

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(THIS THE 4th DAY OF April 2011)

Hon'ble Dr.K.B.S.Rajan, Member (J)
Hon'ble Mr.D. C. Lakha, Member (A)

Original Application No.220 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

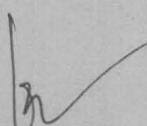
Vidhya Shanker Pandey,
S/o Shri M.S.Pandey, Assistant Instructor
In the Office of the Development Commissioner (HandicraftS)
Presently posted at Regional Carpet Store,
Lekhrajpur, District Allahabad.

.....Applicant

Present for Applicant: Shri N. L. Srivastava, Advocate

Versus

1. The Union of India, Ministry of Textile,
Udyog Bhawan,
New Delhi through its Secretary.
2. Development Commissioner (Handicrafts)
Ministry of Textile, West Block No.7,
R. K. Puram,
New Delhi.
3. Regional Director (Centre region),
Office of the Development Commissioner (Handicrafts)
Kendriya Bhawan,
7th Floor, Aligarh,
Sector-H,
Lucknow.



4. Assistant Director (A & C), Service Centre,
Office of the Development Commissioner (Handicrafts),
1A/3A, Ram Priya Road,
Allahabad District Allahabad.

.....Respondents

Present for Respondents: Shri M.B.Singh, Advocate

O R D E R

(Delivered by Hon'ble Dr.K.B.S.Rajan, Member (J)

Shri N. L. Srivastava, learned counsel for the applicant argued the matter at length and counsel for the respondents filed written arguments.

2. In this O.A. the applicant has prayed for following reliefs:-

- (i) *To issue a direction to the respondent no.2 to regularize the services of the applicant from the date when the services of his juniors have been regularized i.e. 3.10.1985.*
- (ii) *To issue a suitable or equitable order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the present case.*
- (iii) *To award the cost of the O.A. to be paid to the applicant through out.*

3. Brief facts of the case as per the applicant:

The applicant was initially appointed on 10th Oct. 1979 as Asst. Craftsman on some consolidated compensation. The post of Asst. Craftsman was later re-designated as Asst. Instructor. He having been absent for a long period of four years from July 1987, which according to him was on account of illness, he was not allowed to join

duty when reported for duty on 28-10-1991. This led to his filing OA No. 154 of 1993 and the same was allowed vide order dated 03-01-2000. After receiving a threat of contempt, the respondent had issued order dated 08-04-2002 to the applicant which the applicant accepted and joined his duties. His claim for payment of salary for the period from the date of order of this Tribunal till the date of his joining was also directed to be paid when the applicant had approached the Tribunal in OA No. 632 of 2003.

4. When the applicant joined initially as Asst. Craftsman in 1979, two others by name Shri Paras Nath and Shri Jokhan Prasad had also joined and continued in that post.

5. When the seniority list of Asst. Instructor (re-designated Assst. Craftsman) was published in 2004, the name of the applicant was reflected at 222, while that of the other two much above at 51 and 52 respectively.

6. The applicant therefore, claims seniority at par with the other two, on the ground that he too joined the post of Asst. Craftsman in 1979 along with them.

7. Respondents have contested the O.A. According to them, there was continuity in the case of the other two, and their services as Assst. Craftsman (Asst. Instructor) were regularized w.e.f. 03-10-1985, whereas, the applicant having absented himself for a number of years,

b

his appointment in 2000 is one of fresh appointment and as such, he is not entitled to seniority at par with the other two.

8. Arguments were heard and the written submissions and pleadings perused. The entire subject matter rests upon the character of order dated 08-04-2002. If the same is one in continuance of the earlier service, perhaps the applicant would be entitled to the seniority and instead, if the same is one of fresh appointment, though the previous services were taken into account, the appointment as a fresh entrant obliterates the past service. The said order dated 08-04-2002 reads as under:-

In compliance to the order dated 03-01-2000 of the Hon'ble Central Administrative Tribunal, Allahabad Bench, Allahabad in OA No. 154/93, and order dated 16-03-2000 in WP No. 11344/2000 of the Hon'ble High Court of Allahabad, Shri V.S. Pandey is hereby allowed to report for duty to the post of Assistant Instructor in the pay scale of Rs 3050-4590 from the day he reports to Assistant Director, Service Centre Allahabad. He is posted at RCS Kekhrajpur, Allahabad. Shri Pandey shall not be entitled for any back wage.

