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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

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OA.No. 2694 of 1990

Dated at New Delhi, this 23<sup>rd</sup> day of December, 1994

Hon'ble Shri J. P. Sharma, Member(J)

Hon'ble Shri B. K. Singh, Member(A)

Smt Manmit Mukherjee  
Librarian Grade-II  
Ministry of Defence Library

... Applicant

By Advocate: Shri P. I. Oommen

Versus

Union of India, through

1. Secretary  
Ministry of Defence  
South Block  
NEW DELHI 110 011

2. Chief Administrative Officer & JS  
Armed Forces Headquarters  
C - II Hutments  
NEW DELHI 110 011

3. Smt M. M. Williams  
Assistant Librarian  
Ministry of Defence Library  
South Block  
NEW DELHI 110 011

... Respondents

By Advocate: M. S. Ramalingam

Shri M. S. Ramalingam, Departmental  
Representative.

JUDGEMENT

Shri B. K. Singh, M(A)

This OA has been filed by the applicant against the order No.A/22886/Seniority Roll/CAO/P-2 dated 28.8.90 refusing to consider the applicant's seniority in Grade-III for promotion by the respondent No.2 (Annexure 'A' of the paper book).

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2. The admitted facts of the case are that the applicant was initially appointed as casual Librarian (corresponding to Librarian Grade-III) on 24.9.69 in E.M.E. Technical Group, Delhi Cantt. in the scale of Rs.150-320. She was declared surplus by E.M.E. Technical Group, Delhi Cantt. and was subsequently appointed as Librarian Grade-III with effect from 24.3.70 in the same pay scale in Armed Forces Headquarters (AFHQ). On the basis of the recommendations of the Third Pay Commission, the pay scale was revised to Rs.320-640. While doing so, the orders were issued under CDS(RP) Rules, 1973 under Surplus/Deficiency Scheme which was being operated by AG's Branch, Army Headquarters. A copy of the Scheme is enclosed with the counter as Annexure R-1. As per this Scheme, pay of the individuals declared surplus and given alternative appointments, is protected but not their seniority. Their seniority is counted from the date he/she joins the new organisation irrespective of the fact whether he/she is permanent or temporary. The applicant was, therefore, given the seniority in Librarian Grade-III with effect from 24.3.70 i.e., the date on which she joined AFHQ.

3. The Surplus/Deficiency Scheme also provides that if a declared person on being surplus is adjusted against a lower

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appointment, having lower salary, he/she, on joining the new organisation, may apply for reclassification.

4. It is admitted by both the parties that respondent No.3 was initially appointed as Assistant Librarian in temporary capacity on 3.10.70 in National defence College(NDC) in the pay scale of Rs.210-425(pre revised). A copy of the offer of appointment made to Respondent No.3 is enclosed with the counter reply as Annexure R-II.

The NDC was not a part of AFHQ then and it functioned as an independent unit. It was only on 17.10.70 that NDC was declared an inter-service organisation of the Ministry of Defence. The formalities regarding induction of Librarians in NDC of a common roster with AFHQ/Inter service Organisations could be completed only by 17.8.74. While the process of integration of NDC as inter service organisation of the Ministry of Defence was underway, Respondent No.3 was declared surplus to the establishment of NDC and the scheme framed on the basis of the rules issued by DoPT envisaged that a surplus staff could be either absorbed in the same establishment if an equivalent post was available and if an equivalent post was not available, she could be given a lower post after obtaining the specific consent of the person concerned. When respondent No.3 was declared surplus as Assistant Librarian, there was no corresponding post of equivalent rank available in AFHQ. It is not denied by the learned counsel for the applicant that the post of

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Assistant Librarian to which Respondent No.3 was initially appointed, had pay scale much higher than the pay scale of the applicant in this OA. Thus the respondent No.3 accepted a lower post as per the scheme, but represented for reclassification of her post as Librarian Grade-II in AFHQ with effect from 3.4.74 in accordance with the provisions of Surplus/Deficiency Scheme formulated by AFHQ, Ministry of Defence. It is also admitted that her representation was considered in consultation with the Ministry of Law and Justice and Department of Personnel and A.R., Ministry of Public Grievances and Pensions and in the light of the instructions issued by the DoPT on the subject, she was adjusted as Librarian Grade-II with effect from 23.2.81 giving her the notional seniority as Librarian Grade-II with effect from 3.4.74 i.e., the date on which she actually joined AFHQ. It is also an admitted fact that Respondent No.3 was eligible to be considered for reclassification under Surplus/Deficiency Scheme as she was working as Assistant Librarian (corresponding to Librarian Grade-II) when she was declared surplus by NDC and joined AFHQ as Librarian grade-III. Thus her reclassification as Librarian Grade-II with effect from 23.2.81 with notional seniority with effect from 3.4.74 is under challenge in this OA.

