

(OPEN COURT)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No.78 of 2004

Allahabad, This the 28th day of February, 2005.

Hon'ble Mr. Justice S. R. Singh, Vice-Chairman
Hon'ble Mr. S.C. Chaube, Member- A.

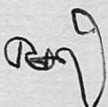
1. Birendra Singh, son of Shri Gopal Singh,
R/o 10/383, Khalasi Line, Kanpur Nagar
Presently posted U.D.C.P/A No.37406,
Station Civil Administration, 402
Air Force Station, Chakeri, Kanpur.
2. Sri Prem Chandra, son of Sri J.N. Mishra,
R/o 404/25-A, Krishnapur Kanpur Nagar,
Presently posted as U.D.C. P./A No.37390,
Station Civil Administration, 402 Air Force
Station Chakeri, Kanpur.

....Applicants.

Counsel for the applicants : Sri R.M. Shukla

V E R S U S

1. Union of India,
through Secretary,
Ministry of Defence,
New Delhi.
2. The Air Officer I/C Personnel,
Air Head Quarters Vayu Bhawan,
New Delhi-110011.
3. The Air Officer Commanding,
402 A.F. Station Chakeri,
Kanpur Nagar.
4. Sri Radha Mohan, S/o Sri Sheo Govind,
P.A. No. 37105-F, presently posted as UDC,
At MET Section 402, Air Force Station,
Chakeri, Kanpur.



- 2
5. Sri R.K.S. Jadaun, S/o Sri Buddh Singh,
PA No. 37399-A, presently posted as
UDC at Station Civil Administration,
402, Air Force Station, Chakeri,
Kanpur.

.....RESPONDENTS

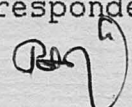
Counsel for the Respondents : Sri N.C. Tripathi
Sri S.S. Upadhyay

O R D E R

By Hon'ble Mr. Justice S.R. Singh, VC.

The applicants were working as Junior Machine Operator (J.M.O.) and Lower Division Clerk (L.D.C.) respectively in the office of Directorate General of Supply and Disposal, Kanpur. As a result of Government decision to close down the Kanpur unit of Directorate General of Supply and Disposal, both the applicants were transferred along with their post to 402, Air Force Station, Chakeri, and Kanpur.

2. Dispute herein relates to their seniority vis-à-vis the respondent Nos. 4 and 5 who were already working at 402, Air Force Station, Chakeri, and Kanpur. The case of the applicants is that they are entitled to count their previous services rendered at Kanpur Unit of Directorate General, Supply and Disposal. It appears that respondent Nos. 4 and 5 instituted O.A. No. 560/02 for issuance of direction to the respondents to place Sri Radha Mohan, (the respondent No.4 herein) above Sri Birendra Singh, the applicant No.1 herein and one Sri V.N. Mehrotra and Sri R.K.S. Jadaun (the respondent No. 5 herein) above Sri Amar Singh, the applicant No. 2 herein. None of the applicants herein ^{was 2}impleaded as respondents ² in that OA which came to be



disposed off vide order dated 08.05.2002 with direction to Air Officer Commanding, 402, Air Force Station, Chakeri, Kanpur to consider and decide the representations dated 20.02.2002 and dated 27.02.2002 preferred by the applicants therein by a reasoned order within a period of three months. It appears that the direction given by the Tribunal in the aforesaid OA was not carried out whereupon Contempt Petition No. 175/03 was instituted in which notices were issued and finally the impugned orders dated 10.12.2003 (Annexure 1 and 2) came to be passed.

3. By order dated 10.12.2003 (Annexure-1) the applicant No. 1 Sri Birendra Singh has been denied benefits of past services rendered in the office of Directorate General (Supply and Disposal) on the ground that " he was not transferred with the post of J.M.O" and was, therefore, not entitled to count his seniority as J.M.O on change of trade as per rules. By a separate order dated 10.12.2003 (Annexure-2) Prem Chandra, the applicant No. 2 has been given seniority in the grade of L.D.C with effect from 03.05.1984 instead of 04.08.1978 and his promotion to L.D.C, it has been provided, will be relegated and pay revised accordingly.

