

CENTRAL ADMINISTRATIVE TRIBUNAL
 ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 1333 of 1998

FRIDAY, THIS THE 13th DAY OF SEPTEMBER, 2002

HON'BLE MAJ GEN K K SRIVASTAVA, MEMBER (A)

HON'BLE MR. A. K. BHATNAGAR, MEMBER (J)

Paras Nath Shukla, son of Late Ram Harke Shukla,
 resident of C/o Shri Rakesh Verma, Advocate,
 175-A, Ram Nagar Chauraha,
 Naini, Allahabad.

.....Applicant

Counsel for the Applicant Shri Rakesh Verma

V E R S U S

1. Union of India, through Secretary,
 Ministry of Personal and training Public Grievance
 New Delhi.
2. Hon'ble Chairman through Registrar
 Central Administrative Tribunal,
 Principal Bench, Faridkot House,
 Copernicus Marg,
 New Delhi.
3. Registrar,
 Central Administrative Tribunal,
 New Bombay Bench, 1st Floor,
 Central Government Offices Complex
 (C.G.O.) Kokan Bhavan Post Office,
 C.B.D.
 New Bombay - 400 614
- 3.A: Registrar,
 Central Administrative Tribunal ,
 Allahabad Bench,
 Allahabad.
4. Shri Shiv Nandan working as Peon,
 Group-D, employed in Central Administrative
 Tribunal, 23-A, Thornhill Road,
 Allahabad.Respondents

Counsel for the Respondents: Shri Amit Sthalaker

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O R D E R

Hon'ble Maj Gen K K Srivastava, Member (A)

Through this application under section 19 of Administrative Tribunal Act, the applicant is challenging several orders dated 26.05.92, 29.05.97, 01.07.97, 05.08.98, 30.09.98, 29.10.98, 29.01.98 and 12.11.98 filed as Annexure A-10, 22, 25, 35, 36, 38, 39, 40 and 41 respectively.

2. In brief the case of the applicant is that by an order dated 24.04.91 the applicant was appointed as peon in the scale of Rs.750-940/- in the Bombay Bench of the Central Administrative Tribunal on ad-hoc and temporary basis for a period of 89 days. On the expiry of 89 days his service were terminated by an order dated 17.07.91. He was again appointed as a peon in the same office and in the same scale on adhoc basis for a period of 60 days and on the expiry of 60 days his services were again terminated by an order No.CAT/BOM/Admn/14(07)/2403 dated nil w.e.f. 16.09.91. This order is said to have been issued with the oral approval of the Vice-Chairman, Central Administrative Tribunal, Bombay Bench (Annexure A-4 to the O.A.). The applicant was again appointed by an order dated 20.09.91 for a period of 90 days w.e.f. 20.09.91. By an order dated 16.12.91 the applicant's appointment was extended for a further period of 90 days w.e.f. 20.12.91 (Annexure A-8 to the O.A.). By another order dated 30.03.92 issued with the approval of the Vice-Chairman, Bombay Bench of C.A.T.



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the applicant was further appointed as peon on temporary basis on a probation period of 2 years in the scale of Rs.750-940/- w.e.f.19.03.92. This order was in continuation of the office order dated 16.12.91 (Annexure A-9 to the O.A).

3. It is notable that while the applicant was still under probation he was released from service from the forenoon of 01.06.92 by an order dated 26.05.1992. No reasons have been stated in the order dated 26.05.92 for terminating the services of the applicant. By another order dated 29.05.92 the applicant was again appointed as Peon in the scale of pay of Rs.750-940/- in the Allahabad Bench of the Central Administrative Tribunal for a period of 2 months w.e.f. ~~From~~ 03.06.92 (Annexure A-11 to the O.A.). This appointment was again extended for a period of 3 months w.e.f. 03.08.92 to 02.11.92 by order dated 24.07.92 (Annexure A-12 to the O.A.). The appointment of the applicant was further extended for another 60 days w.e.f. 03.11.92 to 02.01.1993 by order dated 04.11.92. After a break of one day the applicant was again appointed to the post of peon in the pay-scale of Rs.750-940/- in the Allahabad Bench of Central Administrative Tribunal w.e.f. forenoon of 02.04.93 (Annexure A-17 to the O.A.).

