

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

ALLAHABAD this the 5th day of October, 2007.

**HON'BLE MR. JUSTICE KHEM KARAN, VICE-CHAIRMAN.
HON'BLE MR. K.S. MENON, MEMBER- A.**

ORIGINAL APPLICATION NO. 261 OF 1998

Trilok Chand, a/a 54 years, S/o Sri Baljeet Singh,
Posted as Upper Division Clerk, Military Farm,
Meerut Cantt, Meerut.

.....Applicant.

VE R S U S

1. Union of India through Secretary,
M/o Defence, New Delhi.
2. The Director General of Military Farms,
QMG's Branch, Army Headquarter, West Block-3,
R.K. Puram, New Delhi.
3. The Dy. Director Genral, Military Farm,
QMG's Branch, Army Headquarter, West Block-3,
R.K. Puram, New Delhi.
4. The Quarter Master General,
QMG's Branch, Army Headquarter, New Delhi..
5. The Director, Military Farms and Frieswel Project,
Meerut Cantt, Meerut.
6. Sri Shyam Babu Saxena, presently posted as office Superintendent
in Frieswal Project, Meerut Cantt.

.....Respondents

Present for the Applicants:
Present for the Respondents :

Sri S.K. Mishra
Sri Saumitra Singh

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ORDERBY HON'BLE MR. JUSTICE KHEM KARAN, V.C.

The applicant Trilok Chand, who is U.D.C in Military Farms, is praying for commanding the respondent Nos. 3 and 4 to decide his representation dated 05.03.1997 and 18.09.1997 by a speaking order after perusing service book of Sri Shyam Babu Saxena (respondent No. 6) and also to ask the respondent No. 5 to comply with the order dated 16.05.1997 (Annexure A-5 to the O.A issued by the respondent No. 4. Besides the above, the applicant has also prayed for commanding the respondent Nos. 3 and 4 to re-determine his seniority vis-à-vis redeployed persons and also to quash the order dated 23.06.1998 (Annexure A- 7 to the O.A).

2. There appears no denial of the facts from the side of the respondents that the applicant was initially inducted as Lower Division Clerk in the Military Farm on 16.03.1964 and was confirmed in this appointment on 01.04.1966. There is no controversy that he was promoted to the post of Upper Division Clerk on 27.02.1981 and since then he is continuing as such. According to the applicant, in terms of Government of India orders dated 25.02.1966, number of persons as mentioned in para 5 of the O.A, who were declared surplus in their respective department, were redeployed in the establishment of Military Farm and amongst them, respondent No. 6 was also there. He has tried to say in para 7 and 8 of the O.A that it was in 1996, he had a chance to look into the service book of respondent no 6 and thereupon he learnt that the respondents had wrongly given him the benefit of previous service in determining the seniority in cadre of LDC and UDC. He gave representation dated 10.07.1996 (Annexure A- 1 to the O.A) to the



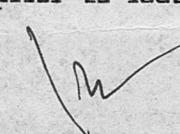
authority concerned saying that such redeployed persons had wrongly been given the benefit of previous services in determining their seniority but his representation was rejected vide order dated 18.11.1996 (Annexure A0 3 to the O.A). Not ^{satisfied} ~~satisfy~~ with the manner of rejection, the applicant gave another representation dated 21.02.1997, requesting the authority concerned to pass suitable order after looking into the service record and in turn, office of the respondent Nos. 3 and 4 sent a letter on 16.05.1997 (Annexure A- 5 to the O.A) to Director, Military Farms, Meerut Cantt to ⁴ send the service book of Sri Shaym Babu Saxena. He complains that the respondent No. 5 did not care to comply with this order of respondent No. 4. His case is that in view of the existing instructions especially Circular dated 01.04.1989 , as referred to in para 4 of the O.A, such redeployed persons could not be given the benefit of previous service in fixation of their seniority vis-à-vis other employees in that cadre and by giving this benefit to respondent No. 6, the respondents have committed grave illegality and the same should be rectified.

3. It transpires that during the pendency of this O.A, the respondent No. 3 passed an order-dated 23.06.1998 (Annexure A- 7 to the O.A) giving reasons for rejecting his request for determining the seniority over and above respondent No. 6. The authority has stated that the seniority lists were published periodically, after giving opportunity to the official concerned for making representation and so the applicant cannot be permitted to rake up the issue after lapse of 27 years of the fixation of seniority in the cadre of L.D.C and U.D.C. It is said that, on the basis of existing seniority list, several Departmental Promotion Committees took up the matters for promotion and so now it is not possible to resettle the

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seniority and thereby unsettle the settled position. Attempt has also been made to ~~say~~ that the seniority of respondent No. 6 and other redeployed persons in the cadre of L.D.C, was determined long back in sixties on the basis of then existing rules and regulations, giving benefit of previous service to redeployed persons. The applicant has got his O.A amended so as to challenge this communication dated 23.06.1998 and so as to seek further relief that the seniority of respondent No. 6 should be determined only from the date, he joined here on redeployment.

