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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO.596 OF 1990

New Delhi this the 23rd day of December 1994.

Hon'ble Mr. J.P. Sharma, Member (J)
Hon'ble Mr. S.R. Adige, Member (A)

J.K. Verma
S/o Late B.N. Verma
Aged Approx. 52 years
R/o 6/655 Lohi Colony
New Delhi-110 003.

Employed as

Assistant
in the Research & Analysis Wing
Cabinet Secretariat
Government of India
Room No. 8-B, South Block
New Delhi

.....Applicant

(By Mr. B.B. Raval, advocate)

Versus

1. UNION OF INDIA
Through the Cabinet Secretary
Govt. of India
Rashtrapathi Bhavan
New Delhi-110 001.
2. Shri A.K. Verma
Secretary
Research & Analysis Wing
Cabinet Secretariat
Room No. 8-B, South Block
New Delhi-110 011.
3. The Secretary
Ministry of Works & Housing & Urban Development
Govt. of India
Nirman Bhavan
New Delhi-110 001.

....Respondents

(By Mr. Madhav Panickar, advocate)

J U D G E M E N T

Hon'ble Mr. S. R. Adige, Member (A)

In this application, Shri J.K. Verma, Assistant, Cabinet Secretariat, has prayed for quashing the memo dated 15.12.1989

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(Annexure-4), rejecting his prayer for re-fixation of his seniority and has also prayed for a direction to be given to the respondents to fix his seniority in the rank of Assistant w.e.f. the date of promotion in the borrowing department is. w.e.f. 5.5.1976 with all consequential benefits.

2. The applicant commenced his career as L.D.C. in the Works & Housing Ministry (CPWD) on 14.9.1959. He came on deputation to the Cabinet Secretariat (Research & Analysis Wing) w.e.f. 1.11.1969, and upon his being promoted in the grade of U.D.C. in the parent department and his option to continue on deputation in the Cabinet Secretariat as U.D.C, his pay was fixed by his parent department under Next Below Rule (NBR). Accordingly, he was granted pay in the deputation post as U.D.C. on the basis of his pay fixed in his parent office w.e.f. 5.2.1972. Meanwhile on account of bifurcation of the Intelligence Bureau into I.B. and RAW (September 1968) and the constitution of RAW's own cadre and formulation of its rules, the applicant submitted a letter dated 8.7.1974 expressing his willingness for permanent absorption in the organisation, in the grade of U.D.C. w.e.f. 1.11.1969. In reply, the respondents informed him vide memo dated 5.11.1974 (Annexure R-1) that as he had not applied for absorption in the previous year, when applications were called for from deputationists, he would be considered after the cases of deputationists already approved for absorption by the Selection Board had been settled. He was further informed that it was not possible to indicate the manner in which the subsequent selection board constituted at a later date for consideration of fresh applications would consider his request. In addition, he was advised to give his willingness for permanent absorption without any pre-condition

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if he was interested to be permanently absorbed in the organisation. He was further informed that in case he was not willing to be considered for permanent absorption in RAW, action would be taken to repatriate him, as he had already completed 4 years and 9 months of his deputation. In response to that, the applicant submitted an unconditional option for permanent absorption vide his letter dated 25.11.1974 (Annexure R-2). Meanwhile, consequent to bifurcation of RAW from IB on 21.9.1968, RAW promulgated its own recruitment cadre and service rules, w.e.f. 21.10.1975, and during the period from 21.9.1968 to 21.10.1975, the IB rules have been followed with modifications wherever necessary.

3. By an order dated 5.5.1976, the applicant alongwith other UDCs (Deputationists) who had been considered for permanent absorption in the Cabinet Secretariat were promoted as Assistants in an officiating capacity on purely temporary and ad-hoc basis, effective from the date they actually assumed duties of the new posts. In that order, it was stated that the appointment would be on probation for a period of 3 years, and their inter-se seniority in the grade of UDC/Assistant would be fixed later on in accordance with the RAW (RCS)'s Rules 1975 as and when their cases for permanent absorption were finally decided. It was also stated that there would have no claim for seniority by virtue of this promotion (Annexure R-5). It also appears that on 13.4.1977, the applicant submitted a note requesting that his crossing of EB in the grade of UDC was due w.e.f. 1.2.1976 and his case be taken up for crossing of EB, to which he replied vide letter dated 22.4.1977 (Annexure R-7) that his parent office had been asked to consider his case for crossing of EB. It appears that the procedure for official constitution was delayed due to various administrative reasons and was taken up only in 1982. The respondents state that the

Government officially approved 1.2.1983 as the date for official constitution and accordingly as per sub-rules 3, 4 & 5 Rules 114 of RAW (RCS) Rules 1975, the applicant was appointed in substantive capacity of U.D.C. w.e.f. 1.2.1983 and was accorded seniority in the grade of U.D.C. below all the direct recruit officials, recruited prior to promulgation of the RAW (RCS) Rules 1975, on 21.10.1975 in accordance with sub-rule 3 of Rule 115 of RAW (RCS) Rules 1975 vide order dated 2.5.1984 and substantively as Assistant (pre-maintenance) w.e.f. 1.2.1983 vide order dated 21.11.1985. The applicant contends that he filed several representations for counting of his seniority as Assistant w.e.f. 5.5.1976 but not receiving a satisfactory response, he has been compelled to file this QA.

