(18)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A./T.A. No. 2151/91 with 1735/91 /19 Decided on: 31.7.96

1. Shri Hari Chand Arora & Anr.
2. Shri H.Y. Parthi

..... APPLICANT(S)

(By Shri S.C. Luthra Advocate)

VERSUS

U.O.I.& anr.

..... RESPONDENTS

(By Shri N.S.Mehta Advocate)

CORAM

THE HON'BLE SHRI S.R. ADIGE, MEMBER (A)

THE HON'BLE ~~SHRI~~/SMT./~~XXX~~R.LAKSHMI SWAMINATHAN, MEMBER (J)

1. To be referred to the Reporter or not? Yes

2. Whether to be circulated to other Benches of the Tribunal ? No

(S.R. ADIGE)
Member (A)

(19)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

1).O.A.No.2151/91
With
2).O.A.No.1735/91

New Delhi: Dated the 31st day of July, 1996

HON'BLE MR. S.R.ADIGE MEMBER(A).

HON'BLE MRS. LAKSHMI SWAMINATHAN MEMBER(J).

O.A.No.2151/91

1. Hari Chand Arora,
s/o Sh. Mool Chand Arora,
working as ACIO-II(G) in
Intelligence Bureau,
Min. of Home Affairs,
R/o 49, 4-Marla Colony,
Model Town, Gurgaon(Haryana).

2. Rajinder Pal,
S/o Sh. Jaswant Ram
Working as Asstt. CIO-II(G)
in Intelligence Bureau,
Ministry of Home Affairs, GOI,
R/o DLF Colony, Rohtak(Haryana) .....Applicants.

O.A.No.1735/91

Shri H.Y.Parthi,
S/o Sh.K.C.Parthi,
working as ACIO-I in
Intelligence Bureau,
R/o 8/690, R.K.Puram,
New Delhi.

.....Applicant.

Versus

1. Union of India through
Secretary,
Ministry of Home Affairs,
New Delhi-110011.

2. Director,
Intelligence Bureau,
Ministry of Home Affairs,
North Block,
New Delhi

.....Respondents.

By Advocates: Shri S.C.Luthra, for the applicants.

Shri N.S.Mehta, for the respondents.

JUDGMENT

BY HON'BLE MR. S.R.ADIGE, MEMBER(A).

As both these OAs involve common question of law and fact, they are being disposed of by this common order.

2. In OA 2151/91 filed on 17.9.91 the applicants Shri H.C.Arora and Shri Rajinder Pal who were serving in the State Police Service, came on deputation to Intelligence Bureau, Ministry of Home Affairs, New Delhi on 24.10.69 and 11.5.60 respectively. While on deputation they were appointed as ACIO-II in Intelligence Bureau w.e.f. 3.3.78 and 11.2.71 respectively and were subsequently permanently absorbed on ACIO-II w.e.f. 1.6.86 and 1.7.79 respectively. They are claiming seniority in the grade of ACIO-II with effect from the date of their initial appointment as such while on deputation and not from the date of their permanent absorption, with consequential benefits flowing therefrom.

3. Similarly in OA No.1735/91 filed on 31.7.91 Shri H.Y.Parthi, who belonged to the State Police Service and came on deputation to IB, and while on deputation was appointed as JIO on 1.7.61, ACIO- II on 1.9.86 and ACIO -I on 20.5.78 and was subsequently permanently absorbed as ACIO-I w.e.f. 1.6.86, claims seniority in the grade of ACIO-I with effect from the date of his appointment as ACIO I i.e. 20.5.78

and not from the date of his permanent absorption on 1.6.86, with consequential benefits flowing therefrom.

4. In both the OAs the applicant based their claims mainly on the judgment of the CAT Calcutta Bench dated 20.12.89 in TA No.1826/86 M.Mitra Vs. UOI & others (Annexurs-A10).

5. We have perused that judgment carefully. We notice that there is no discussion there in the contents of DP & T's O.M. dated 29.5.86 (Annexure-R1), which is specifically on the subject of determination of seniority of persons absorbed after being on deputation, and which is fully applicable to Central Govt. servants such as the applicants in the 2 OAs before us. That O.M lays down that where an officer initially comes on deputation and is subsequently absorbed, the normal principle that seniority should be counted from the date of such absorption, should mainly apply. Where, however, the officer has already been holding on the date of absorption in the same or equivalent grade on regular basis in his parent department, it would be equitable and appropriate that such regular service in the grade should also be taken into account in determining his seniority subject only to the condition that at the most it would be only from the date of deputation to the grade in which absorption was being made. It has also to be ensured that the fixation of the seniority of a transferee in accordance with the above principle would not affect any regular promotions

made prior to the date of absorption. Accordingly, the OM provides that

> "In the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for "transfer on deputation/ transfer"), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from
>
> the date he has been holding the post on deputation,
>
> Or
>
> the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department,
>
> whichever is later."