4. The respondent Nos. 1 to 5 have contested the claim. They say that the O.A is highly time barred and is without any merits. According to them, the applicant is not correct in saying that he had no knowledge of the fact that he was below respondent No. 6 in the cadre of L.D.C and also in the cadre of U.D.C, they say that the applicant never raised any objection as regards the seniority published from time to time and now, he is cooking up a case that he could know about disputed seniority only in 1996, when he had a chance to see the service book of Sri Shyam Babu Saxena. They say that the seniority of respondent No. 6 and others vis-à-vis applicant and others in the cadre of L.D.C was fixed long back prior to 1973, on the basis of existing rules and regulations according to which, such deployed persons were to be given benefit of previous service. They say that C.P.R.O of 73 or Circular dated 01.04.1989 so quoted by the applicant in O.A, would not apply to the case in hand, because the seniority in question had already been determined prior to issuance of these guide lines.

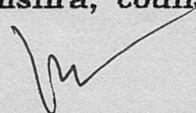


5. Rejoinder Affidavit, Suppl. Rejoinder Affidavit and Suppl. Reply etc. have also been placed on record but the same need not be referred to here as nothing new has been said therein.

6. We have heard Sri S.K. Mishra, learned counsel appearing for the applicant and Sri Saurabh, holding brief of Sri Saumitra Singh for the respondents.

7. In compliance of our direction, the respondents placed before us the seniority list dated 31.05.1974 of L.D.C and seniority list of 1981 of U.D.C. On perusal of these two seniority lists, we found that in the cadre of L.D.C, Sri Shyam Babu Saxena was shown at Sl. No. 96 whereas the applicant was shown at Sl. No. 123. The induction of Sri Saxena as L.D.C is shown as 01.05.1971 whereas, induction of the applicant in the same cadre is shown as on 16.03.1964 and confirmed on 01.07.1966. In the seniority list pertains to the cadre of U.D.C, issued in 1981, the applicant is shown at Sl. No. 141, whereas the respondent No. 6 at Sl. No. 122. We were told that the date of promotion of the applicant and of respondent No. 6 to the cadre of U.D.C was the same. These facts were noted in our order dated 27.09.2007 and thereafter, two seniority lists were returned to the counsel appearing for the respondents.

8. Let us consider as to whether this O.A is time barred. According to the applicant himself, his representation for determining the seniority was rejected on 18.11.1996. The contention of the respondents is that the applicant ought to have come within a period of one year from the communication of this rejection, but he came as late as in 1998. Replying this argument of the respondents, Sri S.K. Mishra, counsel



appearing for the applicant has submitted that since rejection dated 18.11.1996 (Annexure A- 3 to the O.A) was non-speaking one and since his second representation of 1997 for passing a speaking order was still pending with the authorities so, in view of decision dated 26.04.2002 of this Tribunal in O.A No. 489/89 (A.K. Mishra Vs. U.O.I & Ors.), O.A cannot be said to be time barred.

9. We have considered the respective submissions. This Tribunal, after referring to the decision dated 30.01.2002 passed by Allahabad High Court in C.M.W.P No. 1024/2002 (Sudhir Kumar Sharma Vs. State of U.P and others), decision dated 12.11.1987 of Principal Bench of this Tribunal in V. Kumar Vs. UOI & Ors reported in SLR 1988 (7) page 472 and decision dated 12.07.1999 of Madras Bench of this Tribunal in O.A No. 344/ 1988, concluded in its order dated 26.04.2002 that the rejection of representation without reasons will not come in the way of the applicant in giving second representation and in the way of the Government in entertaining such representation and giving its reasoned decision.

10. It is difficult to say that rejection dated 18.11.1996 (A- 3) is non-speaking. Reasons are there but in brief. So, the cited of Sri mishra does not help him on the point under discussion.

11. The story of the applicant that he had no chance to see these seniority lists and he came to know about the same, on seeing the service book of Sri Shyam Babu Saxena in 1996, is unbelievable and unacceptable. Since the rules provide for publication and circulation of the seniority lists and the respondents have also stated in so many words that seniority lists were published after inviting objections of all

concerned, so we do not find ourselves in a position to accept the plea of the applicant that he had no knowledge of the said seniority lists earlier to 1996. It is presumed that those were published in accordance with rules and were circulated amongst all the official concerned. If it is so, then how the applicant can say that cause of action arose to him after 1996. It is settled legal position that the seniority list of officials, which has been published long back, cannot be disturbed on the representation of the official concerned after decades. We cannot open a Pandora Box by unsettling the settled position. If we will permit such a course, any employee will come at his will to get it unsettled after decades. Even if the seniority in the cadre of L.D.C was not determined according to the existing rules and regulations, we will be loath in disturbing the same now, after more than two decades. The question is not whether the cause of action arose in 1996 or thereafter, but the real question is whether cause of action arose on publication of the seniority list in 1974. What the applicant was doing since then and why he allowed the position to remain at that till he woke up in 1996 or thereafter. It is very easy to cook up a case that he had no knowledge of the seniority list, prior to 1996.

11. We are of the view that the O.A is not only time barred but is also not maintainable on the ground of latches and it deserves to be dismissed for the reasons stated above and is dismissed accordingly but with no order as to costs.

Anand
MEMBER- A. 05.10.07

VICE-CHAIRMAN

C. J. Anand
05.10.07

/Anand/