

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH
ALLAHABAD

ORIGINAL APPLICATION NO. 1077/2005

ALLAHABAD this the 23rd day of **November, 2011**

Present:

HON'BLE MR. JUSTICE S.C. SHARMA, MEMBER- J
HON'BLE MR. SHASHI PRAKASH, MEMBER -A

Brijendra Singh son of Sri Gopal Singh r/o 10/383
Khalasi Line, Kanpur Nagar, presently posted as Upper
Division Clerk, P/A No. 37406, Station Civil
Administration 402 Air Force Station Chakeri Kanpur.
.....Applicant

V E R S U S

1. Union of India through the Secretary, Ministry
of Defence, New Delhi.
2. The Air Officer, I/c Personnel Air Headquarters
Vayu Bhawan, New Delhi.
3. The Air Officer Commanding, 402, Air Force
Station Chakeri Kanpur Nagar.
4. Sri Radha Mohan son of Sri Sheo Govind P/A No.
371-F 402 Air Force Station Chakeri, Kanpur
Nagar.

.....Respondents

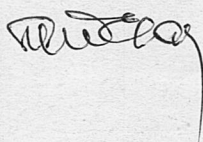
Present for the Applicant: Shri Rakesh Verma

Present for the Respondents: Shri S. Srivastava

O R D E R

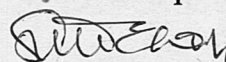
(Delivered by Hon'ble Mr. Justice S.C. Sharma, J.M.)

1. Under challenge in this O.A. is the order dated 25.7.2005
passed by respondent No.3 against the applicant. Further prayer has



also been made for giving direction to the respondents 1 to 3 to treat the applicant senior to respondent No. 4 in service without interfering or disturbing the service and seniority of the applicant and to provide/grant benefit of previous service rendered in the department of D.G.S.& D Kanpur since 1.12.2973 and count previous service for all practical purposes.

2. Pleadings of the parties may be summarized as follows. It has been alleged by the applicant that he was appointed on 8.6.71 on the post of Sorter in the Census Department, Ministry of Home Affairs on consolidated pay on 1.7.72. Thereafter, he was appointed as Assistant Compiler in the grade of LDC. The applicant was also appointed on the post of Junior Machine Operator (JMO) in Directorate of D.G.S& D at New Delhi on 1.12.1973 and joined at Kanpur on 7.1.1974 on transfer after completing required training. The applicant was confirmed in that department on the post of JMO. He has also been absorbed permanently in Air Force on account of closure of D.G.S &D at Kanpur on 1.10.1992 after transfer of employees alongwith post in public interest. That the applicant had been working on the post of JMO in identical scale of LDC in DGS& D since 1.12.73. At the time of absorption on account of closure of D.G.S& D the applicant was absorbed in the Air Force Chakeri on the basis of previous rendered service and he was given seniority since 1.12.1973 in identical scale of JMO in the cadre of LDC, but there was no post of JMO at 402 Air Force Station Chakeri Kanpur. The applicant was promoted on the post of U.D.C. since



12.1.1995 and at present working on the post of U.D.C at 402 Air Force Station. Representation was submitted by the applicant to the respondents for absorption in the cadre of LDC by giving benefit of service rendered by him on the post of JMO which is identical scale of LDC. The applicant was promoted on the post of UDC on the basis of seniority since initial appointment when the seniority list was published. Respondent No.4 Radha Mohan is junior to the applicant and his name is existing at serial No.8 whereas the applicant is at serial No.7. As per circular of the DOPT dated 26th April, 1995, dated 30.8.99 and dated 13.9.99, the applicant has been given the benefit of previous service rendered by him whereas the respondent No.4 was promoted from class IV to class III in clerical cadre on adhoc basis on 4.8.1975. Whereas the applicant was appointed on 1.12.1973 as JMO in DGSD and it ^{is} due to closure of _^ DGS& D the applicant was transferred on administrative ground in public interest. The O.A. 560/02 was filed by the applicant and Radha Mohan for correction of the seniority and the O.A was decided on 8.5.2002 by giving direction to the respondents to decide the pending representation of the applicant. Contempt petition was also filed, but the respondents decided the representation of the applicant against the provisions existing for purpose of seniority and the seniority has not been given to the applicant from the date of his initial appointment as JMO, hence the O.A.

