

RESERVED

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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 28th day of August, 2000

Original Application No. 465 of 1997

District : Gorakhpur

CORAM :-

Hon'ble Mr. Justice RRK Trivedi, V.C.

Hon'ble Mr. S. Biswas, A.M.

Binod Prasad

Son of Sri Janardan Prasad Vinayak,
Working as Chief Electrical Engineer,
North Eastern Railway, Gorakhpur.

(Sri SK Om, Advocate)

. Applicant

Versus

1. Union of India
Through the Secretary,
Ministry of Railway, Railway Board,
New Delhi.
2. Deputy Director Establishment (G.R.)
Railway Board, New Delhi.
3. Secretary Ministry of Home Affairs,
Government of India, New Delhi-11.

(Sri Prashant Mathur, Advocate)

. Respondents

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O R D E R

By Hon'ble Mr. S. Biswas, A.M.

This is an application under Section 19 of the Administrative Tribunals Act, 1985. The applicant has impugned the order No.70RsE(GR)1/5(2) dated 14-5-1996 of the Railway Ministry and seeks that the said order refixing his seniority from 1967 instead of 1965 be quashed with direction to the respondents not to reduce the seniority of the applicant from 1965 as it was originally fixed, to 1967. A further consequential relief by way of direction to the respondents to empanel him in A.S. Grade in the scale of Rs.7,300/- to 7,600/- from the date his junior is being promoted has also been sought.

2. The undisputed facts of the applicant's case is that the applicant, a B.Sc. Engineering in Electrical Engineering had served in Army on Short Service Commission from 20th July, 1964 being the date of his starting Pre-Commission training to 1st May, 1970 when he was released from defence on completion of 5 years contractual term. He had actually joined the Army on 14-2-1965 as per averments made in para 4(1)(2) of the DA. After completion of the Short Service Commission in the Army, the applicant was released on 1-5-1970. Intending to go for All India Engineering Service conducted by Union Public Service Commission, he applied for the same. As the examination was conducted for the first time in 1972, he appeared in the said examination and was appointed in Indian Railway Service of Electrical Engineering (IRSEE) in 1973 vide the letter of appointment dated 8-3-1973 (Annexure-A-1). This was statedly the first attempt made by the applicant. The

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pay and seniority of the 1973 batch IRSEI were fixed by Railway Board's letter No.73/E(GR) 1/5/5 dated 14-3-1975 to be read with letter dated 16-3-1975 and 3-7-1975, which do not appear to be the correct chronological depiction, as these are post-dated orders to find place in the letter dated 14-3-1975. This can be overlooked for the time being. The applicant's name appearing at Serial No.4 was given the "demand date of appointment for fixation of pay" in Column (6) as 4.4.65. Under Column "Fixation of Seniority", it is mentioned, "Allotted to the year, 1965 and, therefore, be placed below all the DR to IRSEE on the basis of 1964 examination etc. below Alakendu Sen of ER" The applicant's claim for 1965 seniority vests on this order dated 14-3-1975 which he has annexed at Annexure-A-3 to the OA. By impugned order dated 14-5-1996, i.e. nearly after 21 years of initial fixation of the seniority, the applicant's seniority has been changed to 1967 as against 1965 which was originally fixed. In the said order the applicant has been placed below 1966 direct recruits, below A.K. Mandal. This refixation has given rise to the cause of action.

3. Heard counsel for the parties on facts and law.

4. The learned counsel for the applicant Sri S.K. Om has tried to make out the case ^{or for applicant} by stating that the applicant's seniority w.e.f. 1965 at the time of his entry into IRSEE on the basis of examination held and selection made by Union Public Service Commission is a well settled fact as per order dated 14-3-1975. The same should be allowed to remain untampered and ~~no~~ no refixation under any amended orders long after 21 years thereof can be held as legally tenable. The

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fixation carried out under the impugned order dated 14-5-1996 is illegal and deserves to be quashed. He has specifically questioned retrospective amendment of of rules on fixation of seniority.

5. In challenging the legality of the said impugned order dated 14-5-1996, the learned counsel for the applicant has largely ~~depended~~^{based his} arguments on court rulings and Apex Court's orders in Civil Appeals.

