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Central Administrative Tribunal, Principal Bench

O.A. No. 1490/2004

New Delhi this the 3rd day of August, 2005

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. S.A. Singh, Member (A)

1. V.S. Kundlass
S/o Shri Raghuveer Singh
R/o 2720, Ist Floor,
Street No.29, Tuglakabad, New Delhi.
2. Om Prakash
S/o Shri Jaggannath Prasad
R/o Q.No.11, Type-II,
P&T Colony, Dev Nagar, New Delhi.
3. Hari Singh
S/o Shri Nanhey Singh
R/o Quarter No.A/2,
HIG, Indrapuram,
Dehradun (Uttranchal).
4. J.K. Sabharawal
S/o Shri S.R. Sabharwal
R/o 241, V.N. Park,
Muksuda, Jalandhar City.
5. Mrigank Johri
S/o Shri S.S. Johri
R/o H-151, Sector "I",
Jankipuram,
Lucknow a present posted
At Saharanpur.

..Applicants

By Advocate: Shri A.K. Mishra.

Versus

1. Union of India
Through the Secretary,
Ministry of Communication &
Information Technology,
Department of Post,
Dak Bhawan, New Delhi.
2. Chief Engineer (Civil, North Zone),
Department of Posts,
Dak Bhawan, New Delhi.
3. Superintending Engineer (Electrical)
Postal Electrical Circle,
9th Floor, Meghdoot Bhawan
New Delhi.

..Respondents

By Advocate: Shri S.M. Arif, Counsel for official respondents.

Shri Pankaj Tharaja, Counsel for private respondents.

ORDER

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

The applicants, Junior Engineers, joined the Department of Posts on deputation initially and absorbed in regular service later have filed this OA for counting their past service rendered in the analogous post in All India Radio (AIR) and for giving proper place in the seniority list of Junior Engineers circulated by the respondents Department of Posts.

2. The applicants, 5 in number, were appointed as Junior Engineer (E) in AIR in the years 1987 to 1990. Later, they joined the Postal Department under orders of the Superintending Engineer (E) Headquarters Postal Dak Bhawan, New Delhi on different dates between 1996 to 1999 (Annexure A-2 collectively). On the request of the applicants and with the consent of the their parent department, i.e., AIR, the Department of Posts absorbed them in regular service on transfer basis as per the terms and conditions, Annexure A-4. According to these applicants they had no option but to accept the terms and conditions of the absorption. Their past service rendered in the AIR preceding the date of regularisation of service in the department of posts has been illegally not counted. The Superintending Engineer (Electrical), Postal Circle, New Delhi issued a draft seniority list in which the name of the applicants did not figure but their juniors were shown to be promoted in higher grade (Annexure A-5). The applicants representation was turned down without giving proper reasons. They have filed this OA for quashing the seniority list which was circulated vide letter dated 5.1.2001, Annexure A.

3. The respondents contested the OA and repudiated the claim of the applicants. It was stated that the seniority list issued on 5.1.2004 has been modified on 16.7.2004 consequent upon the reorganization of office of the Postal Electrical Circle, New Delhi vide Chief Engineer © N&E Zone, New Delhi letter No.4-24/2004 CWP dated 23.4.2004 consisting of Postal Electrical Division, New Delhi, Lucknow and Kolkata, copy of which is Annexure R-1. The names of the applicants, who joined the Department of Posts on deputation and were finally absorbed after getting the NOC from AIR, were shown below the Junior Engineers of the Department of Posts, New Delhi, who were recruited in the department on the basis of their merit list prepared after appearing in the

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examination. Moreover the list was prepared as per the existing rules and regulations and having regard to the acceptance of the terms and conditions laid down in Annexure-A4, the final seniority list dated 5.1.2004 as modified on 16.7.2004 is legally correct and the claim of the applicants is not tenable.

