

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 921/90 199
T.A. No.

DATE OF DECISION 19.9.1990.

Sh. Har Saran Petitioner Applicant

Sh.O.P.Khokha, Advocate for the Petitioner(s) Applicant

Versus

Union of India & ors. Respondent(s)

Mrs. Raj Kumari Chopra, Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. D.K.CHAKRAVORTY, MEMBER(A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *yu*
2. To be referred to the Reporter or not? *ej*
3. Whether their Lordships wish to see the fair copy of the Judgement? *jm*
4. Whether it needs to be circulated to other Benches of the Tribunal?

(Judgement of the Bench delivered by Hon'ble
Mr. D.K.Chakravorty, Member(A))

Judgement

The short point involved in this application under Section 19 of the Administrative Tribunals Act, 1985, is whether the reversion of the applicant from the post of Assistant Mason to the post of Beldar is legally sustainable.

2. The applicant was appointed as Beldar in 1967. On 20-5-75, he was transferred from Hindon to New Delhi at his request. The transfer and posting was subject to the condition that he would forego his old seniority. He joined 'D' Division of C.P.W.D., New Delhi on 2.6.75. Therefore, his seniority, as per rules, will only be with effect from 2.6.75 and not

from 1967 when he joined the C.P.W.D's unit at Hindon, Ghaziabad.

3. The applicant qualified the prescribed trade test for the post of Assistant Mason in 1979. He was promoted as Assistant Mason on 14.8.81. On 16.3.90, the respondents passed the impugned order of reversion on the ground that he had managed to get the promotion by mistake superseding his seniors. The impugned order reads as follows:-

" I am directed to invite a reference to your letter No.10(33)/Co-ord. Circle(E)/E-III/513 dated 8.3.90 on the above cited subject and to say that the matter has been examined and it has been found that Shri Har Saran managed to get the promotion by mistake superseding his seniors, by virtue of his earlier seniority which however, stood forfeited consequent upon his inter-unit transfer from Ghaziabad Central Division to 'D' Division. In fact his date of seniority in the category of Beldar was 2.6.75 and not 1.5.67. Shri Har Saran's wrong promotion has adversely affected the interest of other Beldars of 'D' Division senior to him. Accordingly it has been decided that Shri Har Saran may be reverted to the category of Beldar, forthwith, and be considered for promotion as Assistant Mason in turn on the basis of his seniority from 2.6.75.

2. It has also been decided that the Superintending Engineer/Executive Engineer concerned may furnish a report explaining the reason for the lapse so that officials responsible could be dealt with deterrently.

3. You may proceed further accordingly.

4. The applicant has contended that he has acquired a prescriptive right to hold the post of Assistant Mason and that his seniority cannot be altered to his disadvantage unilaterally without giving him an opportunity to show cause against the same.

5. The respondents have contended that the mere passing of the Trade Test will not entitle him to promotion as Assistant Mason, that the applicant was promoted to the said post by mistake, that there are several persons senior to him who would have been promoted but for the mistake and that the mistake was detected when they received representations in this regard from his seniors.

6. We have gone through the records of the case carefully and have considered the rival contentions. According to the C.P.W.D Manual, Volume III on work charged Establishment, 1972 Edition, normally no transfer of work charged employees shall be made from one unit to another except in the circumstances mentioned in para 10.01. It is provided therein as follows:-

" No transfer of an employee on his own request shall be made except in very special circumstances with the approval of the Engineer-in-Chief. Such an employee will not be given benefit of past service in the new unit for the purpose of seniority. He will, however, count his past service for pensionary or terminal benefits."

7. The respondents have stated in their counter-affidavit that the applicant qualified the trade test by using/quoting his date of seniority as per the record of his erstwhile unit at Ghaziabad, i.e. 1.5.67. This has not been denied by the applicant wherein he has taken the plea that he "being semi-literate could not be expected to know the intricacy of rules regarding the seniority and eligibility for Trade Test etc."

8. We are not impressed by the above contention of the applicant. It is hard to believe that he was

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ignorant of the fact that when he sought transfer from Ghazisbad to Delhi at his own request, it would adversely affect his seniority. The fact that the respondents made a mistake and allowed him to undergo the trade test and promoted him due to mistaken notion of his seniority would not confer on him a legal right to continue in the promotional post after the mistake was detected by the respondents. Neither in law nor in equity is he entitled to the relief sought in the present application. In a case of this kind, we do not consider that the provisions of Article 311 of the Constitution would be attracted. There is no merit in the application and the same is dismissed. ~~as between administration and the parties~~. The interim order passed on 18.5.1990 and continued thereafter, is hereby vacated. There will be no order as to costs.

Declarer
(D.K.CHAKRAVORTY)

MEMBER

19/9/90

Chairman
19/9/90

(P.K.KARTHA)
VICE CHAIRMAN