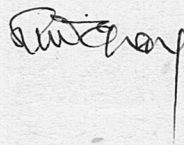
3. The respondents contested the case and filed the Counter reply and denied all the allegations made in the O.A. It has further been

Shirley

alleged that the applicant is at present working as UDC and was initially appointed as Assistant Compiler in Census department of Ministry of Home Affair w.e.f. 1.2.1972 and thereafter appointed as JMO w.e.f. 1.12.1973 in DGS& D Delhi. The nature of duties of the post of JMO and UDC are quite different as shown in Annexure CA-1. The applicant was also confirmed on the post of JMO w.e.f. 21.5.1990. He was also transferred to 402 Air Force Station Kanpur with other staff without post w.e.f. 1.10.1992 vide DGS&D letter dated 3.8.92 in accordance with the instructions of the Department of Supply office dated 27.7.92. As there was no ^{post} ~~vacancy~~ of JMO existing in he Air Force, hence the applicant was adjusted to the post of LDC on his transfer to Air Force and seniority of the applicant in the grade of LDC was given w.e.f. 1.12.1973, the date on which he was appointed as JMO in DGS&D. But vide letter dated 26.4.1995 issued by DOPT seniority is to be fixed on the basis of length of service subject to maintenance of original inter-se seniority within each cadre. Hence the benefit of the past service rendered by the applicant in the office of DGS & D was given to him and seniority on the post of LDC was fixed on 10.12.1973 but it was found erroneous on the re-examination of the seniority of applicant vis-à-vis respondent No.4. One Radha Mohan challenged the seniority of the applicant for LDC and UDC by giving him the benefit of service in the CAT Allahabad Bench by filing O.A. No. 560/02 and the Tribunal vide its order dated 8.5.02 directed that the representation of Shri Radha Mohan and others be decided within three months and

Subhay

for disposal of the representation the seniority of the applicant and others was re-examined and in compliance of the order passed by this Tribunal the seniority of the applicant was revised on the post of LDC w.e.f. 1.10.92 and for UDC w.e.f. 26.8.2002 vide Air Force letter dated 10.12.2003. Being aggrieved from the down-gradation of the seniority list, the applicant filed O.A. 78/2003 before the C.A.T and the Tribunal quashed the order of the Air Force dated 10.12.2003 by which the seniority of the applicant was affected and further direction was given to re-consider the seniority of the persons afresh after affording opportunity of hearing to all of them. In pursuance of the order passed by the Tribunal, the matter of seniority was re-examined within the framework of the existing policy and by complying with the principles of natural justice and a reasoned and speaking order was passed on 25.7.2005. Annexure -1 is the copy of the order. Hence the entire matter was examined by the respondents as per directions of the Tribunal and the seniority was fixed of the applicant as per existing rules and following the principles of natural justice. It has also been alleged that though the scale of JMO and LDC are identical, but the duties are entirely different in nature. As per recruitment rules, the post of LDC requires typing qualification, but the applicant is not possessing that qualification till date and hence the applicant cannot be treated as LDC for the purposes of seniority. His past services rendered in DGS &D are not to be considered w.e.f. 1.12.1973. Earlier, seniority of the applicant was

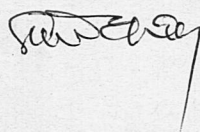


erroneously fixed and later on it was corrected as per direction of the Tribunal. The O.A. lacks merit and is liable to be dismissed.

4. In response to the Counter reply of the respondents, the applicant filed R.A. and reiterated the facts which have been alleged in the O.A. Moreover, on behalf of the respondent No.4 Radha Mohan also, a separate counter reply has been filed. He reiterated the same facts as alleged by the respondents.

5. We have heard Shri Rakesh Verma Advocate for the applicant and Shri Saurabh Srivastava advocate for the respondents and perused the entire facts of the case.

6. From the perusal of the pleadings of the parties, it is evident that almost all the facts have been admitted by the parties. It is an admitted fact that the applicant was appointed on the post of JMO in the DGS &D since 1.12.1973 and the applicant was also confirmed on that post. It has also been admitted that the department of DGS & D was closed and the officials working in DGS &D were absorbed in the Air Force. It is also admitted fact that the pay scale of JMO and LDC are equal. The applicant has alleged that as the scale of JMO and LDC are same, hence after transfer of the applicant in the Air Force, the applicant is entitled for seniority from the date when he joined as JMO on dated 1.12.1973. It is also evident from the perusal of the record that the applicant and one Prem Chandra filed O.A. No. 78/2004. Annexure -2 is the copy of the order and this O.A. was decided on 28.2.2005. The operative portion of the order passed by the Tribunal is material and is reproduced as follows:



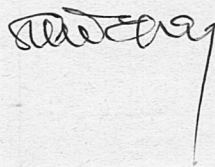
“ Accordingly, the O.A. succeeds and is allowed and the impugned orders dated 10.12.2003 (Annexures 1 and 2) are quashed. The competent authority is directed to decide the question regarding applicant's seniority vis-à-vis the respondent Nos. 4 and 5 in accordance with law and after affording opportunity 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.”