4. In the rejoinder, the applicants have submitted that after the filing of the OA, the respondents have modified the earlier seniority list issued on 5.1.2004 and now totally a changed seniority list has been issued in which also they have not been given their due place and position taking into account their past service rendered in the AIR.

5. We have heard the learned counsel for the parties and perused the record.

6. The short question that arise for determination in the case is whether the applicants' regular service as Junior Engineer in the AIR is required to be counted towards seniority on their permanent absorption in the service of Department of Posts and they are entitled to be assigned higher seniority position in the seniority list.

7. The facts are not much in dispute. The applicants, who were appointed in the AIR on different dates between 1987 to 1990, joined the Department of Posts on transfer on deputation for initial period of 2 years but later on they opted for their absorption in the permanent service of the Postal Department and with the consent of their parent department, AIR, the postal department absorbed them. The terms and conditions for their absorption are given in Annexure A-4 to the OA. The relevant conditions are as under:-

"(iv) He/She will be given pay protection and his/her pay will be regulated in accordance with the provisions in FR/SR and pay will be drawn as per CCS (Pay) Rules applicable to DOP Civil Wing.

(v) He/Her past services will count for all purposes except his/her seniority in the cadre.

(vi) He/She will move to the place of posting at his/her own cost.

(vii) He/She will stand junior to all JEs (C)/(E) who have already opted for DOP Civil Wing and those who have joined the Postal Civil Wing before date of issue of letter of his/her absorption in the Civil Wing of Department of Post.

(viii) He/she will count his/her seniority from the date of issue of letter of permanent absorption in the Postal Civil Wing unit to which he/she is ordered to be posted on permanent absorption. However, the inter-se seniority of JEs absorbed from CCW, AIR will be in accordance with their seniority fixed by the AIR (Civil Construction Wing), Ministry of I&B.

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8. The applicants having accepted these terms joined regular service of Junior Engineers in the Postal Department. When the seniority list of Junior Engineer was circulated vide letter dated 5.1.2004 (Annexure-A), they were not shown in the list. The reason being that their past services in AIR preceding their absorption was not counted in terms of the offer of absorption, as reproduced above. Their service was not counted for the purpose of counting seniority alone. For all other purposes like fixation of pay etc. it was taken into account. After the OA was filed the respondents issued a modified seniority list on 16.7.2004. In the counter it was mentioned that the new list is being annexed as Annexure R-I but there is no annexure to the counter reply. Anyhow, the position of the applicant vis-à-vis the Junior Engineers who were appointed in the Department of Posts directly remained unchanged, i.e., the applicants were not given position in the seniority list after counting their regular services which they had rendered in the AIR preceding the date of their absorption in the postal department. As such they were junior to all those Junior Engineers directly appointed in the Postal Department who were in position on the date of their absorption.

9. As regards to the counting of the past services of a Government Servant the OM No.20020/7/80-Estt (D) dated 25.9.1986 stated as under:-

“ In the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant Recruitment Rules provide for Deputation/Absorption) 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 equivalent grade on regular basis in his parent department, such regular service in the grade shall 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.

10. The Hon'ble Supreme Court in the case of SI Roop Lal and Others Vs. Lt. Governor through Chief Secretary, Delhi, (2000) 1 SCC 644 held that the words “whichever is later” occurring in the above mentioned OM were violative of Articles 14 and 16 of the Constitution and quashed them. Thereafter the DOP&T modified the OM on 27.3.2001 and substituted the words “which is later” with the words “whichever is earlier” to bring it in conformity with the judgment in SI Roop Lal (Supra). However, it was stipulated that the modified OM would be given effect to with prospective effect

