

was later appointed as Lower Division Clerk (LDC) on 16.6.55 in the Ministry of Finance, Department of Economic Affairs. He was confirmed in the Central Secretariat Clerical Service (CSCS) w.e.f. 1.5.1959. In course of time he was declared quasi-permanent LDC and promoted as Upper Division Clerk (UDC) and thereafter as Assistant w.e.f. 1.10.1980. The applicant contends that he has been representing for counting of his Army Service towards seniority, fixation of pay promotion and retirement benefits but all these have been of no avail.

He has prayed for a direction to the respondents for giving him benefit of seniority with consequential benefits, including retirement benefits by counting his Army Service.

(ii) OA 333/91

The applicant herein is Shri Onkar Nath and he too is aggrieved by the order of the respondents dated 9.3.1990 dealing with his identical representation. The applicant has served Army as Sepoy Clerk (Combatant) from 21.8.1951 to 10.2.1956 as per the certificate issued by his Commanding Officer (p.12 of the paperbook) when he was discharged, as his service was no longer required due to reduction in establishment. He was appointed LDC in the Directorate of Estates vide OM dated 21.2.1956 w.e.f. the forenoon of 10.2.1956. He was confirmed as LDC w.e.f. 1.5.1959 and was promoted as UDC and thereafter as Assistant w.e.f. 3.12.1975 after he had passed the Limited Departmental Competitive Examination, 1975. He also represented for counting of his military service in accordance with the rules having been appointed into CSCS but the representations ^{were} of no avail. The final disposal of his representation being the impugned order dated 9.3.90. He has also prayed for identical relief as asked for in OA 298/91.

(iii) OA 561/91



In this O.A. the applicant Shri N.L. Khosla is aggrieved by the similar order dated 9.3.1990, issued by the respondents rejecting his representation for counting of his Army Service. The applicant herein too served as Combatant Clerk/Sepoy Clerk from 18.7.1952 to 27.7.1955 as per Certificate at page 10 of the paperbook. He was appointed as LDC on 28.7.1955 in the Ministry of Finance, Department of Economic Affairs and confirmed w.e.f. 1.5.1959. In course of time he was promoted as Assistant w.e.f. 1.10.1980 like other applicants mentioned in the above two OAs. He too represented for counting his Army Service for seniority, promotion etc. but these representations did not yield any result. His final representation based seeking extension of the judgement of the C.A.T. in **R.L. Chhibber Vs. UOI & Ors. OA 1125/86 decided on 28.5.1987** was rejected by the impugned order dated 9.3.1990.

3. The respondents have filed their counter in all the cases, contesting the claim of the applicants. The learned counsel for the applicant, however, drew our attention to the decision of the Principal Bench in a batch of 5 OAs decided on 18.3.1991 **P.K. Datta Choudhury Vs. U.O.I. & Ors. (OA 1346/89) 1991 (1) ATJ 577** and alongwith four other OAs where one of us (Shri I.K. Rasgotra) was a party and wherein the facts of the case were on all fours with those in the present OAs. The issue raised in **P.K. Dutta Choudhury** (supra) was also identical viz. whether the military service rendered in the capacity of Sepoy Clerk/Havaldar Clerk by the applicant should be counted for the purpose of seniority in the civil service taken up after having been declared surplus and employed LDC in CSCS without any break.

4. We have heard the learned counsel for both parties and perused the records carefully. We are of the opinion that since the broad spectrum of the facts is identical, the applicants in these OAs are ^{also} ^{to} entitled to same reliefs which we had allowed in the case of **Sh. P.K. Dutta Choudhury** and other applicants in the

OAs decided along with the said judgement. We had observed in P.K. Dutta Choudhury (supra) case:-

"6. We have heard the learned counsel of both the parties and considered the material on record. We have also perused the Tribunal's judgement in the case of R.L. Chhibber (supra) dated 28.5.1987. The Office Memorandum dated 18 July, 1956 issued by the Ministry of Home Affairs purports to answer the specific queries which seem to have been made by the Defence Ministry by stating that:- 'The undersigned is directed to say that this Ministry have taken a decision to count for the purpose of seniority in the grade of Lower Division Clerks in the Central Secretariat and offices included under the Central Secretariat Clerical Service Scheme, all service rendered as Sepoy Clerks and Havaldar Clerk provided such service is continuous with service in the grade of Lower Division Clerks. No general orders on the subject have however, been issued by this Ministry.'

