

9

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 101 OF 2004

New Delhi, this the 31st day of August, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A. Singh, Member (A)

1. D.S. Dagar, Inspector,
SIC-II, CBI, New Delhi.
2. K.S. Thakur, Inspector,
SIC-II, CBI, New Delhi.
3. M.S. Hazari, Inspector,
ACB, CBI, New Delhi.
4. S.K. Tripathi, Inspector,
SIC-II, CBI, New Delhi.
5. V.S. Rana, Inspector,
SU, CBI, New Delhi.

...Applicants

(By Advocate: Shri O.P. Aggarwal)

-Versus-

1. Union of India through
Secretary,
Ministry of Home Affairs,
North Block,
New Delhi- 110 001.
2. Director,
Central Bureau of Investigation,
3, CGOs Complex, Lodhi Road,
New Delhi - 110 003.
3. Director General,
Central Industrial Security force,
13, CGOs Complex, Lodhi Road,
New Delhi - 110 003.

...Respondents

(By Advocate: Shri N.S. Mehta for R-1 & R-2 and none for R-3)

ORDER

By Mr. Justice V.S. Aggarwal:

Applicants (five in number) belonged to the Armed Forces of the Union. They came on deputation with Central Bureau of Investigation (for short, 'CBI') since 1992 onwards. They were absorbed with respondent no. 2 (CBI) on different

U Aggarwal

dates. This is apparent from the following chart as to when the applicants joined on deputation:

<i>"S/Shri</i>		
1.	<i>D.S.Dagar</i>	<i>-30.03.1992</i>
2.	<i>K.S.Thakur</i>	<i>-31.03.1992</i>
3.	<i>M.S.Hazari</i>	<i>-16.04.1992</i>
4.	<i>S.K.Tripathi</i>	<i>-15.05.1992</i>
5.	<i>V.S.Rana</i>	<i>-26.03.1996"</i>

They were permanently absorbed from the following dates:

<i>"S/Shri</i>		
1.	<i>D.S.Dagar</i>	<i>-31.08.2000</i>
2.	<i>K.S.Thakur</i>	<i>-14.12.2001</i>
3.	<i>M.S.Hazari</i>	<i>-31.08.2000</i>
4.	<i>S.K.Tripathi</i>	<i>-31.08.2000</i>
5.	<i>V.S.Rana</i>	<i>-10.07.2001"</i>

2. They had undergone training courses conducted by respondent no. 2. By virtue of the present application, it is asserted that the services of the applicants were taken into account and applicants were absorbed in the office of respondent no. 2, as indicated above. The seniority list had been circulated on 1.1.2003. The respondent no. 2 had assigned the seniority to the applicants ignoring their earlier service rendered on deputation or in other words weightage has not been given to the applicants with respect to the services rendered by them also in their parent department. By virtue of the present application, they seek quashing of the seniority list so far as it relates to the applicants and to direct the respondents to count and reckon the previous services of the applicants rendered by them as Inspector in their parent department as well as the CBI and thereupon issue a fresh seniority list.

3. The application has been opposed. The basic facts, as to when the applicants came on deputation and they were earlier working as Inspector in Central Industrial Security Force (for short, 'CISF'), are not in dispute. It is also not disputed that they were absorbed permanently pertaining to the dates, which we have mentioned above.

CS Ag

4. Respondents' plea is that seniority of the applicants has been fixed in accordance with Govt. of India, Department of Personnel & Training OM of 29.5.1986 and of 7.3.1984. According to the respondents, the pay scales of the applicants in their earlier department i.e. Central Police Organizations was Rs.1640-2900/- and pay scale of Inspector in C.B.I. was Rs. 2000-3200/-. According to respondents, even the post of Inspector in Central Police Organizations and in C.B.I. is not considered to be the same. Plea is also raised that their duties are different and minimum qualification for direct recruitment to the post of Sub Inspector in CBI is graduation while there is no minimum qualification prescribed for the post of Inspector in Central Police Organizations. It is contended, in these circumstances, that the applicants are not entitled to any benefit, as claimed.

5. We have heard the parties' counsel. Needless to state that arguments addressed at the Bar were at par with what has been alleged and pleaded in the Original Application and the counter reply. According to the applicants, their earlier services, rendered in the parent department, should be counted because they also served as Inspectors therein while the respondents' contention is that the duties of the Central Police Organizations Force are different from the Inspectors in C.B.I. It is not an analogous post. The applicants had to undergo specialized training. They were working on an inferior post and in these circumstances the seniority list has rightly been drawn.

6. The question of seniority of persons who come on deputation and are absorbed has been considered more often than once. Earlier Office Memorandum of 7.3.1984 had been issued as to how the same had to be determined. The relevant portion of the same reads:

"(i) Though the scales of pay of the two posts which are being compared may not be identical, they should be such as to be an extension of or a segment of each other, e.g. for a post carrying the pay scale of Rs. 1200-1600, persons holding posts in the pay scale of Rs. 1100-1600 will be eligible and for a post in the scale of Rs. 1500-2000,

U. Ag

persons working in posts carrying pay scale of Rs. 1500-1800 and Rs. 1800-2000.

