

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 1138/2004

This the 10th day of May, 2005

HON'BLE MR. JUSTICE M.A. KHAN, VICE CHAIRMAN (J)
HON'BLE MR. S.A.SINGH, MEMBER (A)

T.N.Malhotra,
S/o Sh. K.G.Malhotra,
R/o C-4-E/8/101, Janak Puri,
New Delhi-110058.
Stenographer, Grade-D,
Nirvachan Sadan,
Ashoka Road,
New Delhi-110001.

..... Applicant

(By Advocate: Sh. Atul Kumar)

Versus

1. Election Commission of India
Through its Secretary,
Nirvachan Sadan, Ashoka Road,
New Delhi-110001.

2. Chief Election Commissioner,
Election Commission of India,
Nirvachan Sadan, Ashoka Road,
New Delhi-110001.

..... Respondents

(By Advocate: Sh. S.Muralidharan)

ORDER

By Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)

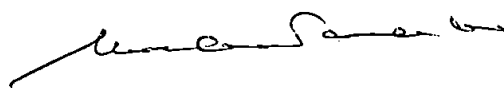
The short question that arise for determination is whether the past service rendered by the respondent preceding his deputation period and his absorption in the respondent Election Commission is required to be reckoned for determining his seniority.

2. There is no dispute about the facts. Applicant was appointed to the post of Stenographer Grade 'D' in the pay scale of Rs.1200-2040 (pre-revised) and

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Rs.4000-6000 (revised) w.e.f. 1.1.1996 on 2.3.1987 in the office of the Regional Development Commissioner for Iron and Steel, Ministry of Steel and Mines, New Delhi. He was confirmed in service on 8.3.89. He was appointed as a Stenographer Grade 'D' in the same pay scale on deputation in the Election Commission of India respondents on 24.4.1996. He was absorbed in permanent service there on 24.6.1998. Afterwards he joined National Human Rights Commission in the grade of PA on deputation basis w.e.f. 28.8.1998. Applicant was repatriated and he joined the parent office the Election Commission of India on 1.11.2002. While he was on deputation in NHRC the seniority list was circulated. On coming to know about his incorrect placement therein, the applicant made a representation dated 6.5.2002 claiming fixation of seniority from the date of his initial regular appointment in the grade of Stenographer Grade 'D'. This representation has been rejected by the respondent Election Commission of India by order dated 21.4.2004 (Annexure A-1) which is impugned in this OA. Applicant has prayed that his service from the date of his initial regular appointment in the grade of Stenographer Grade 'D' rendered in the earlier department be reckoned for computing the seniority and he sought quashing of the order dated 21.4.2004.

3. The case of the respondents is that the representation of the applicant was rejected on a clarification received from DOPT that OM No.20011/1/2000-Estt.(D) dated 27.3.2001 is not applicable to the applicant. It is submitted that the draft seniority list was circulated and was sent to the applicant also who was working in the NHRC but applicant failed to file his objections within the given period therefore, his representation dated 6.5.2002 was barred by time. It was stated that as per DOPT OM dated 29.5.1986 (Annexure A-11) the seniority would normally be counted from the date of absorption and in case such person was already holding on the date of absorption the same or equivalent grade on regular basis in his parent department such regular service was also be taken into



account in fixing his seniority subject to condition that he would be given seniority from -

(a) the date when he had been holding the post on deputation or

(b) the date on which he has been appointed on regular basis to the same or equivalent grade in his parent department whichever is later.

4. Applicant's seniority in terms of the above OA was fixed in the draft seniority list dated 28.4.2000 counting his past service from the date of his absorption in the Election Commission of India, i.e. 16.6.1998 and he was placed below all the regular employees in the list as on that day. The Hon'ble Supreme Court in **SI Roop Lal & others vs. Lt. Governor through Chief Secretary, Delhi** 2000 (1) SCC 644 struck down the words "whichever is later" in the above referred O.M.. The DOP&T memorandum dated 27.3.2001 has substituted the term "whichever is earlier" in place of the term "whichever is later" in the aforesaid memorandum. As such the benefit of the decision in SI Roop Lal's case (supra) was given to the employees who were absorbed after 14.12.1999. Accordingly, OM dated 27.3.2001 will not be applicable to him and the applicant has already been informed.

5. In the rejoinder the applicant has reiterated his own case and controverted the allegation of the respondents.

6. We have heard the learned counsel for the parties and have gone through the relevant record.

7. Counsel for respondents has fairly conceded that the term "whichever is later" used in OM No.2002/7/80-Estt.(D) dated 29.5.1986 issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training of the Government of India has been struck down by the Hon'ble Supreme Court in the case of SI Roop Lal (supra). However, it is submitted that by OM No.20011/1/2000-Estt(D) dated 27.3.2001 issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training of the Government of India the term "whichever is later" has been

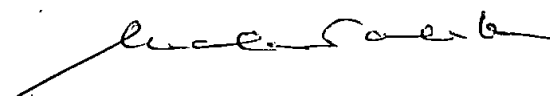


substituted with the term "whichever is earlier" and that the instructions contained in the OM would come into effect from 14.12.1999. It is submitted that the applicant was absorbed in the regular service of the respondent Election Commission of India on 16.6.1998, i.e. prior to the issue of office memorandum dated 14.12.1999 from which date the amended OM dated 29.5.1986 came into force. It is argued that the applicant would not be entitled to be granted the benefit of the OM dated 27.3.2001.

