

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

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- (1) Registration T.A.No.360 of 1987
(Writ Petition No.291 of 1979)

T.Ramanujam Petitioner
Versus

Union of India & Ors Respondents.

- (2) Registration T.A.No. 971 of 1987
(Writ Petition No. 11580 of 1982)

C. Kasu Petitioner
Versus

Union of India & Ors Respondents

Hon'ble Mr. Justice K.Nath, V.C.,
Hon'ble Mr. K. Obayya, Member(A)

(By Hon'ble Mr. K.Obayya, A.M.)

These are two connected writ petitions received on transfer from the High Court of Judicature at Allahabad and registered as T.A.No..360 of 1987 and T. .No. 971 of 1987.

2. The grievance of the petitioners is about their inter-seniority on the post of Black Smith and Welder (B.S.W. in short), in the Air Force Unit, Chakeri, Kanpur. As the facts are similar and the issue is common, petitions were heard together and we proceed to dispose them off by a common order.

3. The petitioner in T.A.No.360 of 1987 Sri T.Ramanujam was appointed on the post of B.S.W. in the Air Force Unit Avadi on 1.8.1962 in the scale of Rs.130- 185. He was declared surplus in 1967 and was adjusted in Military Engineers Service (M.E.S.) in Jammu and Kashmir on the post of

Black Smith in the scale of Rs. 85- 128. On his representation he was repatriated to his Parent Cadre and joined as B.S.W. in the Air Force Unit, 4 Base Repair Depot (BRD), Kanpur. He appeared at the selection for promotion to the next higher post namely Senior Chargeman and was declared qualified in 1973. However, one C. Kasu (the petitioner in T.A. 971 of 1987) was promoted as Senior Chargeman. Aggrieved by this the petitioner made a representation (Annexure No.A-1) on consideration of which C.Kasu was reverted (Annexure A-2) and the petitioner was promoted vide order dated 21.6.1976 (Annexure-A-3). Subsequently, by an order dated 1.1.1979 (A-4), the petitioner was reverted from the post of Chargeman to the post of B.S.W. on the ground he is junior to C. Kasu.

4. The petitioner in T.A.No. 971 of 1987 Sri C.Kasu joined service in the Air Force Station Avadi in 1963 on the post of BSW. In 1966 he was transferred to Kanpur and was confirmed on the said post. He qualified for promotion to the post of Senior Chargeman in 1973 and stood promoted to that post in 1975. However, he was reverted to the lower post of BSW in 1976, as he was adjudged junior to Ramanujam. He made representations claiming seniority over Ramanujam, on the basis of length of service in the Post of B.S.W. and on reconsideration of the seniority

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question, he was again promoted to the post of senior Chargeman on 24.2.1979. This position continued till 24.5.1982, when one V.Prem Kumar was promoted and the petitioner was reverted as B.S.W. on seniority consideration.

5. The case of the petitioners is that they are senior to each other. The petitioner Ramanujam claimed seniority as he was appointed earlier in 1962 and that according to the applicable instructions and rules laid down in Air Force Instruction No. 17/51 the period during which he served in M.E.S. should be considered as continuous for the purpose of seniority. He also relied on the instructions contained in A.F.O. 472 of 1970. On the other hand, the petitioner C.Kasu states that the case of seniority is governed by Army Instruction No.25/51. According to him the service conditions like seniority, are all governed by the Army orders and that seniority is determined on the length of service in a grade, and that seniority lists should be drawn unit-wise and trade wise and that both T. Ramanujam and V. Prem Kumar who are given higher seniority came to 4 BRD, Kanpur as transferees and they have no right to claim seniority as in the original units but have to take seniority below to those who are already regular in 4 BRD.

6. In their counter, the stand taken by the respondents is that the principle of seniority is on the basis of length of service in a particular grade and T. Ramanujam is considered to be B.S.W. continuously from 1970 while C.Kasu remained BSW

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throughout and so he had longer service in that grade. It is also contended that A.F.I. 17/51 is not applicable to the petitioner, since the case of the petitioner is not one of break in service, but, he was declared surplus and he was never reverted nor discharged. They have relied on A.F. Order 25/51 according to which the seniority should be determined on the basis of length of service in a particular grade.

7. We have heard the Learned Counsel of the parties. The controversy in these petitions relates to inter-seniority. The claim of the applicant T.Ramanujam (T.A.No.36/87) is on the basis that he was appointed as BSW in 1962. He was declared surplus and was adjusted in M.E.S. during the period 8.8.1967 to 16.1.1970, on administration grounds. This is not a case of reversion or removal. He held lien in the parent cadre. He was repatriated to his original cadre in 1970 to the same post which he held earlier namely the post of BSW. According to him his case is governed by the instruction-AFI 17/51 which lays down that employees who are reinstated in the relevant grades should be treated for purpose of seniority as if they have not been reverted or retrenched to lower grade. Consequently reckoning service as BSW w.e.f. the date of his rejoining at Kanpur i.e. 16.1.1970 was not in accordance with the rules. His seniority should be reckoned from 1962.