9. The applicant's earlier O.A. No. 154 of 1993 was allowed in 2000 on the basis of applications filed by Shri Da Shrath Bind and Sukhram Bind whose applications were allowed in 1993 and consequently they had been inducted in service in 1993 itself vide serial No. 216 and 217. In the case of the applicant however, since his date of entry as Asst. Instructor in the wake of the order of the Tribunal was 11-04-2002, the same is stated to have governed the seniority position.

10. It is not known, whether the above mentioned Da Shrath Bind and Shri Sukhram Bind had agitated against their alleged loss of

seniority as the applicant herein. Be that as it may. In so far as the applicant is concerned, the same has to be dealt with in the light of the nature of the order passed for reinstatement and consequential action taken.

11. Order in OA 509 of 1991 on the basis of which order in OA No. 154 of 1993 was passed reads as under:-

"The respondents have opposed the application and in their return it has been contended that none of the information was furnished by the applicant to the respondent no. 2 and 3. Actually the applicant was absent from his duty without any intimation land proper leave application. The respondents have denied that there was leave application whatsoever of the applicant. It is stated during the year 1990 a representation for joining has been received from the applicant which has been forwarded to the Competent Authority for further action. But at the same time it has been stated that the applicant did not turn upto his duty since 25.11.87. It is submitted that the applicant was monthly consolidated wages worker and did not turn up his duty since 25.11.87 without any intimation as such question of his termination as wages worker does not arise. It is submitted that the applicant was absent form his duty without any information and leave applicant and thereafter submitted false statement before the Court, disciplinary action against him could have been taken. As such now the respondents are directed to allow the applicant to resume his duty without prejudice taking into consideration any disciplinary action pending against the applicant. In case the applicant is found not guilty and he is allowed to join the duties and the period is to be taken continuously. It will be opened for the respondents to decide as to whether he is entitled for the wages during this period or not taking into consideration

g

respective faults. The application shall stand disposed off finally in this respect. No order as to costs."

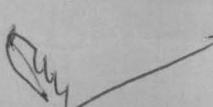
12. The above order mandated the respondents to allow the applicant in that OA to resume his duty without prejudice taking into consideration any disciplinary action pending against the applicant. Back wage was discretionary. On the basis of this order only, the applicant's OA No. 154 of 1993 was decided. The wordings of the order especially, "resume" duty indicates that the service of the applicant would be in continuance of the earlier service. Thus, the benefit of past service would be available to the applicant, save back wage. From the seniority list it is seen that all the persons who were in service as on 03-10-1985 were all regularized and admittedly the applicant was in service during that period. If his services were also regularized along with others, then while working out the seniority, his date of initial entry in 1979 alone would have governed his seniority, as in the case of his colleagues (Paras Nath and Jokhan Prasad). Reason for non regularization is not known as at the material point of time, the applicant was not absent and must have fulfilled all the conditions of regularization. Thus, once the applicant had been allowed to resume duties, albeit without back wages, all other attendant benefits were to percolate which includes regularization (unless regularization was not made due to any other plausible and justifiable reasons). The order dated 08-04-2002 cannot be construed as one of fresh appointment.

[Signature]

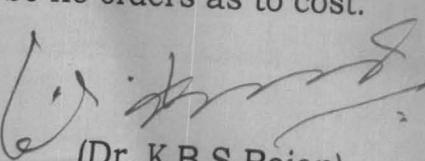
13. In view of the above, the **O.A. succeeds**. It is declared that the applicant is entitled to be considered for regularization w.e.f. 03-10-1985 subject to his having been on duty during that period and subject to fulfillment of other conditions if any attached to such regularization, and seniority at par with those who had joined the institution as Asst. Craftsman in 1979 shall be available to him. His name shall therefore be interpolated at the appropriate place based on his initial date of appointment. Respondents are directed act in this direction and due notice to those whose seniority would be affected be also given as per rules. Needless to mention that the benefit of seniority for further promotion would also be available to the applicant.

14. This order be complied with, within a period of four months from the date of communication of this order. Consequential benefits (consideration for promotion on the basis of seniority, if to be made) may follow within two months thereafter.

15. Under the circumstances, there shall be no orders as to cost.


(D.C. Lakha)
Member (A)

Shashi


(Dr. K.B.S. Rajan)
Member (J)