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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA No. 2364/91 .. Date of decision: 15.01.93

Sh. Piara Singh .. Applicant

Versus

Union of India & Others .. Respondents
Ms. Nitya Ramakrishna .. Counsel for the applicant
Sh. Jog Singh .. Counsel for the respondents

CORAM

The Hon'ble Mr. P.K.Kartha, Vice Chairman(J)

The Hon'ble Mr. B.N. Dhoundiyal, Member (A)

1. Whether Reporters of local papers may be allowed to see the judgement? *Y*
2. To be referred to the Reporters or not? *Y*

JUDGEMENT

(Of the Bench delivered by Hon'ble Sh. B.N. Dhoundiyal

Member (A)

In this OA Shri Piara Singh has challenged the impugned letter dated 4.3.91, issued by the Senior Superintendent, New Delhi Sorting Division under Post Master General, refusing to amend the seniority list to fix the seniority of the applicant from the date of his appointment as Sorting Assistant on 1.2.59.

2. According to the applicant, he was appointed in 1959 as Sorting Assistant. In 1965, he was reverted to the next lower grade, but in 1970, he passed the confirmation test and was re-appointed with full arrears of wages, allowances and increments, as though there was no break. However, seniority in the service gradation list is being given to him only from 1970 i.e. from the year of passing the confirmation test. The applicant alleges that he was not given the special chance to pass the test before reversion and that at

the time of initial appointment, he was given training in the same manner as the confirmed employees and upon qualifying in the confirmation test, there were no grounds for treating him differently. He has prayed that the impugned order dated 4.3.91 be set aside and quashed and his seniority be directed to be fixed from the date of his appointment i.e. 1.2.59.

3. The respondents have stated that the applicant joined as Sorting Assistant in the Postal Department on 16.5.59. He failed to qualify in the confirmation test within the permissible number of chances. He was offered a Group D post of Porter on 13.7.65. He remained absent without information from 19.6.65 to 31.8.66 and joined as Porter on 1.9.66 and worked upto 15.5.71. He was promoted as Sorting Assistant w.e.f. 16.5.71 after passing the Departmental Clerical Examination. He was given the basic pay of Rs.134/- which he was drawing on 18.6.65 i.e. before his reversion as Group D officer. He retired from service on 31.10.91. The principle for fixing the seniority on the basis of length of continuous service is not applicable in his case, as he stood reverted as Porter and was appointed ^{freshly} ~~freshly~~ in ~~—~~ clerical cadre w.e.f. 16.5.71. The respondents have denied that the applicant qualified the confirmation test in 1970. He was promoted in clerical cadre w.e.f. 16.5.71, only after passing the departmental clerical examination. Though his pay was fixed at Rs. 134/- per month on the basis of the pay drawn by him before his reversion to Group 'D' post, no benefit of increments etc. was given to him for his service as Group 'D' officer. He availed of permissible six chances of confirmation examination but failed to qualify every time and did not apply for a special chance.

4. We have gone through the records of the case and heard the learned counsel for both parties. According to the circular dated 12.4.78, as amended by the circular dated 20.5.87, the seniority of persons appointed during the period 22.6.49 to 22.12.59 has to be fixed on the basis of length of service irrespective of the date ^{en}

(10)

on which they qualified in confirmation test. The respondents have denied the benefit to the applicant on the ground that from 1.9.66 to 15.5.71, the applicant has worked in a Group 'D' post and this period cannot be counted in determining the length of service. The learned counsel for the applicant has argued that the respondents should not have discriminated in reverting some persons who had failed to qualify in the confirmation test, while retaining others in the same post, who had also similarly appeared and did not qualify. On the basis of such illegal reversion, the respondents again deprived the applicant's seniority from the date of his initial appointment. The 7 years' service put in by the applicant in the clerical grade prior to his reversion must also be counted for determining his seniority. It is accepted by the respondents that in view of the judgement of the Principal Bench of the Central Administrative Tribunal in case of Dev Dutt Sharma Versus Union of India; T.783/85, decided on 29.5.86, the length of continuous service has to be taken into account for fixing the seniority. It is necessary to determine whether all those who failed to qualify the departmental test were given equal treatment and were reverted to Group 'D' posts.

5. In view of the facts and circumstances of the case, we direct the respondents to carry out a review to satisfy themselves whether the applicant in this case has been given the same treatment as was given to all those employed between 22.6.49 to 22.12.59, who had appeared and failed to qualify in the confirmation tests. In case, it is found that only the applicant was not given the same treatment and was discriminated, the respondents shall give him relief as given to his similarly situated colleagues. The review shall be carried out, expeditiously and preferably, within a period of three months from the date of communication of this order, and appropriate orders passed. The applicant will be at liberty to approach this Tribunal again in accordance with law, if he is aggrieved by the order passed by the respondents.

No order as to costs.

B. N. Dhondiyal
(B.N.Dhondiyal) 15/1/93
Member(A).

arun
(P.K.Kartha) 5/11/93
Vice Chairman (J)