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5. The impugned order was issued vide letter No.A/22886/Sen Roll/CAO (P-2) dated 28.8.90. This is Annexure 'A' of the paper book. The applicant had ~~already~~ worked for less than six months before being declared surplus since she joined as librarian Grade-III on 24.9.69 in the pay scale of Rs.150-320 and was declared surplus and was posted in the AFHQ, Ministry of Defence with effect from 24.3.70 vide letter No.13/CIV dated 24.3.70. This is Annexure 'B' of the paper book. There were three others who were also declared surplus and posted as Librarian Grade-III in the AFHQ and these are Shri B. S. Yadav with effect from 12.2.71, Shri M. S. Katoch with effect from 5.4.73 and Smt M. M. Williams with effect from 3.4.74. The seniority list of Librarian Grade-II was published vide letter No.89644/79/CAO/P-4 dated 16.1.79. This is enclosed as Annexure 'D' to the OA. In the aforesaid seniority roll for Grade-III Librarian, the applicant's name was shown at serial No.7 below Shri Sukhbir Singh. The names of Shri B. S. Yadav, Shri N. S. Katoch and Smt. M. M. Williams were placed at serial Nos. 8,9&10 respectively.

6. The Recruitment Rules, 1968 lay down the classification for appointment to Grade-III Librarians and this is (i) Matriculation or equivalent qualifications of a recognised Board/University, (ii) Certificate in



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Library Science from a recognised University or Institute and (iii) Two years' experience as a Librarian in a Public/Government Library. As regards promotions, a Librarian Grade-IV with three years' service in the grade is eligible for promotion as Grade-III. A copy of the Recruitment Rules is enclosed as Annexure 'E' to the OA.

7. The grievance of the applicant is that while adjusting and reclassifying Mrs Williams as Grade-II Librarian with effect from 23.2.81, the applicant was not considered for promotion though she was eligible for the post of Grade-II and entitled for the post of Grade-II in the year 1981 in accordance with recruitment Rules, 1977. When she filed representation questioning the seniority granted to Mrs Williams vide Annexure 'I', her representation was rejected vide Memo No.A/22886/Seniority/CAO/(P-2) dated 7.4.84. In that order it was stated that seniority of Librarian grade-II was allowed to Mrs Williams with effect from 3.4.74 after due consultation with the Legal Adviser(Defence), DP&AR and Ministry of Law and Justice, and after due consultation with the authorities, Mrs Williams was assigned her place in the seniority roll of Grade-II.

8. The applicant has sought the following reliefs:

"(a) To quash the seniority roll published by respondent No.2 vide Annexure 'H'.

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(b) To quash the order of respondent No.2 reclassifying the status of Mrs Williams to Grade-II Librarian w.e.f. 23.2.81 with notional seniority w.e.f. 3.4.74 (Annexure 'O').

(c) To direct the Respondent No.2 to prepare a select list for promotion to Grade-II Librarian from the date Respondent No.3 was adjusted to grade-II Librarian i.e. from 23.2.81 and include the applicant in the select list by virtue of her seniority and hold a DPC as per the rules.

(d) To revise the seniority roll of grade-II Librarians thereafter accordingly..."

9. A notice was issued to the respondents who filed their reply contesting the application and the grant of reliefs prayed for.

10. We heard the learned counsel Shri P.I. Oommen for the applicant and Shri M. S. Ramalingam, Legal Advisor to the Ministry of Defence and perused the record of the case.

