

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(12) DECIDED ON : 28-5-

1. O.A. 1301/92

Anirudh Roy

... Applicant

Vs.

Union of India & Ors. ... Respondents

2. O.A. 1309/92

Shiv Singh

... Applicant

Vs.

Union of India & Anr. ... Respondents

CORAM :

THE HON'BLE MR. B. N. DHUNDIYAL, MEMBER (A)

THE HON'BLE MR. B. S. HEGDE, MEMBER (J)

Shri R. P. Oberoi, Counsel for Applicants

Shri J. C. Madan, Proxy Counsel for Shri
P. H. Ramchandani, Counsel for Respondents

JUDGMENT

Hon'ble Shri B. N. Dhoundiyal, Member (A) —

In both these O.A.s, the O.M. dated 18.3.1992 issued by the Ministry of Labour rejecting the request of the applicants for counting their past service in the Army for purposes of seniority and consequential benefits with regard to confirmation and promotion with retrospective effect has been challenged. As the same issue has been raised in both the O.A.s, these are being disposed of by a common order.

2. Shri Anirudh Roy (applicant in O.A.1301/92) joined Army Ordnance Corps as Combatant Sepoy Clerk on 29.11.1947 and worked there for about seven years and six months till 31.5.1955. He joined as IDC in the Office of the Director General of Food on 1.6.1955. He was declared permanent as

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LDC on 1.5.1959, promoted as UDC on 6.2.1970 and after being transferred to various offices was promoted as Assistant in the office of Chief Labour Commissioner, Ministry of Labour on 1.3.1979. He retired from service on 31.7.1987.

3. Shri Shiv Singh (applicant in O.A. 1309/92) joined the Army Ordnance Corps as Combatant Sepoy Clerk on 22.1.1949 and worked there upto 23.3.1955. He joined as LDC in the office of D.G., R.&E. w.e.f. 22.2.1955. He was promoted as UDC on 2.6.1970 and as Assistant on 10.7.1979. He retired on 31.10.1983.

4. Though the applicants were granted the benefit of increments in civil service after counting their service with the Army, this benefit did not cover their seniority in their respective cadres. After the judgment of this Tribunal in O.A. No. 1346/89 on 18.3.1991 : P. K. Datta Choudhary vs. Union of India & Ors., the applicants also represented for extension of the benefit of this judgment, that is, for counting their service in the Army for refixation of their seniority, confirmation and promotion with retrospective effect. By the impugned order dated 18.3.1992 their representations were rejected on the ground that the judgment in the case of P. K. Datta Choudhary (supra) was specific and not applicable in general.

5. The respondents have contended that the applicants have challenged their seniority fixed over three decades ago and these applications are clearly barred by limitation; that they did not agitate the matter during their service period and have filed the present applications after many years of their retirement; that they have already been given advantage of pay fixation by counting Army service and this advantage has also been given in the allotment of

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accommodation; and that it is not possible at this late stage to accede to their request for counting their Army service for the purposes of confirmation and seniority with retrospective effect. They have again reiterated that the Tribunal's judgment in the case of P. K. Datta Choudhary (supra) is specific and not applicable in general.

6. We have gone through the records of the case and the learned counsel for the parties. The learned counsel for the applicants had drawn our attention to the observations made by the Hon'ble Supreme Court in their order dated 22.1.1987 in the case of Abid Hussain & Ors. vs. Union of India & Ors. : AIR 1987 SC 820, specifically stating that "The benefit of this order shall be extended to all such employees including those who have retired and those who have not joined as petitioners herein." O.M. dated 18.7.1956 issued by the Ministry of Home Affairs and O.M. dated 28.6.1972 issued by the Cabinet Secretariat, provide 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 Clerk in the Central Secretariat and Offices included in the Central Secretariat Clerical Service Scheme, provided such service was continuous with service in the grade of Lower Division Clerk." These instructions make it very clear that the service in the Army is to be counted for the purpose of seniority, provided it is continuous with service in the grade of LDC. It has been held by the Tribunal in the case of P. K. Datta Choudhary (supra) that the financial loss to the applicants being of recurring nature/their claim cannot be barred by limitation. Moreover, the respondents have chosen to consider the representations submitted by them for extension

of benefit of the judgment in the aforementioned case and rejected it by the impugned order dated 13.3.1992 against which these O.A.s have been filed.

7. In view of the facts and circumstances of the case and agreeing respectfully with the ratio of the judgment of this Tribunal in the case of P. K. Datta Choudhary (supra), we hold that the applicants are entitled to the same relief. Accordingly, these applications are allowed with the direction to the respondents that the seniority of both the applicants shall be refixed taking into account their past service in the Army. They shall be given the consequential benefits in regard to confirmation and promotion with retrospective effect. These orders shall be implemented expeditiously and preferably within a period of six months from the date of communication. There shall be no orders as to costs.

Let a copy of this order be placed in both the files.

10/10/1993
(B. S. Hegde)
Member (J)

(B. N. Dhoundiyal) 18/3/93
Member (A)

as
210593

Issue Copy
A.P.O. dated
28/3/93