8. The case of C.Kesu (Petitioner) T.A.971/1971 is that ever since his appointment as BSW in 1963,

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he has been continuously working in that grade without any break and that he was entitled for higher seniority because of his longer service in that grade vis-a-vis the other petitioners T Ramanujam and V. Prem Kumar.

9. The respondents have not been able to come out with a clear position as to what are the applicable rules on the subject. This is evident from the fact that they have first promoted Sri Kasu, reverted him and promoted Sri Ramanujam then reverted Sri Ramanujam and promoted Sri Kasu and finally they have reverted Sri Kasu also and promoted V. Prem Kumar. This view also gains support from the promotion orders given to these petitioners, which invariably contained a condition that they are liable to be reverted, if their seniority was found to be incorrect or is revised. Perhaps part of this problem is due to the fact that instructions and orders are given by the Air Force Headquarters at Delhi and the local Unit Commanders are unable to decide the issue. We have carefully examined the relevant Army instructions cited by both the parties. The respondents have taken a stand that Air Force Instructions 25/51 governs the seniority question. This instruction is available as Annexure-I to their counter. This instruction mentions that generally the rule of seniority should be on the basis of length of service in a grade or equivalent grade. Though this instruction refers to Secretariat Assistants etc, Perhaps the principle could be followed in other cases as well.

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It is also their contention that Air Force Instruction No. 17/51 is not applicable as the petitioner was neither discharged nor reverted to a lower post. We have also carefully gone through the relevant instructions Photo-stat copies of which have been filed as Annexure SA-2, SA-3 to the Supplementary affidavit of the Respondents. AFI 17/51 is as under:

"AFI 17/51- Treatment of the period of break in service between reversion and re-employment under the retirement instruction."

Reference: Air Force Instruction No. 92/50

"A question has arisen about the treatment for purposes of seniority of the period of break in service between the dates of discharge/reversion and re-appointment or promotion of scheduled caste employees who have been re-employed or promoted to their original posts under instruction No. 10 of Air Force Instruction 65/50 and the above Air Force Instruction. After careful consideration, it has been decided that Government servants, who have been reinstated in the relevant grades under this provision should be treated for the purpose of seniority as if they had not been reverted or retrenched to the lower grades at all."

The fact, that the petitioners and also Sri V.Prem Kumar belong to Scheduled Caste is on record.

10. Further there is also the Air Force Order No. 472/76 (Annexure SA-2 to Supplementary Counter) which refers to termination of service in case the staff is rendered surplus and the clarification under this Army order 472 is to the effect that where an

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employee is declared surplus and is adjusted in a lower post, he will be treated to be continuing in service without break. The order is extracted below.

No. 472

AIR HEADQUARTERS

New Delhi, Saturday, 3 Jul 76

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1. Government of India, Ministry of Defence Office Memorandum No. 4876/D-12 dated 24 Dec 48 and No. 3228/D-II dated 30 Mar 50, on the above subject, are reproduced as Appendices "A" and "B" to this Order for information and guidance.

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3.

AIR CHIEF MARSHAL
CHIEF OF THE AIR STAFF

APPENDIX 'A'

(Refers to AFO 472/76)

TERMINATION OF SERVICE OF PERSONS RENDERED SURPLUS AND OFFERED EMPLOYMENT IN A LOWER CATEGORY

1. By the terms of I.A.F.Z. 2055 under which the majority of temporary employees have been engaged by the various Branches/Directorates 'the employee shall remain and continue in the Service of the Government in the Posts to which he was appointed. It is illegal to demote him to a lower post unless disciplinary action

has been taken against him and provisions of Section 240(1) of the Government of India Act complied with.

2. It is noticed that in certain cases when an employee is rendered surplus in the category to which he was posted, he was offered a post in a lower category to save him from unemployment.

3. It is laid down for future guidance that when employees recruited under the agreement which provides for terminations of service by notice by either party are rendered surplus, their service should be terminated by due notice before any offer of employment in a lower category is made. There should be no departure from this rule.

4. Headquarters/Branches/Directorates will please bring to the notice of this Ministry cases where offers of appointment to a lower category have been made and accepted by persons appointed to a higher category under an agreement.

APPENDIX 'B'

(Refers to AFO 472/76)

TERMINATION OF SERVICE OF PERSONS RENDERED SURPLUS AND OFFERED EMPLOYMENT IN A LOWER CATEGORY.