11. A perusal of the Recruitment Rules issued vide S.R.O.115 dated 30.3.68 which are relevant for adjudication in the instant case lays down that in case of Librarian Grade-II, the mode of selection is <sup>50% by</sup> direct recruitment <sub>and 50% by promotion</sub> and the essential qualifications are (i) Degree of a recognised University, (ii) Diploma in Library Science from a recognised University or Institution and (iii) Two Years' experience as Librarian in a Public or Government Library and the pay scale give is Rs.210-425(pre revised). In case of Librarian Grade-III the qualifications have been enumerated above and it is both by direct recruitment and also by

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promotion from Librarian Grade-IV. During the course of arguments, the learned counsel for the applicant never mentioned that there was a possibility of promotion from Grade-III to Grade-II i.e. it was never contended that there was a possibility of promotion of Librarian Grade-III to Grade-II. The very nature of the qualifications is such that promotion of a Matriculate having a certificate in Library Science could not be considered for promotion to the post of Librarian Grade-II where the essential qualification is a degree of a recognised University, diploma in Library Science from a recognised University or Institution and 'two years' experience as Librarian in a Public or Government Library. Thus the applicant while holding the post of Librarian Grade-III could be considered eligible for the main promotion to Grade-II but this was not a plank of argument of the learned counsel for the applicant. There could be promotion from Librarian Grade-IV to Grade-III but the Recruitment Rules also envisage a promotion from Grade-III to Grade-II, to the extent of 50%. Where it is of a case of reclassification, holding a DPC or the question of seniority list becomes wholly irrelevant. If the post is to be filled up by direct recruitment and the applicant who had also been considered fit for holding Grade-II post i.e. the post of Assistant Librarian in her previous assignment before being declared surplus on account of her qualifications

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which is a Masters Degree from a recognised University plus a certificate in Library science etc. was well within her right to file a representation after joining Grade-III to reclassify her post and the Respondents were well within their right both on the basis of the instructions issued by DoPT in regard to the redeployment of surplus staff and also on the basis of their own circular issued vide annexure R-I filed to the counter which was issued in April, 1976. This was issued vide Special Army Order No.8/S/76 regarding disposal of surpluses and deficiencies. The circular issued by the AFHQ covers categories in Class-III and Class-IV (non combatants) and this holds good only for people who are in direct line of promotion. It stipulates that the service of eligible employee will not be terminated without providing him/her an opportunity of being considered for alternative appointment under the SAO.

Paragraph-5 of the said circular stipulates:

" An individual rendered surplus in a unit/establishment will first be considered by the Officer Commanding for absorption in the same unit/establishment against an equivalent or lower appointment for which he possesses the requisite qualifications and is found suitable in all respects. Absorption in a lower appointment will be carried out only after the individual concerned has given his willingness in writing to accept such an appointment."

12. Since no post of Librarian Grade-II was available in the AFHQ when the applicant was declared surplus and the respondents took her consent and brought her to Grade-III as per the provisions contained in paragraph-5. Paragraph-8 of the circular lays down that surplus employees will be adjusted in the same trade and grade.

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On the basis of this provision contained in paragraph-8, Respondent No.3 was fully entitled to the promotion of the grade in which she was working as Assistant Librarian before being rendered surplus. Paragraph 14 refers to the order of priority for offering alternative appointments. It also lays down clearly that surplus employees will be adjusted in equivalent posts/vacancies and to a lower post only when vacancies of equivalent grade are not available and that too after obtaining the consent of the employee concerned. Paragraph 19 of the same clearly and unambiguously lays down that the employees/who are offered lower appointments under these orders due to lack of avacancies in their own grade/trade will be free to apply to AFHQ through proper channel for reclassification to their original post on the form which is enclosed as Appendix 'E' on joining duty in their new posts.

13. The seniority in the grade of Librarian Grade-II to  
was assigned  
Respondent No.3/ with effect from 3.4.74 vide Order  
No.A/03347/CAO/P-2 dated 12.5.81 and No. A/22886/Sen  
Roll/CAO(P-2) dated 27.5.81. Thus, the cause of action,  
if any, arose during May,1981. The Hon'ble Tribunal has  
no jurisdiction to entertain and adjudicate a case  
wherein the cause of action arose prior to 1.11.82.

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14. The Hon'ble Supreme Court in the case of state of Punjab vs Gurdev Singh (1991 4 SCC 1) held that the party aggrieved by an order has to approach the court for relief on declaration that the order against him is inoperative and not binding upon him within the prescribed period of limitation since after the expiry of the statutory time limit the court cannot give the declaration sought for. In case of S. S. Rathore Vs State of M.P. (AIR 1990 SC 10) it was held that the cause of action shall be taken to have arisen on the date of the order of the higher authority and where no such order is made within six months after making such representation, the cause of action would arise from the date of expiry of six months.