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from 14.12.1999. The legality and validity of this stipulation and prospectivity of the application of modified OM came up for consideration before the Principal Bench of this Tribunal in T.N. Malhotra and Others Vs. Chief Election Commissioner in OA No. 1138/2004 decided on 10.5.2005 and Tribunal held that the OM dated 27.3.2001 so far it was made applicable w.e.f. 14.12.1999 was in contravention of the ratio of the judgment of the Hon'ble Supreme Court in SI Roop Lal and Others (Supra) and it was violative of Articles 14 and 16 of the Constitution so it was quashed. The Tribunal in the said order also observed that the words "whichever is earlier" was also violative of Articles 14 and 16 of the Constitution of India but these observation seems to be per incurium since the question of legality and validity of these words "whichever is earlier" was neither raised in the petition nor was argued before the Tribunal. Being per incurium and in view of the ratio of the judgment in SI Roop Lal and Others (Supra), the said observation cannot operate as a precedent. The result is that the words "whichever is earlier" in the modified OM dated 27.3.2001 remain valid and operative.

11. The main contention of the respondents is that the respondents have opted for their absorption in the department of Post accepting the terms and conditions of the offer of absorption which have already been reproduced above and they are bound by them. They countered the allegation of the applicants that they had to accept the offer of absorption under the terms and conditions offered as reproduced in the foregoing paragraph since they had no other option available with them. The question here arises whether the applicants having opted for the absorption accepting the terms and conditions as aforesaid can still claim their seniority as per the modified OM, also reproduced above, and the principles of law laid down in SI Roop Lal and Others (Supra). The Hon'ble Supreme Court in SI Roop Lal and Others case (Supra) has held as under:-

"23. 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 appellant-petitioners 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 appellant-petitioners to count their service from the date of their regular appointment in the post of Sub-Inspector in BSF,

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while computing their seniority in the cadre of Sub-Inspector (Executive) in the Delhi Police, is restored".

12. In the judgment the Hon'ble Court cited the observations made in an earlier judgment in K. Madhavan Vs. U.O.I. 1987 SCC (L&S) 496, which are as under:-

"We may examine the question from a different point of view. There is not much difference between deputation and transfer. Indeed, when a deputationist is permanently absorbed in the CBI, he is under the rules appointed on transfer. In other words, deputation may be regarded as a transfer from one government department to another. It will be against all rules of service jurisprudence, if a government servant holding a particular post is transferred to the same or equivalent post in another government department, the period of his service in the post before his transfer is not taken into consideration in computing his seniority in the transferred post. The transfer cannot wipe out his length of service in the post from which he has been transferred. It has been observed by this Court that it is a just and wholesome principle commonly applied where persons from different sources are drafted to serve in a new service that their pre-existing total length of service in the parent department should be respected and presented by taking the same into account in determining their ranking in the new service cadre. See R.S. Makashi and Others Vs. I.M. Menon, (1982) 1 SCC 379; Wing Commander J. Kumar Vs. Union of India, (1982) 2 SCC 116".

13. The judgment in SI Roop Lal's case (Supra) has been followed in large number of cases by the Tribunal and the benefit of the past services on analogous ^{post} rendered in the parent department preceding the deputation and later absorption in regular service of the borrowing department have been granted to the government servants. The provisions of the OM were not brought to the notice of the respondent when they were given terms and conditions of absorption. The applicants cannot be estopped from claiming their seniority by counting the service rendered prior to the date of their absorption for the purpose of their seniority in the Department of Post. The terms and condition of absorption, which took away the benefit of past service of the applicant are manifestly violative of Article 14 and 16 of the Constitution of India and the principles of law laid down in SI Roop Lal's case (Supra) will apply to the case of the applicant. The action of the respondents to the contrary cannot be sustained in law.

14. Accordingly, the OA succeeds. The respondents are directed to redraw the seniority list and assign proper position in the seniority list to the applicants after counting their regular service on the analogous post of Junior Engineer in the lending department of AIR preceding their deputation followed by permanent absorption on the post of Junior Engineer in the Department of Post. Such seniority list shall be redrawn with due notice to all those who may be affected by the change in their seniority position.

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The order of the Tribunal shall be implemented within 4 months. However, the parties are left to bear their own costs.



(S.A. Singh)
Member (A)



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

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