

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.998/2004

New Delhi this the 10th day of December, 2004

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

Shri Dinesh Verma
S/o Sh. Daya Ram Verma,
D-801, Gali No.8, Ashok Nagar,
Delhi.

Applicants

(By Advocate Shri Sachin Chauhan)

VERSUS

1. Government of NCTD, through its
Secretary, Delhi Secretariat,
I.P. Estate, New Delhi.
2. Deputy Secretary,
Services, ACP Promotion Cell,
5th Level A-Wing.
3. Deputy Secretary,
GAD Level II A Wing Delhi
Secretariat, Delhi.
4. Principal Secretary,
GAD Level II A Wing Delhi Secretariat,
Delhi.

Respondents

(By Advocate Shri Ajesh Luthra)

ORDER (ORAL)

Mr. Justice V.S. Aggarwal, Chairman

The applicant, by virtue of the present application, seeks setting aside of the impugned orders annexure A-1 to annexure A-3 and to restore the benefits of Assured Career Progression Scheme (ACP Scheme) with all consequential benefits.



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2. Some of the relevant facts are that the applicant was appointed as LDC in Delhi Energy Development Agency (DEDA), which is an autonomous body under the Govt. of National Capital Territory of Delhi. The appointment was first made on 1.6.1982. However, on 30.11.1999, the applicant was rendered surplus in DEDA. On the next date, he was re-deployed as LDC on the same scale and on the same post. ACP Scheme benefit was given to him. However, by the impugned order dated 11.7.2003 the said benefit had been withdrawn with retrospective effect.

3. By virtue of the present application, the applicant claims that his regular service in DEDA organization should be counted and the view taken by the respondents is not correct and should be quashed.

4. The petition is being contested primarily on the ground that the applicant had not rendered 12 years of regular service with the respondents and thus the earlier service in DEDA cannot be counted for regular service as such.

5. This question came up before this Tribunal in OA 1548/2003 raising similar controversy for consideration, which was decided on 31.12.2003 holding:

"12 We know that the language used speaks the intention. So far as the second condition is concerned, it was the subject matter of controversy. The later part of the order dated 25.1.2000 makes it clear. It clearly shows that the past service rendered by the applicants was not to be counted for purposes of seniority only. Otherwise the order is unambiguous and makes it clear that in all other service matters, it shall be treated as an appointment by transfer in public interest. If the intention was not to count their past service on transfer for purposes of the ACP Scheme, it could have been so stated specifically in the orders. In fact the order makes it clear that the only exception is that for purposes of seniority, the past service shall not be counted. Therefore, we have no option but to hold that their past service rendered in the previous organization was on transfer and the second condition referred to in paragraph 14 of the terms and conditions for grant of ACP Scheme is duly met.

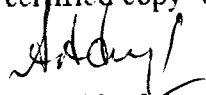
13. As regards the clarification that has been given, perusal of the "point of doubt" clearly shows that if the appointment is by direct recruitment, only in that event their past service in the previous organization is not to be calculated. Herein, for all practical purposes except for seniority, their past service has to be counted. Therefore, it would not be as an appointment by direct recruitment. Clarification no 43, therefore, will not apply.


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14. Otherwise also, as referred to above, if the clarification runs counter to the main scheme, it will have little import because it is the main scheme and the terms and conditions thereto which would govern the matter".

6. In view of the observations made above, we allow the present original application and direct that benefits of the ACP Scheme be restored to the applicant. Consequential benefits should also be accorded within three months from the date of receipt of a certified copy of this order.


(S.A.Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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