From the perusal of the order, it is evident that the direction was given to the respondents to decide the question regarding the applicant's seniority vis-à-vis respondents 4 and 5 in accordance with law after affording opportunity to the applicant as well as respondents 4 and 5 Shri Radha Mohan and Shri R.K.S. Jadaun by reasoned and speaking order. In pursuance of the order passed by this Tribunal the matter of seniority was examined by the respondents and seniority was given to the applicant w.e.f. 1.12.1973. It is also material to state that one O.A. was also filed by Radha Mohan and others (O.A. No. 560/02) and direction was given by this Tribunal in that O.A. also in order to re-examine the matter of seniority of the applicant vis-a-vis these applicants of the O.A. Moreover, Contempt petition was also moved on behalf of Radha Mohan and others (No. 175/2003) and the Contempt petition was disposed of by giving direction to the respondents for final settlement of the controversy of seniority. Hence in pursuance of the direction of the Tribunal in O.A. 560/2002 the matter was re-examined and further, the matter was also re-examined as per direction of the Tribunal in O.A. 78/04 and the impugned order

[Signature]

Annexure No. 1 was passed on 25.7.2005 after considering the respective contentions of both the parties. With the above background the matter of seniority is to be considered of the applicant vis-à-vis respondent No. 4 and others.

7. It has been argued by the learned counsel for the applicant that earlier the applicant had been working in the D.G.S. & D as JMO which carries the same pay scale as was admissible to an LDC. It has also been argued that the applicant was transferred to the Air Force Chakeri alongwith the post of JMO and that he was also absorbed on the post of LDC because the applicant was transferred in the Air Force Chakeri with the post of JMO. The learned counsel for the respondents argued that as there was no post of JMO in the Air Force, and hence as a matter of adjustment the applicant and others were adjusted in the Air Force in the equivalent pay scale of LDC whereas in all respects the post of LDC is entirely different to that of JMO. Irrespective of the fact that the post of JMO as well as the post of LDC carrying equal pay scale but the post of JMO is inferior to the post of LDC regarding nature of work, qualification, procedure of appointment etc. Under these circumstances it has also been argued by the learned counsel for the respondents that the as the applicant was transferred with the post of JMO and he was to be absorbed as LDC then the respondents earlier absorbed the applicant from the date when he joined Air Force as LDC. The applicant joined in the grade of LDC w.e.f. 1.10.1992 whereas it has been argued by the learned counsel for the applicant that the



applicant is entitled for seniority w.e.f. the date when he joined in the DGSD as JMO on 1.12.1973. Private respondent No. 4 Radha Mohan also filed Counter reply and it has been alleged in it that the applicant was wrongly promoted w.e.f. 12.1.1995 as UDC. Because the applicant was holding the post of JMO and that the applicant was absorbed as LDC from the cadre of JMO on account of non existence of the post of JMO in the Air Force. It has also been alleged that the respondents alleged that the applicant was absorbed as LDC after obtaining his consent. That one O.A. No.560/2002 was also filed by him and it was decided on 8.5.2002. That the applicant was absorbed on the post of LDC w.e.f. 1.10.1992 whereas the respondent No. 4 is holding the post of LDC w.e.f. 4.8.1975 and under these circumstances, it is not understandable how and on what basis the applicant is claiming to be senior to respondent No.4. That the applicant cannot claim seniority on the basis of length of service, nor can it be accepted by any authority as per rules. The respondents considered the matter after providing full opportunity to the applicant as well as to the respondent No. 4 and the position of the rules was also examined and the seniority of the applicant has been fixed in view of the O.M. of DOP&T dated 26.4.1995. The post of LDC is higher to the post of JMO and hence the applicant was appointed as LDC and the seniority was not considered from the date when he was holding the post of JMO. The case of Shri V.N. Mehrotra has also been cited in the speaking order passed by respondents (Annexure -1) and it has been alleged that Shri V.N.