It was further held by the Hon'ble supreme court that repeated unsuccessful representations not provided by law cannot enlarge the period of limitation. The repeated representations cannot extend the period of limitation. In case of Bhoop singh Vs UOI (JT 1992 3 SC 322) it has been laid down that the cause of action has to be reckoned from the date on which the grievance actually arises and in case of Administrative Tribunal, the period of limitation is already prescribed as maximum one-and-a-half year for filing the application. In view of the specific provisions under Section 21 of the Administrative Tribunal Act, 1985. The Hon'ble Supreme Court in the case of UOI Vs Ratan Chandra samanta (JT

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1993 3 SCC 418) set aside the order of the Hon'ble Tribunal Bombay Bench on ground of limitation alone. Delay and laches deprive a person of his right and if the right is lost the remedy available to him is also lost simultaneously. Thus, the application although and barred by time / highly belated has been admitted and as such we are deciding it on merits also.

15. On merits also, it would be seen that Respondent No.3 was more qualified than the applicant in this case having a Master's Degree and a certificate in Library Science and had been recruited by the respondents in a higher pay scale as Assistant Librarian and it is only when she was declared surplus that she was temporarily adjusted in the cadre of Grade-III and assigned the seniority in that grade from the date of her appointment. But in the light of their statutory instructions and provisions, they reclassified her post and assigned her seniority as Librarian Grade-II with effect from 3.4.74 and was given notional benefit of seniority from that date but she was allowed to draw the higher pay scale in AFHQ with effect from 23.2.81. Under the statutory provisions contained in their circular, Respondent No.3 was eligible to be considered for reclassification under Surplus/Deficiency Scheme as she was working as Assistant Librarian (corresponding to Librarian grade-II) when she was declared surplus by the NDC and joined AFHQ as Librarian Grade-III. Thus her reclassification as Librarian Grade-II with effect from 23.2.81 with notional seniority with effect from 3.4.74 is valid as per the extant instructions on the subject. The applicant herself was adjusted as Librarian Grade-III in AFHQ as

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she was holding an analogous post in E.M.E. Technical Group, Delhi Cantt. prior to her being declared surplus.

It is neither promotion nor a direct recruitment. It is only upgradation of the post held by Mrs Williams in Grade-III to that of Grade-II. Upgradation means the person carries the post with him and the number of post and thus was reduced by one in Grade-III/a new upgraded post is added to Grade-II and this enhances the prospects of future promotion of grade-III unless the post is again downgraded and reclassified.

16. It is a settled principle of service jurisprudence that the policies of Government should be such as to eliminate the hardship as far as possible even when an employee is declared surplus. Redeployment Scheme of the DoPT contains provisions which shows that as far as possible an employee declared surplus should be redeployed in an equivalent grade or post. The policy changes brought about by S.A.O. issued in 1976 also are based on the instructions contained in the redeployment scheme of the DoPT. The ethics of service is an integral part of the administrative behaviour and it is this ethics which guides the framing of the administrative instructions and if the administrative instructions supplement the statutory rules then these instructions also have the force of a statute as held by the Hon'ble Supreme Court in case of K. K. Bevinkutty Vs Karnataka P.S.C. (AIR 1990 SC 1233). The applicant's representation regarding reclassification of Respondent No.3 was also disposed of during April, 1994 and if we

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take this date also as the cause of action arising to the applicant then also it is barred by limitation. The applicant was initially appointed in E.M.E. Technical Group, Delhi Cantt. as Casual Librarian Grade-III and on being declared surplus with effect from 24.3.70 was appointed in the same grade in AFHQ. For want of non availability of <sup>grade-II</sup> post, Respondent No.3 was brought to Grade-III after obtaining her consent, but as per paragraph-19 of the S.A.O. she applied for reclassification of her post and as per the statutory provisions contained in that order, she was reclassified as such. She is no longer a member of Grade-III since her post was upgraded to Grade-II with effect from 3.4.74 and was allowed the higher pay scale from 23.2.81. She was placed below Smt. Raj Bedi and above Shri Pyare Lal in the seniority roll of Librarian Grade-II. Annexure 'O' at page-54 contains the order No.A/03347/CAO/P-2 dated 12.5.81. This order does not affect the applicant nor others in Grade-III. The only person who is affected by this order is Shri Pyare Lal in Grade-II above whom Mrs Williams has been placed in the seniority roll of Grade-II and Shri Pyare Lal is not an applicant before us. The applicant also cannot take the plea that her promotion chances have been minimised because Mrs Williams has not been promoted to Grade-II nor has any benefit of promotion accrued to her. Her post has only been reclassified in the light of the instructions on the subject and was given notional benefit of seniority with effect from 3.4.74 and actual pay from 3.2.81 and this is as per the provisions contained in the aforesaid S.A.O.