4. A perusal of order dated 06.05.1996 (Annexure CA-IX) goes to show that as per decision of the Union Cabinet a total of 14 D.G S&D posts along with the corresponding 61 officers/staff had been transferred to Indian Air Force and were taken on the strength of Indian Air Force from the date of reporting their duties. The said order goes to show

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that one post of J.M.O was transferred from office of Directorate General (Supply and Disposal) (in short D.G S&D) to 402, Air Force Station, Chakeri, Kanpur, the applicant Sri Birendra Singh was the only J.M.O who had been transferred to 402, Air Force Station, Chakeri, Kanpur as per decision of the Union Cabinet as provided in letter dated 06.05.1996. The terms and conditions subject to which the posts were transferred are contained in paragraph No. 2 of the aforesaid letter. Clause (e) of paragraph 2 of the said letter provides that seniority in respect of centrally controlled categories will be fixed in terms of DOP&T ruling given vide their I.D No. 28017/1/94-Estt (D) dated 26.04.1995 and in respect of Unit controlled categories it will be fixed by concerned command in a similar way. The DOP&T I.D No. 28017/1/94-Estt (D) dated 26.04.1995 provides that in so far as fixation of seniority of such of the employees who are transferred from one cadre to another along with their posts is concerned, their cases will have to be treated as one of merger of cadres in which the same is fixed on the basis of length of service subject to maintenance of original inter-se-seniority within each cadre. ²Therefore, the benefit of the past services rendered by these officers from DGS&D will have to be given in the matter of seniority in the cadres in which they are merged. In the impugned order dated 10.12.2003 (Annexure-1) it has wrongly been stated that the applicant Briend Singh was not transferred with the post of J.M.O. It is true that he was absorbed as LDC but not because of the reason ²that he was not transferred with the post of J.M.O but because of the reason that there was no post of J.M.O

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in 402, Air Force Station, Chakeri, Kanpur and the order referred to herein above clearly indicates² that this is a case of merger of cadre of J.M.O in to the cadre of L.D.C in which the applicant Sri Birendra Singh was absorbed. The order dated 10.12.2003 has been passed erroneously on the basis that the applicant was not transferred with the post and ~~this~~² erroneous assumption vitiates the impugned order whereby the applicant has been denied the benefit of services rendered in the parent department of DG(S&D). So far as the order dated 10.12.2003 (Annexure A-2) is concerned ² ~~is to say 2~~ suffice² that Prem Chandra, applicant no.2 was transferred along with the post of LDC to 402, Air Force Station Chakeri, Kanpur as would be evident from Annexure CA-2 filed on behalf of department and he was absorbed as LDC w.e.f. 01.10.1992.

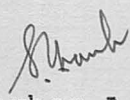
5. One of the question² raised by ~~the~~² Shri Prem Chandra, applicant no.2 before the competent authority was that he was entitled to get the weightage for the services rendered by him before confirmation in view of the D.O.P.T. letter dated 04.11.1992 which visualizes² that his seniority would be delinked from his confirmation. The ~~effect of delinking seniority with confirmation has not been examined by the competent authority while deciding the question of seniority of Prem Chandra, applicant no.2 vis-à-vis opposite party nos. 4 and 5. However, it is submitted by the learned counsel representing the respondents that in the seniority list of LDC in 1989 as on 31.12.1989 issued by the DG (S&D) the applicant Prem Chandra is junior to Shri R.K.S. Jadhaun (respondent no.5).~~


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~~However,~~ ² The counsel for the applicant on the other hand has submitted that the said list was never circulated and, therefore, the applicant no.2 was not aware of the said seniority list. Be that as it may, the question, in our opinion, needs to be decided afresh after proper self direction to the plea raised by the applicant as to whether he is entitled to count adhoc services as LDC in the DG (S&D) Kanpur and whether he was ^{debarred, & any} ~~deprived~~ by the principles of law from raising the question regarding seniority in view of the earlier seniority list published on 11.07.1989.

6. Accordingly, the O.A succeeds and is allowed and the impugned orders dated 10.12.2003 (Annexure-1 & 2) are quashed. The competent authority is directed to decide the question regarding applicant's seniority vis-à-vis the respondent nos.4 and 5 in accordance with law and after affording opportunity to the applicants as well as respondent nos.4 and 5 by means of reasoned order to be passed within a period of three months from the date of communication of this order. No Costs.


Member-A.


Vice-Chairman

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