Shri V.N. Mehrotra

Mehrota was initially appointed as JMO and then became LDC and thereafter his seniority as LDC has been fixed. He has been appointed as LDC and services rendered as JMO in DGS& D have not been counted² and on this ground it has been alleged by the respondents that the case of Virendra Singh was also examined and as per rules the services put in by the applicant as JMO in the DGS&D cannot be counted for adjustment as LDC in Air Force.

8. There are numerous judgments of Hon. Apex court on the point of equal pay for equal work, but in the present case this principle is somehow different in the respect that the post of JMO and LDC carry equal pay, but nature of work is entirely different and hence as per the principle laid down by the Hon. Apex court we have to examine that what should be the criteria in fixation of seniority of JMO vis-à-vis LDC in the case of transfer from one department to another department. The Hon. Apex court held in State of Haryana vs. Tilak Raj (2003) 6 SCCA 123, that the principle of "equal pay for equal work is a concept which requires for its applicability complete and whole sale identity between a group of employees claiming identical pay scales and other group of employees who have already earned such pay scales. The problem about equal pay cannot always be translated into a mathematical formula." The Hon. Apex court also considered this matter in another case of State of U.P. and others vs. Ministerial Karmchhari Sangh, AIR 1998 SC 303, and the Hon. Apex court observed that "even if persons holding the same post are performing similar work

Singh

but if the mode of recruitment, qualification, promotion etc. are different it would be sufficient for fixing different pay scale. Where the mode of recruitment, qualification and promotion are totally different in the two categories of posts, there cannot be any application of the principle of equal pay for equal work." Hence with this principle of Hon. Apex court we have to decide the matter of seniority of the applicant vis-à-vis other persons. When the applicant joined the post of LDC there were other persons who had been transferred from DGS&D on its closure and had been working on the post of LDC or UDC in the earlier department. If the LDC had come from DGS&D, later in a point of time to the person who is holding the post of JMO then if both the employees might have remained in the parent department i.e. DGS&D then they had different streams of service for purposes of promotion and others. But if a person who is holding the post of LDC but he joined later in time to the employee who had been working as JMO in the parent department and when both were transferred to Air Force then their seniority shall not be equal. There shall remain disparity because in the earlier department also there was disparity but in the subsequent department one cannot claim that his seniority is to be counted when he initially joined on the post of JMO. It will be a great injustice to the persons who had already joined the Air Force on higher post not for purposes of scale but for the nature of work and after transfer to subsequent department due to closure of earlier department, if the person who is holding inferior post in the earlier department is given

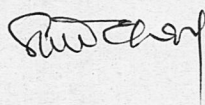
Sudhakar

seniority over the persons who are senior in the subsequent department, then those persons will suffer.

9. Moreover, for purposes of seniority, there should be whole sale identity between the two groups. It is undisputed fact that after closure of the department of DGS &D the persons who had been working on the post of JMO were absorbed on the post of LDC as it was a matter of adjustment. The Hon. Apex court also held that two groups of service can be different having into account similar work, mode of recruitment, qualification, promotion etc. On the face of it, it can be inferred that the nature of work of JMO is of Junior Machine Operator. He is operating Machine, whereas the work of LDC is of clerical type. Irrespective of the fact that the pay scale of both the groups is same, it cannot be said that both the groups of services have wholesale identity. They are different from group having into account the nature of work, qualification and promotional avenues etc. It has been alleged by the respondents in the Counter Reply that there is no promotional avenues for the post of JMO. Even after about 19 years, the applicant continued to work as JMO whereas there are promotional avenues to a person who is holding the post of LDC. He is to be promoted as UDC or on higher post. Moreover, it is evident from the fact that the applicant joined in the Air Force w.e.f. 1.10.92 and at the time of filing the O.A. the applicant was promoted as UDC. The applicant was promoted as UDC because there are promotional avenues on the post of LDC and if the applicant continued to remain as JMO in the parent