- (ii) Both the posts should be falling in the same Group of posts as defined in the Department of Personnel and Administrative Reforms Notification No. 21/2/74-Estt (D) dated the 11th November, 1975.
- (iii) The levels of the responsibility and the duties of the two posts should also be comparable.
- (iv) (a) Where specific qualifications for transfer on deputation/transfer have not been prescribed, the qualifications and experience of the officers to be selected should be comparable to those prescribed for direct recruits to the post where direct recruitment has also been prescribed as one of the methods of appointment in the recruitment rules.

(b) Where promotion is the method of filling up such posts, only those persons from other Departments may be brought on transfer on deputation whose qualifications and experiences are comparable to those prescribed for direct recruitment for the feeder grade/post from which the promotion has been made."

Thereafter, the landmark judgment of the Hon'ble Supreme Court in the case of **Sub Inspector Rooplal vs. Lt. Governor** had been pronounced, reported as 2000(1) SCC 644. Therein Sub Inspector Rooplal had been appointed in Border Security Force and was transferred on deputation to Delhi Police in the cadre of Sub Inspector. He was permanently absorbed. The question for consideration was whether he was entitled to count his substantive service as Sub Inspector in Border Security Force for purposes of seniority in the cadre of Sub Inspector in Delhi Police. The Supreme Court held:

"Hence, we will proceed to deal with this argument now. Equivalency of two posts is not judged by the sole fact of equal pay. While determining the equation of two posts many factors other than "pay" will have to be taken into consideration, like the nature of duties, responsibilities minimum qualification etc. It is so held by this Court as far back as in the year 1968 in the case of Union of India v. P.K. Roy. In the said judgment, this Court accepted the factors laid down by the Committee of Chief Secretaries which was constituted for settling the disputes regarding equation of posts arising out of the State Reorganization Act, 1956. These four factors are: (i) the nature and duties of a post; (ii) the responsibilities and powers exercised by the officer holding a post, the extent of territorial or other charge held or responsibilities discharged; (iii) the minimum qualifications, if any, prescribed for recruitment to

AS Ag e

the post; and (iv) the salary of the post. It is seen that the salary of a post for the purpose of finding out the equivalency of posts is the last of the criteria. If the earlier three criteria mentioned above are fulfilled then the fact that the salaries of the two posts are different would not in anyway make the post "not equivalent". In the instant case, it is not the case of the respondents that the first three criteria mentioned hereinabove are in any manner different between the two posts concerned. Therefore, it should be held that the view taken by the Tribunal in the impugned order that the two posts of Sub-Inspector in BSF and Sub-Inspector (Executive) in the Delhi Police are not equivalent merely on the ground that the two posts did not carry the same pay scale, is necessarily to be rejected. We are further supported in this view of ours by another judgment of this court in the case of Vice Chancellor, L.N. Mithila University v. Dayanand Jha wherein at SCC para 8 of the judgment, this Court held : (SCC pp.10 & 11)

"Learned counsel for the respondent is therefore right in contending that equivalence of the pay scale is not the only factor in judging whether the post of Principal and that of Reader are equivalent posts. We are inclined to agree with him that the real criterion to adopt is whether they could be regarded of equal status and responsibility.....The true criterion for equivalence is the status and the nature and responsibility of the duties attached to the two posts."

18. *Therefore, in our opinion, the finding of the Tribunal that the posts of Sub-Inspector in BSF and Sub-Inspector (Executive) in the Delhi Police are not equivalent, is erroneous, and the same is liable to be set aside."*

The Supreme Court, after coming to the above said findings, allowed the petition and held that in case the conditions, which we have reproduced above, are satisfied, in that event, the past service necessarily has to be counted for purposes of seniority. In pursuance of the decision of the Supreme Court, the Government of India had issued a fresh Office Memorandum of 27.3.2001. As already pointed above, the Supreme Court had directed that the words 'whichever is later' in Office Memorandum of 29.5.1986 have to be read as 'whichever is earlier'. The instructions now issued provided the necessary guidelines and are:

"The undersigned is directed to say that according to our O.M. No. 20020/7/80-Estt(D) dated May 29, 1986 (Copy enclosed) in the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for "transfer on deputation/transfer"), 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

As Ag

the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also 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 same or equivalent grade in his parent department
whichever is later.*

2. *The Supreme Court has in its judgment dated December 14, 1999 in the case of Shri R.I. Rooplal & Others vs. Lt. Governor through Chief Secretary, Delhi, JT 1999 (9) SC 597 has held that the words "whichever is later" occurring in the Office Memorandum dated May 29, 1986 and mentioned above are violative of Articles 14 and 16 of the Constitution and, hence, those words have been quashed from that Memorandum. The implications of the above ruling of the Supreme Court have been examined and it has been decided to substitute the term "whichever is later" occurring in the Office Memorandum dated May 29, 1986 by the term "whichever is earlier".*

7. From the above, it can conveniently, therefore, be stated that when a person is working in the parent department and is taken on deputation and subsequently absorbed, he would only be entitled to count his earlier service for purposes of seniority in case the nature of duties of the post are identical; responsibility and powers exercised are similar; minimum qualifications prescribed for the posts are same and salary of the posts is the last criteria that has to be seen. The court approves the earlier decision to hold that if first three conditions are satisfied, the fact that salaries of two posts are different would not make any difference.