6. The learned counsel for the respondents S/Shri AK Gaur and Shri Prashant Mathur have admitted the fact that an error was actually committedⁱⁿ commuting the number of years of Short Service Commission service put in by the applicant in the Army which which is to be added to his seniority from the date of appointment which is undisputedly April, 1973. The basic particulars of the applicant's service are as under :-

- | | |
|--|--------------|
| (a) Date of pre-commissioned training on recruitment in the Army as SSC Officer. | : 20-7-1964. |
| (b) Date of joining the Army on completion of training. | : 14-2-1965. |
| (c) Date of release. | : 01-5-1970. |
| (d) Year of UPSC Examination. (First Chance) | : 1972. |
| (e) Date of joining Railway Service (IRSEE) (Appointment Order dt. 8-3-1973). | : 3-4-1973. |

Accordingly, the applicant ought to have been given the deemed date of seniority by adding up the actual numbers of years put in by him in the Army before release on 1-3-1970. The arithmetical calculation simply follows as below:-

	<u>Days</u>	<u>Months</u>	<u>Years</u>
Date of Release	10	5	1970
-(Minus) Date of initial entry for training on Commission.	<u>20</u> 11	<u>7</u> 9	<u>1964</u> 5

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Therefore, the number of years/required to be added is 5 years as it is required to be rounded off to number of years. The date of seniority is accordingly to be fixed by pushing back from the date of entry into IRSEE, which is 3.4.1973. To do this exercise simply 5 years to be deducted from the entry year i.e. 1973. By doing this the date should have been fixed at 1967 whereas ~~to the year~~, two years which the applicant spent in applying, preparing and taking the UPSC Examination were added wrongly.

7. According to the respondents, the wrong fixation has only been rectified. It is affirmed that no rule was required to be amended. It was only required to be correctly understood and applied. It was never implied or expressed in the rule to add any period or years etc. which was not spent in the Army but spent in taking examination as actual period of service in the Army.

8. In all 12 candidates released from SSC were appointed on the basis of 1972 examination in 1973. The seniority of them was erroneously fixed. The matter was under deliberation and correspondence with the DUPT of the Ministry of Home Affairs. Ultimately, when it was decided to rectify the wrong fixation, adequate opportunity was ~~required to be~~ given on 8-9-1978 and 17-4-1979 as indicated in Annexures-CA-XII and CA-XIII. The DUPT had taken the following stand:-

"The advice given by the Deptt. earlier in respect of 12 officers appointed to the Railway Engineering Services in 1973 was wrong and not in accordance with provisions of the rules applicable

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to medical and engineering services. The Deptt. for that matter, the administrative deptt. has an inherent right to rectify its own mistakes..... The revision will affect adversely only 5 of 12 officers, whereas, 6 of the remaining officers will gain seniority and there will be no change in the year of allotment".

This will clearly show that the respondents had undertaken lengthy deliberation in order to avoid any further misconception or repetition of mistakes. Nobody was picked up for any discriminatory treatment in the matter. The Law Ministry was also consulted. The fixation was, therefore, done as averred in annexed letter dated 17-4-1979 of Director Management Services to Joint Secretary, DUPT, Mr. KC Sharma, after giving all the affected officers adequate opportunity to represent their cases. The delay to arrive at the decision was consequential.

9. The respondents' counsel has further submitted in the supplementary affidavit that 1962 and 1963 instructions are only procedural instructions regarding SSC/EC officers recruitment. The seniority clause finds mention only in Notification No.9/14/77 Etc(C) dated 25-11-1971. In para 6 thereof the policy on seniority fixation was clearly spelt as follows:-

"Seniority and pay-. Pay of the released Emergency Commissioned Officers or Short Service Commissioned Officers appointed against a reserved vacancy shall be fixed on the assumption that he would have been appointed to the service or post as the case may be on the date arrived after giving credit for his approved military service as Emergency Commissioned Officer or Short Service Commissioned Officer, as the case may be, including the period of training, if any, and for the purpose of seniority he shall be deemed to have been allotted to the corresponding year".

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10. Having perused these material details carefully, we are convinced that the respondents committed a fortuitous mistake which they have sought to rectify by issue of the impugned order of refixation dated 14-5-1996. They have not sought to amend Para 6 of the aforesaid procedure which was evidently misinterpreted. The correction and refixation was only a natural consequence of a wrong understanding and application of the rule so that ~~no~~ unintended benefit does not go to any one and make other suffer to that extent. In doing so the respondents have also observed the principles of natural justice to an adequate extent.