Signature

department, then he should have not been promoted on the higher post equal to UDC. He might have retired from the post of JMO with certain monetary benefits but there will be no change of the post. Considering this aspect of the matter the post of JMO and LDC are entirely different merely on the ground that LDC and JMO carry equal pay and it cannot be inferred that the applicant is entitled for seniority from the date on which he joined DGS&D as JMO. It will affect the interest of others who had joined as LDC in the DGS&D and there might be certain persons who had been promoted on the post of UDC on the basis of their seniority in the department and it may be possible that a person who stand promoted as UDC in the DGS&D joined later in time in comparison to the applicant. It will be entirely detrimental to the interest of such persons. Moreover, from the perusal of the speaking order it is evident that even the DGS&D does not consider the post of JMO and LDC equal in all respects, because in the speaking order the matter has been cited of Mr. V.N. Mehrotra. Seniority was given to the applicant when he was appointed as LDC, but not from the date when he was appointed as JMO. It has also not been disputed that the recruitment rules for the post of JMO and LDC are entirely different. For the post of LDC one is required to undergo certain tests and he is also required to possess the qualification of typing etc. whereas it is not so for the post of JMO. Hence, on comparative analysis, according to the parameters of Hon. Apex court, there is a vast difference in the two groups of JMO and LDC and in case a person holding inferior post



of JMO is merged with the post of LDC, then rightly seniority is to be given to him from the date when he joined as LDC. Earlier service as JMO is not to be considered for purposes of seniority. We have perused the speaking order passed by the respondents. (Annexure-1) and we are of the opinion that the respondents considered all the aspects of the case while deciding the seniority of the applicant vis-à-vis Radha Mohan. We have also perused the direction of the Tribunal in O.A. No. 78/04 as well as O.A. No. 560/02. If a mistake has been committed by the respondents in fixing the seniority to the applicant from the date when he joined as JMO and on careful consideration of the rules, we have arrived at the conclusion that it is a mistake quite detrimental to others, then they have right to rectify it and they have rightly rectified the earlier order giving seniority to the applicant from date he joined on 1.12.73. In our opinion, the applicant is entitled for seniority from the date he has joined the Air Force as LDC. The date of joining as JMO will be relevant for other benefits but not for the purposes of seniority as LDC. It is also a fact that the applicant was not possessing the qualification which is required for the post of LDC and as per decision of the Government as the department of DGS&D was disbanded hence employees are to be absorbed somewhere else. In the Air Force, there was no post of JMO and there was a post of LDC which carries the same pay like that of JMO, hence it was decided as a matter of adjustment, the employees who had been working as JMO be adjusted as LDC in the Air Force. Hence it was

Reddy

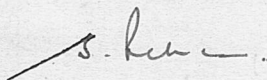
not in principle but as a matter of adjustment, hence the applicant cannot claim seniority w.e.f. 1.12.73 and the respondents rightly decided that the seniority of the applicant is to be given from the date when he joined as Air Force as LDC.

10. It has also been argued by the learned counsel for the respondents that there is an OM issued by the DOPT dated 26.4.95 which provides how the seniority is to be counted of the persons who had worked in the DGS&D and subsequently adjusted in the Air Force. It has been provided in the DOPT O.M. that DGS&D cadre and Air Force cadre in a particular grade and not a different grade as the instructions mentioned in the inter-se seniority in each cadre. It has also been provided in the letter of the respondents dated 6.5.96 that separate seniority list of such grades in the IAF like JMO, JPO should be maintained. It was neither intended nor mentioned that the JMO cadre was merged with the department as was in the scale of Peon and Laskkars. That such individuals may have to be adjusted against other available posts subject to recruitment rules and from the perusal of the entire case, it can be held that the case was more of adjustment instead of merger. We are of the opinion that when the seniority will be fixed of the applicant vis-à-vis others, then entire facts shall be taken into consideration. That the respondent No.4 had been working from earlier to applicant as LDC in the DGS&D hence the respondent No.4 is entitled for seniority from the date from which he is holding the post of LDC. Similarly, the applicant is also entitled for seniority from the date he is holding the post of LDC and

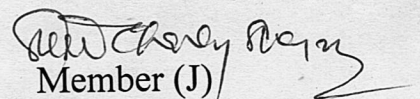
Sunil Chav

the seniority of the period during which he was holding the post of JMO is not to be considered.

11. For the reasons mentioned above, we are of the opinion that the order of the respondents is perfectly justified and in accordance with O.M. of DOPT and all the aspects were considered by respondents while passing the impugned order. This aspect was also considered with the matter of seniority ~~and~~ ^R may not be detrimental to the interest of others. We are also of the opinion that both the posts of JMO and LDC are entirely different. There was no wholesale identity between these two groups as has been held by the apex court for purposes of determination of the seniority. We should be satisfied that the conditions in both the matters are identical and equal and the duties discharged by them are also equal. In our opinion, there is no need to interfere with the order passed by the respondents. The O.A. lacks merit and is liable to be dismissed. The O.A. is dismissed. No order as to costs.


Member (A)

s.a


Member (J)