8. Conversely the learned counsel for the applicant has produced a copy of the order of this Tribunal dated 1.1.2003 passed in OA-1180/2002 **Sanyukta Arjuna vs. Union of India and others** where this Tribunal considered the validity of the prospectivity of the application of the OM dated 27.3.2001 fixing the cut of date 14.12.1999 for extending the benefit of the judgment of the Hon'ble Supreme Court in SI Roop Lal's case (supra). The bench of this Tribunal after considering the ratio of the judgment of SI Roop Lal (supra) held the term "whichever is earlier" substituted by OM dated 27.3.2001 in the OM dated 29.5.1986 was violative of the principles enshrined in Articles 14 & 16 of the Constitution of India and was illegal and quashed para 4 of the OM by which the instructions in the OM were given effect to from 14.12.1999.

9. In order to find out whether the order of this Tribunal dated 1.1.2003 in OA-1180/2002 has attained finality, a notice was issued to the DOP&T. In response one Sh. Hari Nath appeared on behalf of the DOP&T and had taken time to take instructions in the matter from the department in the light of the Tribunal's order dated 25.10.2004. Nobody appeared on behalf of DOP&T thereafter. Counsel for applicant has stated at the Bar that as per his instructions the order of this Tribunal dated 1.1.2003 has become final and no proceeding assailing its legality and validity has been filed or is pending.

10. We proceed to decide the matter holding that the order dated 1.1.2003 passed in OA-1180/2002 has attained finality. It is an order of the Coordinate



Bench with which we are in respectful agreement. It is a binding precedent.

The Hon'ble Supreme Court in **SI Roop Lal's** case (supra) has held as under:

"It is clear from the ratio laid down in the above case that any Rule, Regulation or Executive Instruction which has the effect of taking away the service rendered by a deputationist in an equivalent cadre in the parent department while counting his seniority in the deputed post would be violative of Articles 14 and 16 of the Constitution. Hence, liable to be struck down. Since the impugned Memorandum in its entirety does not take away the above right of the deputationists and by striking down the offending part of the Memorandum, as has been prayed in the writ petition the rights of the appellants could be preserved, we agree with the prayer of the petitioners/appellants and the offending words in the Memorandum "whichever is later" are held to be violative of Articles 14 and 16 of the Constitution, hence, those words are quashed from the text of the impugned Memorandum. Consequently, the right of the petitioners/appellants to count their service from the date of their regular appointment in the post of Sub-Inspector in BSF, while computing their seniority in the cadre of Sub-Inspector (Executive) in the Delhi Police is restored."

The words 'whichever is later' are held violative of Articles 14 and 16 of the Constitution of India and were quashed. Consequently, it shall be deemed that these words were illegal, invalid and void abinitio. On the same principle on which those words were held ultravires of the Articles 14 and 16 of the Constitution of India, the words 'whichever is earlier' has to be held ultravires of Articles 14 and 16 of the Constitution and they are invalid and illegal. As a result fixing cut off date of 14.12.1999 for granting benefit accruing from the judgment of Hon'ble Supreme Court in SI Roop Lal's case (supra) is illegal and ~~cannot be~~ given effect to.

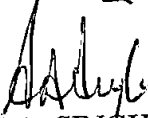
11. In view of this, the OM dated 27.3.2001 so far as it has substituted the term "whichever is later" with the word "whichever is earlier" and has made the OM applicable w.e.f. 14.12.1999 is no more available to the respondents as a defence to the claim of the applicant.

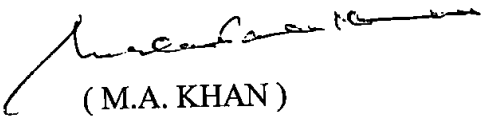
12. Admittedly, the applicant had joined the office of the Regional Development Commissioner for Iron and Steel, Ministry of Steel and Mines, Government of India as a Stenographer Grade 'D' on 2.3.1987. He was confirmed in this grade w.e.f. 8.3.1989. He was appointed in the same grade of

Stenographer Grade 'D' on deputation in the Election Commission of India, respondent herein on 24.4.1996. He was absorbed in the grade of Stenographer Grade 'D' in Election Commission of India w.e.f. 16.6.1998. Since the ad hoc service of the applicant has been followed by his regular appointment on the post of Stenographer Grade 'D' the period spent during his ad hoc appointment and regular appointment preceding the ad hoc appointment has to be reckoned and counted towards his seniority in accordance with OM dated 27.3.2001 read with the judgment of Hon'ble Supreme Court in SI Roop Lal's case (supra) and this Tribunal in OA-1180/2002 and the finding recorded above.

13. As a result of the above discussion, the order of the respondent dated 21.4.2004 is illegal and invalid and it is quashed.

14. The OA succeeds. The respondents are directed to refix the seniority of the applicant reckoning the past service rendered by the applicant from the date of his regular appointment in the office of Regional Development Commissioner for Iron and Steel, Ministry of Steel and Mines, New Delhi and fixing his seniority accordingly. He shall be granted consequential benefits similar to the one which were granted to the applicant Smt. Sanyukta Arjuna in OA No.1180/2002 decided on 1.1.2003. This exercise shall be ^{done} by the respondent after putting to notice all those employees whose seniority is adversely affected in the process of refixation of the seniority of the applicant. This order be implemented by the respondent within a period of 3 months. Parties are left to bear their own costs.


(S.A. SINGH)
Member (A)


(M.A. KHAN)
Vice Chairman (J)

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