11. The applicant's counsel has cited several court rulings and the decisions of the Apex Court, which in our opinion, are out of context. In Civil Appeal No.1335-36 of 1976, in Markandey Singh I.P.S. and Ors (Appellants) Vs. ML Bhanot and Ors, (Administrative Tribunal Case No. 953 of 1988) the Apex Court decided the ratio of deputationists in the I.P.S.

12. In the case of Ex.Capt KC Aurora Vs. State of Haryana (AIR 1987 SC 1858) 1984 Lab IC 1015) also similarly the Hon'ble Supreme Court held, "In view of this latest pronouncement by the Constitution Bench of this Court, the law appears to be well settled and the Haryana Govt. cannot take away the accrued rights of the petitioners and the appellants by making meendment of the rules with retrospective effect.". We have perused the decision carefully. The applicant's case is not that an extant rule was amended. In the present case on the contrary, the relevant Para 6 to the procedure remains intact. It was not understood properly and wrongly applied. The refixation does not follow from an amendment.

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13. In PD Aggrawal & Ors Vs. State of UP and Ors (AIR 1987 S.C. 1676), the issue is seniority of the Assistant Engineers appointed in a substantively temporary post, which was regularised. It was held that the applicants, "are not entitled to have the benefit of their such adventitious purely ad hoc and temporary service being not appointment substantively even to a temporary post will not be reckoned for seniority unless they become members of the service in accordance with the provisions of service Rules". We find ~~that~~ no relevance of this to the present case also.

14. In Narendra Nath Pandey and Ors Vs. State of UP & Ors (Respondents), the Hon'ble Supreme Court (AIR 1988 SC 164) (From 1984 Lab IC NOC 48 (All)) also similarly decided the issue in this ^{civil} appeal (272) relating to Rule 6 of the State of U.P. This rule ^{is} ~~presented~~ an independent procedure for appointment of demobilised officers whereas the Central Government followed a self-contained and entirely different procedure for the purpose as laid down in Para 6 thereof. We are unable to accept this in the present context.

15. In his representation to the Secretary, Ministry of Railways in response to the impugned letter dated 14-5-1996, the applicant has acknowledged the fixation of his seniority at the time of appointment in accordance with Para 6 of the procedure set out in Ministry's letter dated 25-11-1991. According to the submissions made by the applicant:-

"4.0. Here it is to be noted that I had joined the Indian Army as SSC Officer for a period of 5 years and it was indicated by various notifications of GOI that after the contractual period of 5 years chance for absorption in technical services and administrative services of Central Government will be offered. Whereas regular recruitment for Administrative services started well in time, there was some delay for technical services for reasons not known to me. After completion of the

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contractual period of 5 years, I left the Army services and waited for the recruitment to Technical Services. In the meantime Indian Army offered to extend the tenure of SSC officers by 2 years and further by one year. Some of my colleagues took the extension whereas I left the service after completion of the original contractual period of 5 years. And most of my Army colleagues who have joined railway services alongwith me are now getting advantage of accepting these extension at the time of joining Army service through University Entry Scheme. As such by continuing in Army service against successive extensions some of my colleagues are getting substantive benefit which has accrued to them out of fluke and not based on any sound principle or logic or guided by any of the extant rules and notifications."

Certain unintended benefits have accrued to the candidates who got their services extended and got seniority for the ~~said~~ extended period. The applicant has himself himself acknowledged that actual period of service rendered in Army was added to their ^{present} ~~past~~ service.

16. The applicant was released from SSC on 1-1-1970, and applied and appeared for the UPSC Examination in, 1972. His offer after selection came in 1973. In our view this is the period he was out of service ~~for this period~~ and in our view the rule clearly does not give any credit for the period between the date and year of release from the SSC and the date and year of joining IRSEE. The demand of seniority for this period is unjustified. The rule is quite clear on this. Of 12 candidates selected and offered the appointment, only 6 were adversely affected when the mistake was corrected by the impugned order and 5 of them have gained. None of them are in the fray. Nor the gainers have been impleaded.

17. The mistake was detected in 1978-79. An opportunity was given to the applicant to represent. The delay in ^{Communicating the order} ~~committing the delay~~ thereafter only shows that the applicant was not surprised by the impugned order.

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He probably knew that such order is on the way. We
can hardly be of any help ^{to him} for this.

18. In view of the foregoing, we find no merits in
the OA. The OA is dismissed. No costs.

S. Davis
Member (A)

Vice Chairman

Dube/