8. At this stage, we just cannot restrain but observe that when such a situation arises, the applicants must allege, in the petition filed in the Tribunal, the grounds referred to above. It should not be left for the Tribunal to determine the same by making vague assertions. It is true that Code of Civil Procedure does not apply to the proceedings before the Tribunal but still the Tribunal has the trappings of a court. Unless a fact is pleaded, ordinarily it should not be allowed to be agitated. Just exceptions creep in where no prejudice is caused or similar

LS Ag

15

situation can arise. Otherwise in peculiar facts, it can be taken that he does not mean to averring a particular fact to be considered.

9. Another factor, which just cannot be ignored, is that in matter pertaining to seniority, all persons likely to be affected by the seniority should be arrayed as parties. This practice of only allowing the official respondents to contest the matter is to be deprecated. This is for the reason that seniority is basically a dispute between different employees. In fact we take advantage in referring to the decision of the Hon'ble Supreme Court in the case of ***Sub Inspector Rooplal*** (supra). The Supreme court deprecated the practice of the State taking upsides. Instead, it made a pious wish that it should be left to the parties to contest the matter and the State should not involve itself in the litigation, unless there are compelling reasons to do so. In this backdrop, the experience has shown that the State who contests, while it could have been a contest between two private individuals, may or may not take proper interest. Therefore, it would be in the fitness of things that in all such matters particularly when interest of the other party is vitally involved i.e. of a private individual, he should be arrayed as a party.

10. In the present case, we would have also directed accordingly but as would be noticed hereinafter it is unnecessary to do so because the application is totally without any merit.

11. Admittedly, the applicants were in CISF. They came on deputation with C.B.I. It cannot be believed that nature of duties of both the posts are ^{same} ~~different~~. The nature of duties of an Inspector in CISF is basically security while in the C.B.I. it is the investigation of important matters, which is the main duty of such a person. The Inspector in Central Police Organizations performs duties like security, patrolling, maintenance of law and order, vigilance and collection of intelligence etc., which may be different from the duties and responsibilities of an Inspector in the CBI.

ls Ag

12. In addition to that it has been pointed that even the pay scales of both the posts are different as Inspector in CBI is drawing a higher pay scale; even the educational qualifications are different and a Sub Inspector in the CBI has to be a graduate while it is not so prescribed in case of the corresponding post in the other Central Police Organizations. Taking stock of all these facts, it is obvious that the applicants indeed in the peculiar facts cannot claim that their past service should be credited for purposes of seniority.

13. At this stage, it would be appropriate in all fairness to refer to the precedents cited at the Bar on behalf of the applicants.

14. Applicants rely upon the decision of the Hon'ble Supreme Court in the case of *O.P. Singla & Anr. Etc. vs. Union of India & Ors.*, (1985) 1 SCR 351. In the cited case, there was a basic dispute of seniority between direct recruits and promotees. They were governed by specific rules of Delhi Higher Judicial Services. It was in that peculiar facts on interpretation of those rules that question of seniority of direct recruits and promotees had to be decided i.e. having little application to the present case and, therefore, it must be stated that it is distinguishable.

15. Reliance further is being placed in the case of *Union of India & Ors. Vs. C.N. Ponnappan*, 1996(1) SLR 18. In the cited case, the question for consideration was as to whether, when a person is transferred from one unit to another unit on compassionate ground, the service held at a place from where the employee has been transferred has to be counted as experience for the purposes of eligibility for promotion or not? This Tribunal had held that services held at a place from where the employee was transferred had to be counted as experience. The Supreme Court had upheld the order of the Tribunal as is apparent from the very facts, from which we have referred, it is clear that they are distinguishable.


16. Another decision in the case of *L. Chandrakishore Singh vs. State of Manipur & Ors*, 1999(5) SLR 538 had also been mentioned in this matter. The Govt. had issued an order appointing on promotion the officers including




Chandrakishore Singh in order of their seniority. The dispute again was between direct recruits and promotees. It was held that length of service had to be counted for consideration for further promotion. At the risk of repetition we mention that that was not the controversy before us and resultantly the cited decision also must be taken to be distinguishable.

17. Lastly, the applicants relied upon a decision of this Tribunal rendered in the case of ***Umed Singh & Ors. v/s. UOI & Ors. (O.A.No.2174/2001, decided on 4.4.2002)***. In that case there was certain Constables who wanted their seniority to be computed in CBI after absorbing them. This Tribunal had relied upon the decision in the case of ***Sub Inspector Rooplal*** (Supra) and allowed the application. But the grounds, on which we have distinguished the matter because of the nature of duties and other factors including pay scales etc., were not seemingly in controversy before this Tribunal. Thus the cited decision is also of no avail.

18. For these reasons, the Original Application, being without merit, must fail and is accordingly dismissed. No costs.


(S.A.Singh)
Member (A)


(V.S.Aggarwal)
Chairman

/na/