on the subject. The question of circumstances, classifications and length of service have no relevance since the applicant and Respondent No.3 were not holding same or equivalent rank. It is also admitted that the qualification of respondent No.3 is higher than that of the applicant and she had rendered much longer service in a higher grade before being declared surplus and it is only later that on her representation the post was reclassified and upgraded to Grade-II. Article 14 & 16 of the Constitution are attracted only when persons are similarly circumstanced. The applicant and respondent No.3 were not similarly circumstanced. When they were initially appointed they were not similarly circumstanced when Respondent No.3 was brought to Grade-III because the statutory instructions clearly lay down that after joining she could file a representation for reclassification of her post. Respondent No.3 was eligible for filing the representation and she filed a representation which was considered as per extant instructions on the subject and her post was reclassified and upgraded from the date she joined the AFHQ and was given notional seniority in Grade-II on that date but actual payment from the date of issue of the order. The law can make and set apart among the same group classes to ~~be~~ according to the needs and exigencies of service. In the present case thereclassification is neither arbitrary nor artificial or evasive. It is based on an intelligible differentia. It

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distinguishes the applicant from Respondent No.3. The differentia has a rational relation to the object sought to be achieved by S.A.O. issued in April, 1976 i.e. to eliminate the hardship of surplus staff and to give her the benefit of reclassification. Article 14 cannot be held identical with the doctrine of classification.

17. In the written submissions filed by the learned counsel for the applicant, he has relied <sup>on decisions</sup> in cases of Gujrat Vs. Raman Lal Keshav Lal Soni 1983(1) SLJ 268: 1983(1) SLR 581(SC), R. N. Nanjundappa Vs T. Thimmia SC Vol.2 P.536, S. K. Ghosh Vs UOI 1968 SLR 141, Mateshwar Singh Vs State of Bihar 1985 2 SLR 511(Patna), Dr S. M. Chaturvedi vs Ministry of Railways 1983 2SLJ 148 All.1983 2 SLR 479 and several other judgements of Hon'ble Supreme Court. The principle of seniority is not involved in this case at all. The question of seniority is involved amongst equals and not between unequals. Respondent No.3 was initially recruited in a much higher post and the applicant in a much lower post. Respondent No.3 having worked for less than six months was declared surplus and reported to AFHQ and although she belonged to the Technical grade she was adjusted as Librarian-III in the same pay scale which she was drawing before being declared surplus. The applicant was in the pay scale of Rs. 150-320 whereas Respondent No.3 was working in the pay

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scale of Rs.210-425 and thus initially they were not holding equivalent ranks. Respondent No.3 worked in a higher post for a much longer period before being declared surplus. As per extant rules, she filed her representation for reclassification and for this purpose there was no need to convene a DPC or to draw a select panel. Her reclassification was permissible according to the rules on the subject and hence the question of malafide does not arise. The applicant had no fundamental or legal right for consideration for promotion before her turn. She was entitled to be considered for promotion in her own turn.

18. We do not find any arbitrariness or malafide in the action of the respondents since the applicant has neither been superseded nor discriminated against in preference to any other person similarly situated. Her seniority has in no way been affected and as such she has no cause of action before the Tribunal. We are not dealing with the question of seniority here. The applicant and the Respondent No.3 initially belong to two different streams and were in different scales of pay. It is only due to fortuitous circumstances that Respondent No.3 joined the stream of Librarian Grade-III but was allowed all the benefits of reclassification as per the extant rules contained in the S.A.O. issued in April, 1976.

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19. We do not find any genuine grievance arising to the applicant and the rulings cited by the learned counsel for the applicant have no bearing to the facts and legal issues involved in the present case and accordingly they are totally irrelevant to the question in issue.

20. Taking a synoptic view of all the facts and circumstances of the case, we find that the application is hit by delay and laches. On merits also it fails because the action of the respondents is valid as per the extant instructions contained in Special Army Order issued in April, 1976. The application thus fails and is dismissed, leaving the parties to bear their own costs.



(B. K. Singh)  
Member (A)



(J. P. Sharma)  
Member (J)

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