The above memorandum makes it clear that no general orders have been issued on the subject by the Ministry of Home Affairs although the Ministry of Home Affairs had taken a decision to count for the purpose of seniority the service rendered in clerical posts (including service rendered as Sepoy Clerk and Havilder Clerk) in the grade of Lower Division Clerks in the Central Secretariat Clerical Service Scheme Provided such service is continuous. The Department of Personnel's Office Memorandum dated 28th June, 1972, is, however, of greater help. The relevant extract of the said Office Memorandum is reproduced below:-

However, the controlling authority in the Ministry of Home Affairs dealing with the Central Secretariat Clerical Service had, in 1976, informed the Ministry

of Defence vide their Office Memorandum Number 4252/56--CS(C), dated the 18th July, 1956 (copy enclosed) that Service rendered in clerical posts (including service rendered as Sepoy Clerk and Havildar Clerk) would count for purpose of seniority in the grade of Lower Division Clerks in the Central Secretariat and Offices included in the Central Service Scheme, provided such service was continuous with service in the grade of Lower Division Clerk. No general orders on the subject were, however, issued by the Ministry of Home Affairs and, as such, this Department is not aware whether any such benefit was allowed to Lower Division Clerks serving in Offices not participating in the Central Secretariat Clerical Service Scheme.

2, In this connection a copy of Unstarred Question Number 614 by Shri Sanda Narayanappa and of the reply given to thereto in the Rajya Sabha on the 25th May, 1972 is enclosed, To enable this Department to fulfil the assurance given in the reply to the Rajya Sabha Question, it is requested that this Department may kindly be informed whether a similar benefit as laid down in the Ministry of Home Affairs Officer Memorandum dated the 18th July, 1956 referred to above was given to ex-Servicemen absorbed as Lower Division Clerks, prior to the 22nd December, 1959, in Offices under the Ministry of Finance etc which are not included in CSCS and, if so, whether such a benefit was given by the cadre authorities on volition or in consultation with the Ministry of Home Affairs (now Department of Personnel?. The required information may be given in the proforma enclosed.

It is obvious from the above that the service rendered in the Army as Sepoy Clerk and Havaldar Clerk would count for purpose of seniority in the grade of

Lower Division Clerks in the Central Secretariat and Offices included in the Central Secretariat Clerical Service Scheme provided such Army Service was continuous with service in the grade of Lower Division Clerks. Thus the position explained by the Ministry of Home Affairs which was then the controlling authority dealing with the Central Secretariat Clerical Service can be construed as having statutory force. No material has been produced before us if any follow up action by issuing a general circular after considering the position in response to Department of Personnel's Office Memorandum dated 28th June, 1972 was taken up by the said Department. This is however not material in these cases as the applicants before us belong to the Central Secretariat Clerical Service Scheme.

A point was made by the learned counsel for the respondents that since the applicants had been rendered surplus, their service cannot be counted in accordance with the Statutory Rules. The Statutory Rules regarding Redeployment of Surplus Staff issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training are not applicable to the surplus ex-servicemen. That Scheme is applicable only to non-gazetted staff. Ministerial and non-Ministerial identified as surplus as a result of the studies made by Staff Inspecting Unit of the Ministry of Finance and the Administrative Reforms in the Ministry of Finance and the Administrative Reforms in the Ministry of Personnel. In fact the 'surplus staff' covered by the Scheme is defined in that Scheme as:-
'the Central Civil Servants (other than those employed on ad-hoc casual, work-charged or contract basis) who--

W

(a) are permanent or quasi-permanent or, if temporary, have rendered not less than five years regular continuous service, and

(b) have been rendered surplus along with their posts from the Ministries/Departments/Offices of the Government of India as a result of--'

Even the judicial pronouncement in Chiranjiv Singh Jat v. UOI & Ors. (supra) cited by the learned counsel of the respondents relates to a Government Servant who had been rendered surplus from Civil Service and later provided another job on redeployment.

We are also not persuaded to accept that the case is barred by limitation. It is apparent that the representations made by the applicants, assigning them seniority by counting their past Army Service were rejected by the respondents. In that view of the matter, the matter having ended there got resurrected only with the decision in the case of R.L. Chhibber v. UOI (supra) by the Tribunal on 28.5.1987. The cause of action can, therefore, be said to have been arisen only from 28.5.1987. Further the financial loss to the applicants being of recurring nature can not be barred by limitation."

5. In view of the above facts and circumstances of the case, we are of the opinion that the applicants shall be entitled to counting of Army Service for the purpose of seniority, fixation of pay and consideration for promotion on the basis of revised seniority. If in consequence of the revision of seniority the promotions of the applicants are to be antedated, their pay shall be refixed in accordance with the rules/ ^{notionally.} Their retiral benefits shall be refixed in accordance with the notional pay, as refixed, after taking into account their Army Service and assigning them revised seniority. No arrears of pay etc., however, shall be payable.

2

2

Ordered accordingly. The respondents are directed to implement the above orders with utmost expedition and preferably within 4 months from the date of communication.

There will be no order as to costs. *Let a copy of this order be placed in all the three case files.*

MEMBER(A)

(P.K. KARTHA)

VICE-CHAIRMAN

May 29, 1992.

SKK
280592