service for

counting seniority was claimed on the basis of an order issued by the Government of India, Ministry of Defence. It is obvious that this Government order will apply only to the employees under the Ministry of Defence. This order is not of general application. Further this Government order does not give benefit of service during the emergency period. Accordingly, reliance placed by the learned counsel on this judgment is misconceived.

11. We may now come to the judgments of the Tribunal in order to find out whether the applicant's claim can be accepted on the basis of these judgments. Earlier in point of time is the decision of the Principal Bench in O.A. No.1125/86 - R.L. CHIBBER Vs. UNION OF INDIA & OTHERS decided on 28.5.1987. This case was heard and decided by a Division Bench. In this case, the applicant had served in the Army from 6.8.1946 to 2.4.1953. He was declared surplus to the Army establishment and was thereafter appointed as Lower Division Clerk on 26.8.1953 in the office of Director General, Supplies and Disposals, Government of India. He was declared quasi-permanent with effect from 1.7.1954 and he was confirmed as Lower Division Clerk with effect from 1.5.1959. In the Application, the applicant had pointed out that his colleague Shri Hari Bhagat was also previously in the Indian Army and his period of Army service had been added to his service in the civilian employment for the purpose of counting his seniority but the same benefit had been denied to him. He obviously invoked the equality clause in the Constitution. The claim of the applicant was resisted on behalf of the Government on the ground that Shri Bhagat had more length of service than the applicant in the Army. On this basis the charge of discrimination was sought to be met.

The Tribunal observed that the respondent had not brought to their notice any rule, regulation or administrative instruction prescribing that benefit of Army service will be determined on the basis of period of service rendered in the Army. In other words, the Tribunal was of the opinion that the Government had failed to rebut the charge of discrimination. Another ground on which the applicant's claim was sought to be resisted was that he had not passed the typing test. This plea also did not find favour with the Tribunal on the ground that despite his failure to pass the typing test the applicant had been confirmed as Lower Division Clerk and, therefore, the failure to pass the typing test could not be set up against him while determining his seniority. The Tribunal was of the opinion that if the benefit of Army service was given to the applicant at the time of his confirmation, there was no occasion to deny him that benefit while counting his seniority. The applicant had also relied upon Office Memorandum dated 18.7.1956 issued by the Ministry of Home Affairs, Government of India, which provided "service rendered in clerical posts (including service rendered as Sepoy Clerk and Havildar Clerk) would count for the 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." (emphasis supplied). The Bench was of the opinion that the applicant was entitled to the benefit of this Office Memorandum and the short break in service of 4 months and 25 days was liable to be ignored. The Bench was of the opinion that this short break in continuity of service was liable to be ignored as on account of that break, respondents had not denied to the applicant the benefit of the Office

Memorandum while according him quasi-permanency. In other words, the Bench was of the opinion that once benefit of the Government order had been given to the applicant for one purpose, its benefit could not be denied to him subsequently for other purposes. The facts of this case are entirely different. The Office Memorandum relied upon in this case had no reference to service in the Army during emergency period. This judgment is, therefore, of no assistance to the applicant.

12. The last judgment relied upon by the learned counsel was delivered on 18.3.1991 at the Principal Bench while disposing of a number of Applications, the leading Application being O.A. 1346/89 - P.K. DATTI CHAUDHURY Vs. UNION OF INDIA AND OTHERS. In this case, all the applicants prior to joining civil establishment had served in the Army establishment and they claimed addition of the period of their service in the Army to the period of their civilian service for the purpose of determining their seniority. It appears from the judgment that on behalf of the applicants reliance had been placed on Office Memorandum dated 18.7.1956 referred to in Chibber's case (supra) which allowed addition of period of army service provided there was no break between release from Army and joining the civil employment. The Bench took note of this Memorandum and the decisions rendered in the cases referred to hereinbefore and recorded the finding that the applicants were entitled to count their Army service for the purpose of determining their seniority in the civil employment. From the statement of facts in O.A.s No.1357/89, 70/89, 1356/89, 1355/89 and 1462/89, it is apparent that there was continuity in service in respect of these applicants between employment in the Army and their employment in the civil establishment. Accordingly, this authority is also of no assistance to the applicant. In the case of the applicant there is break in service.

He was discharged from the Army on 20.2.1982 and he joined the External Affairs Ministry on 11.6.1984 after more than 2 years and 3 months. His employment under the Punjab Government is of no avail as seniority is ordinarily post-wise or grade-wise. Even period of employment on another post under the same Government does not count towards seniority unless there is rule or direction to that effect. In the case on hand, there is change ~~of~~ not only grade or post but Government also; the position is worse. It also needs to be pointed out that the applicant has not based his claim on continuity of service. He has based his claim only on rendering service in the Army during emergency.

13. In all the cases cited by the learned counsel, the period of Army service was directed to be counted in determining seniority either on the basis of statutory rule or on the basis of Government instructions contained in Office Memorandum. As mentioned earlier the applicant does not cite any statutory rule or any Government order or Office Memorandum; the authorities cited are of no assistance. The penultimate position is that neither there is statutory rule, nor there is any Government order or Office Memorandum nor any authority of the Supreme Court or of any High Court or any Bench of the Tribunal to sustain the applicant's claim. The applicant approached the Tribunal with an absolutely misconceived grievance.

14. In view of the above, the O.A. is dismissed with costs to the respondent, which is quantified at Rs.500/-.

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(P.T. THIRUVENGADAM)
MEMBER (A)

S.C. Mathur
(S.C. MATHUR)
CHAIRMAN