6. This OM clearly lays down that in cases where a person who is intially taken on deputation and is absorbed later, such as the applicants in the two OAs before us, their seniority will be reckoned from the date of their absorption as has been done in the instant cases. However, in cases where he has already been holding the same or equivalent grade on regular basis in his parent department (the State Police Service in the instant cases)such regular service would also be counted for fixation of seniority, subject to seniority being fixed from the date of deputation or the date of regular appointment on the same or equivalent post in the parent

department whichever is later. It is not the case of the applicants in OA 2151/91 that they were in the grade of ACIO-II in their parent department on regular basis on 3.3.78 and 11.2.71 respectively or that of the applicant in OA No.1735/91 that he was in the grade of ACIO Gr.I in his parent department on 20.6.78. Indeed that cannot be their case, because the applicants came to the IB on deputation on lower posts and were subsequently appointed to the higher posts while on deputation. The applicants have sought to argue that had they gone back to their parent departments they would have earned their promotions well before their absorption in IB, but respondents have correctly pointed out that having found the IB more attractive than the State Police Service they came to IB and they cannot now stake a claim on the ground that had they remained in their parent department they would have been promoted earlier. The option to go back to their parent department was always open to them but having come to , and continued in IB their claim as to what position they would have reached in their parent department is not tenable.

7. We may mention here that in the judgment dated 31.1.91 in OA 711/89 H.C.Sahni Vs. UOI & others, which is subsequent to the judgment in M.Mitra's case (Supra) and is also a Division Bench Judgment, and also relates to the Intelligence Bureau, it has categorically been held that as long as an officer remains on deputation, he has no claim for seniority

in the rank he held in the borrowing department as he held lien on his substantive post in the parent department.

8. During hearing, the applicants' counsel relied upon the Hon'ble Supreme Court's judgment in M.M.Hiregoudar Vs. State of Karnataka & ors. AISLJ 1992(1)86. In that case, the appellant was selected by the State Public Service Commission and was appointed by the proper authority. After over 20 years he was made junior to others on the plea that he was a local candidate and had not been appointed by the proper authority. The Tribunal had agreed with that action, but upon appeal the Hon'ble Supreme Court found the approach fallacious and set aside the Tribunal's orders and allowed the appeal, holding that the applicant was entitled to his earlier seniority. This ruling does not advance the claim of the applicants in the 2 OAs before us becuase not only is it distinguishable on facts, but nowhere enunciates any legal ratio which permits the applicants before us to count their seniority from the date of their initial appointment as ACIO Gr.II or ACIO Gr.I, as the case may be.

9. Another ruling relied upon by applicants' counsel is Shri Ram Dutt Vs. UOI & ors. 1987(3) CAT AISLJ 479, but that case is also distinguishable from the present ones before us not only on facts, but also on point of law. In Shri Ram Dutt's case, the grievance of the applicant was non-inclusion of certain posts

in the official Language service, as a result of which he has denied an opportunity to be inducted into the service, although others who were also on deputation like him, were later inducted into that service. That ruling also therefore does not advance the case of the applicants.

10. Yet another ruling relied upon by applicants' counsel was that of K.Madhavan Vs. UOI 1987(5) SLR 725 which has also been discussed in M.Mitra's case(Supra). In that case the Hon'ble Supreme Court while interpreting the Special Police Establishment (Ex.Staff) Recruitment Rules, 1963 noted that the relevant rules required that one of the conditions for eligibility for promotion from DSP to SP in CBI was "8years service in the grade". The Hon'ble Supreme Court held that 8 years service in the grade meant 8years service as DSP and did not mean from the date of deputation to CBI as DSP. In other words the period during which an officer held the post of DSP in the State Police Service should also be taken into account for computing the period of 8 years.

11. This ruling upholds the contents of DP & T's OM dated 29.5.86(supra) where it talks of a Govt. servant holding , on the date of absorption, the same or equivalent post on regular basis in his parent department, such regular services could also be taken into account while fixing his seniority upon absorption after

deputation. As the applicants were not holding posts of ACIO Gr.II / ACIO Gr.I or equivalent post in their parent department on the dates they were appointed to those posts in IB, that ruling does not help them.

12. The applicants in OA 2151/91 have referred to the case of Shri N.B.Singh but the respondents have very frankly admitted that the appointment of Shri N.B.Singh as ACIO-II(G) against deputation quota vacancy was done through inadvertance. It is well settled that action in contravention of rules through inadvertance does not give any person any enforceable legal right, that such contravention of rules/instructions should also be extended to him. The plea of discrimination can be taken to enforce what is legally right but not what is in violation of rules/instructions.

13. In the result, neither OA warrants any judicial interference and both OAs are therefore dismissed. No costs.

14. Let a copy of this judgment be placed on the file of OA No.1735/91 also.

(MRS. LAKSHMI SWAMINATHAN)
MEMBER (J)

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

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