4. The applicant was thereafter transferred to the Lucknow Bench of C.A.T. w.e.f. 01.06.93 by an order dated 13.07.93 and he joined the Lucknow Bench of the C.A.T. in the forenoon of 01.06.93. By an order dated 12.11.93 (Annexure A-19 to the O.A) the services of one Shri Sheo Nandan who had also been appointed on the post of peon in the pay-scale of Rs.750-940/- in the

Lucknow Bench of C.A.T. were regularised under the order of the Vice-Chairman, Allahabad Bench, C.A.T. Allahabad. In the meantime the applicant who was working in the Lucknow Bench was transferred to the Allahabad Bench C.A.T. by order dated 04.01.94 and in pursuance of the said order the applicant joined at Allahabad. The respondent No.3 by an order dated 16.08.94 appointed one Shri Ramesh Pakharial as ad-hoc Group-D peon and one Shri Virendra Bahadur as ad-hoc Chowkidar. At the same time by an order dated 29.05.97 the services of the applicant and Shri Sheo Nandan Group-D were dispensed with from the afternoon of 30.05.97 and their names were struck off from the strength of the Tribunal on the basis of the recommendation of the staff Inspection Unit (Annexure-22 to the O.A.). However, by an order dated 01.07.97 the applicant was again appointed in service on the post of peon Group-D in the scale of Rs.750-940/- in a temporary but regular capacity against available vacancy. The applicant was placed under probation for two years. By another similar order dated 03.09.97 Shri Sheo Nandan was appointed on the post of peon Group-D in the scale of Rs.750-940/- w.e.f.03.09.1997 and he was also placed under probation of two years. On 04.04.98 a tentative seniority list was issued in which the applicant was placed at serial No.13 and Sheo Nandan was placed at serial No.14. In the said seniority list the date of appointment of applicant on the post of the peon was shown as 01.07.97. The applicant submitted a representation on 04.05.98 claiming that since he had been working as a peon since April 1991 and his services had also been regularised

w.e.f.15.04.93 his date of appointment could not be shown as 01.07.1997. The respondents issued another order dated 26.05.98 (Annexure A-33) to the O.A.) by which the period of break in service of Shri Sheo Nandan from 31.05.97 to 02.09.97 was regularised. On the same date a recommendation was also made by the office of this C.A.T. Allahabad to the Registrar, Principal Bench, New Delhi to the effect that the period of break in service of the applicant from 31.05.97 to 30.06.97 may be regularised as done in the case of Shri Sheo Nandan since the break in service of both Shri Sheo Nandan and the applicant have been caused as a result of the implementation of the Staff Inspection Unit Report.

5. The grievance of the applicant is that though he was similarly placed as Shri Sheo Nandan, the period of break in service of Shri Sheo Nandan had been regularised but in the case of the applicant no such orders had been passed and he was treated as a fresh appointee on the post of Peon w.e.f. 01.07.97. An option was sought from the applicant for adjustment on transfer to Chandigarh or Bangalore Bench of the C.A.T. on the ground that the applicant had been declared as surplus. Aggrieved by the action of the respondent No.3, the applicant submitted a representation bringing out the fact that he had throughout been senior to Shri Sheo Nandan and therefore he could not have been declared surplus. The respondent No.3 through his letter dated 29.10.98, again insisted that the applicant submit his option for adjustment on transfer to the Bangalore Bench of the C.A.T. The applicant again submitted a representation on 29.10.98 but without



considering the same he was transferred to the Bangalore Bench of the C.A.T. by the order dated 12.11.98 and his name was struck off the strength of the Allahabad Bench w.e.f. 13.11.98.