4. The respondents have contested the QA and have averred that the applicant came to the Cabinet Secretariat as a deputationist and as per rules, appointment on deputation does not confer any right on the deputationist to a deputation post. The lien of the deputationist continues on the post held by him in his parent office. It is only after permanent absorption in the deputation post that the deputationist's lien to the deputation post is created. No doubt the applicant was promoted to the grade of UDC in his parent office and his pay was to be protected with reference to his immediate junior and accordingly he was granted NBR benefit, but that was not a promotion given by the borrowing department. The applicant had submitted only his conditional willingness for permanent absorption in the Cabinet Secretariat (RAW) vide his letter dated 8.7.1974, and hence his case for absorption could not be considered with others. Later he gave his unconditional willingness for permanent absorption, but even after that he was kept informed that his status in RAW was that of deputationists and this fact was also made clear in the order of temporary/ad-hoc promotion as Assistants.

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After the official constitution of the RAW (RCS) Rules 1975 w.e.f. 1.2.1983, the applicant was appointed in the substantive capacity of UDC w.e.f. 1.2.1983 and thereafter was appointed in the substantive capacity as Assistant also, w.e.f. 1.2.1983. Hence the respondents state that this DA is devoid of merits and is fit to be dismissed.

5. We have heard Mr. B.B. Naval for the applicant and Mr. Madhav Panicker for the respondents. We have also perused materials on record including the applicant's personal file which was produced for our inspection by the respondents.

6. The main grounds taken by the applicant are that he was taken on deputation by promotion by the borrowing department, which promoted him on the basis of preforma promotion under NBR w.e.f. 5.2.1972, on which date he was also promoted in his parent department. The applicant had given his willingness for permanent absorption on 25.11.1974 and the RAW (RCS) Rules, 1975 were promulgated on 21st Oct. 1975 and the applicant having been promoted as Assistant on 5.5.1976 had reason to believe that he stood absorbed in the new department and therefore lost all interest in getting attached with the parent department. Furthermore, it is contended that the respondents have shown those officers who joined as LDC and/or UDC after the applicant joined the department on deputation, but before 21.10.1975 i.e. promulgation of RAW(RCS) Rules 1975 as senior enblock to the applicant. It is also contended that the date of 1.2.1983 as the applicant's date of absorption is arbitrary and without any rational basis.

7. We have considered these grounds carefully. Admittedly, the applicant was confirmed LDC in the Ministry of Works & Housing, when he joined the Cabinet Secretariat on deputation as UDC on 1.11.1969. There are no material to indicate, and indeed the applicant

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has not even averred ^{in as to the date} ~~that~~ he was ^{as} confirmed UDC in the parent department and therefore, under rules, while he was given the benefit of proforma promotion as UDC under NBR after his joining the Cabinet Secretariat, he could not under rules carry his seniority as confirmed UDC upon his deputation to the Cabinet Secretariat, not having been confirmed as UDC in his parent department. Hence his prayer for counting his seniority in the rank of UDC w.e.f. 1.11.1969 cannot be acceded to. Furthermore, the order promoting the applicant as Assistant w.e.f. 5.5.1976 made it absolutely clear that the applicant was still continuing to be a deputationist, and the promotion as Assistant itself was purely temporary and ad-hoc, with a further rider that the applicant's seniority in the grade of UDC/Assistant would be fixed later on in accordance with the rules as and when permanent absorption cases were finally decided. No doubt, the applicant by his letter dated 25.11.1974 had given his unqualified acceptance for absorption, letter dated 19.4.1977 from the Cabinet Secretariat, addressed to the Engineering Chief of CPWD makes it clear that the applicant till that date continued to be treated as on deputation, and was also made aware of the fact that the Cabinet Secretariat treated him still as a deputationist. It is only after the coming into force of the RAW (RCS) Rules 1975 w.e.f. 1.2.1983 that the applicant was appointed and was accorded seniority in the UDC grade, below the direct recruited officials and was also appointed in a substantive capacity of Assistant w.e.f. 1.2.1983 at the pre-maintenance stage vide order dated 21.11.1985.

8. Under the circumstances, the applicant has failed to point out any error that has been committed in the fixation of his seniority, and this application therefore lacks merit and fails. It is accordingly dismissed.

No costs.

Adige
(S. R. ADIGE)
MEMBER (A)

Sharma
(J. P. SHARMA)
MEMBER (J)