

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI



OA No. 2708/91

Date of decision: 15.01.93

Sh. Kedar Narain Mehra

Applicant

Versus

Union of India

Respondents

Ms. Nitya Ramakrishna

Counsel for the applicant

Sh. Jog Singh

Counsel for the respondents

CORAM

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

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

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

J U D G E M E N T

(Of the Bench delivered by Hon'ble Sh. B.N. Dhoundiyal,  
Member (A))

In this OA Shri Kedar Narain Mehra has challenged the seniority list not taking into account his initial appointment in clerical cadre in 1958.

2. According to the applicant, he was selected in 1958 for Clerical cadre and was sent to Saharanpur to undergo the prescribed training for promotion to clerical cadre. He functioned in the clerical cadre until 19.5.1965. Thereafter, he was reverted to the Class IV grade. In 1967, he passed the confirmation test and was only re-appointed as Sorting Assistant on 25.9.68. He was treated as having worked in the clerical cadre since 1958 and paid full backwages with all the necessary increments. However, seniority in the service gradation list is being given to him only from 1970 and he has been shown junior to those who were promoted to the clerical cadre much later. Having passed the matriculation examination, he was eligible

to be promoted to clerical cadre as per rules prevalent in 1958. In any case his having qualified in a confirmation test and having been promoted in 1968 with full back wages, it is not open to the respondents to deny him seniority from 1958. The reliefs prayed by him are as under :-

- (i) The respondents be directed to treat the date of his initial appointment of the applicant as 1958 and reckon his seniority from that date.
- (ii) The respondents be directed to accord the applicant the consequential benefits of appointment in 1958, pay and allowances and seniority in those terms.

3. The respondents have stated that the applicant joined as Porter on 25.2.55 and was promoted as Sorting Assistant (Clerical Cadre) on 16.12.58. He failed to pass the confirmation test within the permissible number of chances and was reverted to the post of Porter on 19.5.65. He remained on leave from 15.5.65 to 7.2.66 and joined as Porter on 8.5.66. He was promoted as Sorting Assistant on 25.9.68 after passing the Departmental Clerical Examination held on 22.1.67. He was given the basic<sup>dw</sup> pay of Rs. 126/- which he was drawing on 18.5.65 i.e. before his reversion as Group D officer. He has retired from service and had not made any representation. The principle<sup>dw</sup> officiating for fixing the service on the basis of length of continuous service is not applicable in his case, as he stood reverted as Porter and freshly<sup>dw</sup> appointed in ~~-----~~ clerical cadre w.e.f. 25.9.68. Though his pay was fixed at Rs. 126/- 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 chances of confirmation examination but failed to qualify till 1967.

4. We have gone through the records of the case and heard the learned counsel for both parties. According to the circular dated <sup>dw</sup>

12

12.4.78 as amended by the circular dated 26.5.87, 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 on which they passed the confirmation test. The respondents have denied the benefit to the applicant on the ground that the applicant was working in a Group D post when he cleared the examination and was promoted in 1968. 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 deprived the applicant of seniority from the date of his initial appointment. The years of 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 Vs. 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 above facts and circumstances of the case, we direct the respondents to carry out a review to ascertain whether the applicant in this case has been given the same treatment as was given to all those employees between 22.6.49 to 22.12.59, who had appeared and failed to qualify in the confirmation test. In case, it is found that only the applicant was not given the same treatment and was discriminated, the respondents shall give him the 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

13

appropriate orders passed in this case. 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. Dhoundiyal*  
(B.N. Dhoundiyal) 15/11/93  
Member(A)

*P.K. Kartha*  
(P.K. Kartha) 15/11/93  
Vice Chairman (J)