6. A common affidavit was filed on behalf of the respondents wherein it was stated that the ad-hoc services of employees including applicant were not to be taken into account while deciding their respective position for application of the principle of 'last come first go'. The case of the respondents further was that though the applicant and Shri Sheo Nandan have both been appointed as regular peon w.e.f. 02.04.93 and 12.11.93 respectively, the applicant has been placed for probation for one year. In the meantime as a result of implementation of S.I.O Report the services of the applicant and Shri Sheo Nandan being the junior most persons were dispensed with w.e.f. 30.05.97. Subsequently both the applicant and Sheo Nandan were given fresh appointment as peon w.e.f. 01.07.97 and 03.09.97 respectively. It was also stated that the case for regularisation of the period of break in service of Shri Sheo Nandan was considered by the Chairman, Central Administrative Tribunal, New Delhi and the period of break in service from 31.05.97 to 02.09.1997 was regularised by the Chairman, C.A.T. New Delhi. However, the case for regularisation of the period of break in service from 31.05.97 to 30.06.97 of the applicant was rejected by the Chairman, C.A.T., New Delhi and the applicant thus became junior to Shri Sheo Nandan and being the junior most peon Group-D, he was transferred to the Bangalore Bench of Central Administrative Tribunal.

7. We have heard Shri Rakesh Verma, learned counsel for the applicant and Shri Amit Sthalaker, learned counsel for the respondents and have perused the records.

8. The facts as they stand are not in dispute between the parties. In fact it is admitted ⁱⁿ ~~by~~ the respondents that the applicant was initially appointed as a peon on temporary basis in the pay-scale of Rs.750/-940/- for a period of 89 days and the said period was extended from time to time after short breaks of one or two days. It is also admitted by the respondents in their counter affidavit that the services of the applicant had been regularised on the post of Peon in the Allahabad Bench of the CAT by an order dated 15.04.93. It is also admitted by respondents in para-4 of their Counter Affidavit that a tentative seniority list dated 04.04.98 was issued in which the applicant was shown senior to Shri Sheo Nandan by virtue of their date of regularisation. The Copy of the seniority list showing the relative seniority position of the applicant and Shri Sheo Nandan has been filed as Annexure-6 to the Counter Affidavit.

9. As regards the transfer of the applicant to the Bangalore Bench of the C.A.T., subsequently an affidavit was filed on behalf of the respondents pointing out that during the pendency of the O.A. the applicant had been transferred back to the Allahabad Bench of the C.A.T. by order dated 30.07.2001.

10. The only question that falls for our consideration now is whether the applicant was entitled for regularisation of the period of break in his service from 31.05.97 to 30.6.97.

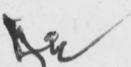
As we have already noted above, the applicant had been appointed as a Peon in 1991 and had continued in service with several artificial breaks. Thereafter his services were regularised on the post of Peon w.e.f. 02.04.93 and he was kept on probation. It is to be noted that his services were terminated w.e.f. 30.05.96 alongwith those of Shri Sheo Nandan not on account of unsatisfactory work or as a result of any disciplinary action, but his services were terminated as a result of reduction of posts on the implementation of the Staff Inspection Unit Report. However within one month the applicant was again appointed on the post of peon by order dated 1.7.97. Similarly Sri Sheo Nandan was also appointed as peon by order dated 3.9.97. A tentative seniority list was also issued dated 4.4.98 in which the applicant was placed at serial No.13 and Sri Sheo Nandan placed at Serial No.14 subsequently by an order dated 26.05.98 the period of break in service of Shri Sheo Nandan from 31.05.97 to 02.09.97 was regularised. In our view, similar action should have been taken in the case of the applicant also for regularising his period of break in service from 31.05.97 to 30.06.97 but that was not done, although a recommendation to that effect had been made by the respondent No.3 through their letter dated 26.05.98.

11. We have perused the impugned order dated 05.08.98 and also the impugned seniority list dated 20.08.98 in which the name of the applicant has been shown at Serial No.31, Junior to Shri Sheo Nandan. The factual merit set out above leaves no doubt that the applicant who was once senior to Shri Sheo Nandan has become junior because of

non-regularisation of his period of break in service from 31.05.97 to 30.06.97. The impugned order dated 05.08.1998 rejecting the proposal for regularisation of break in service of the applicant from 31.05.97 to 30.06.1997 does not disclose any reason for rejection.

12. In the facts and circumstances and aforesaid observation, we are of the view that the interest of justice shall be better served if the applicant files a detailed representation before Respondent No.2 within 4 weeks and the same is considered and decided by an appropriate order within 3 months from the date same is filed before him. The O.A. stands disposed of.

13. There shall be no order as to costs.


MEMBER (J)


MEMBER (A)

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