A doubt has been raised whether a person whose services are terminated in terms of this Ministry's O.M.No. 4876/D-12 dated 24th December, 1948, but who continued in service without a break in a lower post is to be treated as fresh entrant. The intention of the O.M. in question is that if a person so continued

in a lower post immediately after the expiry of the usual period of notice terminating the service in the higher post, service in the lower post will be treated as continuous."

11. The instruction refer to above provide for different situations. The stand of the respondents is that the case of the petitioner T.Ramanujam is governed by Air Force instruction 25/1951 (Annexure No. 1 to the counter affidavit) The principle laid down in these instructions is that seniority should be decided on the basis of length of service in a particular grade. It is on record that petitioner, T.Ramanujam was appointed on 1.8.1962 while Sri C.Kasu was appointed on 7.8.1963 and V.Prem Kumar on 18.7.1963. If this principle is followed the seniority of V.Prem Kumar over Sri C.Kasu cannot be questioned as he was appointed in the month of July while latter Sri C.Kasu entered service in the month of August though in the same year namely 1963. In this view of the matter reversion of Sri C.Kasu by order dt. 25.5.1982 and promotion of Sri Prem Kumar on the post of Senior Charge Man should be held to be in order as the principle of seniority was strictly followed. It is admitted that Sri V.Prem Kumar was also qualified in 1973 alongwith the petitioner Sri C.Kasu in the year 1973 for promotion to higher post of Senior Charge Man.

12. This takes us to the question whether the petitioner in D.A.No. 360/T namely T.Ramanujam is entitled for higher seniority over Sri C.Kasu notwithstanding his adjustment in a lower post in M.E.S. during the period dt. 7.8.1967 to 19.1.1970. In para 7 of the counter the respondents have stated that the petitioner T.Ramanujam

was not discharged nor reverted but he was only declared surplus and adjusted elsewhere though in a lower grade.

In para 3 of the same counter, it is also admitted by them that the petitioner was given same grade i.e. B.S.W. when he rejoined the Air Force unit on 20.1.1970. If we agree with the contention of the respondents that the petitioner T. Remanujam was never discharged nor reverted it follows that his status as B.S.F. in the parent unit remained unaffected. He may have taken a lower position outside his parent unit but in the parent unit he has not lost his right for his original grade. Presumably this aspect was considered, and the respondents conceded the rightful claim of the petitioner, when they put him back on B.S.W. post i.e. the post he was holding prior to adjustment in M.E.S. In these circumstances, the petitioner who was neither discharged nor reverted is deemed to have held a lien in the parent department on the post he held namely B.S.W. and his service in other units will not deprive him of his right for his original grade or seniority in the parent department.

13. On the other hand, if service outside the parent unit in a lower grade is considered as break in service in the parent unit, then the instructions contained in A.F. 17/51 and A.F.O.472/76, squarely meet the situation.

According to these instructions an employee continued in a lower post, outside his parent cadre, is deemed to be continuing in service, and that the period of reversion to a lower grade has to be treated as if there has been no reversion.

14. Taking the facts and circumstances of the case we are of the view that the petitioner Sri R. Remanujam is entitled to reckon seniority from the date of his appointment in 1962 and that the period when he was out of his parent unit is period of service without break and that

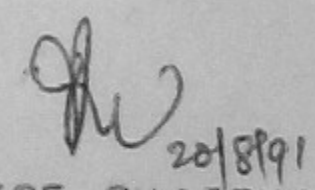
when he was taken by to his parent unit, he is entitled to go back to his grade and seniority position he held earlier. In this view of the matter we hold that he is senior to Sri C. Kasu as he was appointed as B.S.W. on 1.8.1962, while Kasu was appointed as B.S.W. in 1963^{so} that by virtue of his seniority he is entitled for promotion in preference to Sri C. Kasu. The order of reversion of the petitioner dt: 1.1.1979 (Annexure-4) is liable to be set aside and the same is set aside. Respondents are directed to treat T. Ramanujam senior to Sri C. Kasu and give him his due promotion and place him above C. Kasu.

15. T.A. No. 360/87 is allowed as above.

16. With regard to the interse seniority of C. Kasu and V. Prem Kumar, as we have observed earlier Sri V. Prem Kumar is senior to Sri C. Kasu as he joined service earlier and continued in service without any break as such reversion of Sri C. Kasu by order dt. 24.5.1982 on this basis cannot be questioned. His petition for seniority and promotion claims by-passing T. Ramanujam and V. Prem Kumar has no merit and accordingly T.A. No. 97/87 is dismissed as without merit.

17. The petitions T.A. No. 360/1987 and 971/87 are disposed of as above. Parties to bear their costs.


Member (A)


20/8/91
VICE CHAIRMAN

Dated:

Allahabad.