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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No. 539 of 1988

Allahabad this the 28th day of September 1995

Hon'ble Dr. R.K. Saxena, Member (J)
Hon'ble Mr. D.S. Baweja, Member (A)

Shambhu Nath S/o Late Udit Ram R/o 33 A Mori
Daraganj, Allahabad, Office Address - Estt (ND)
Ordnance Depot, Allahabad.

APPLICANT.

By Advocate Shri P.K. Kashyap.

Versus

1. Director General of Ordnance Service, Army Head-
quarters DHQ, New Delhi through Master General
of Ordnance Branch, Army Head Quarters, DHQ,
New Delhi-110001
2. Officer in Charge, AOC Records, Secundrabad.
3. Commandant, Ordnance Depot, Fort, Allahabad.
4. Shri S.K. Chandra, Ordnance officer (Civilian)
Ordnance Depot, Allahabad.

RESPONDENTS

By Advocate Shri Ashok Mohiley

ORDER

By Hon'ble Dr. R.K. Saxena, Member (J)

To challenge the order dated 07.1.1988

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and to seek promotion on the posts of Office Superintendent Grade I and Ordnance Officer (Civilian) is filed this O.A. by the applicant.

2. The facts giving rise to this O.A., are that the applicant was initially appointed as Lower Division Clerk on 05.12.1955 under the control of respondent no.2. He was promoted to the post of Upper Division Clerk on 01.6.1976 and as Office Superintendent Grade II on 10.6.1981 on officiating basis. Regular appointment on the post of Office Superintendent Grade II was made on 01.10.1983. His grievance is that the period of officiation has not been included in counting the seniority while the said benefit was allowed to his juniors. The result was that his juniors got promotion not only of the post of Office Superintendent Grade I but, also of the post of Ordnance Officer (Civilian). Citing the example of Shri S.K. Chandra who was junior to the applicant and was promoted as Office Superintendent Grade II on 01.7.1981-subsequent to the date of officiating promotion of the applicant, it was pointed out that he (Shri S.K. Chandra) got promotion of Office Superintendent Grade I on 01.2.1984 and of Ordnance Officer (Civilian) on 01.4.1985. It is contended that the applicant, on the other hand, had been languishing on the post of Office Superintendent Grade II. He could learn in the year 1985 that it all happened due to the fact that the

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officiating period had not been counted for the purposes of seniority. He, therefore, gave representation to the respondent no.2 who rejected the same vide annexure-II. Then he preferred appeal to the respondent no.1 but, he also rejected the appeal vide order dated 07.1.1988 annexure-IV. Hence, this O.A. is filed with the relief already mentioned.

3. The respondents filed counter-reply averring that the officiating promotion of the applicant came to an end w.e.f. 01.10.1983 when he was promoted on regular basis. It is also contended that the applicant had taken financial benefits of the office during the period of officiation. It is pleaded that the seniority shall be counted from the date of regular promotion.

4. The respondents came with plea that promotion to the post of Office Superintendent from U.D.C. was based on merit-cum-seniority because it was selection post. Meritorious employees may supersede the seniors in the process, is also the point of the respondents. As regards Sri S.K. Chandra, it is pointed out that he was posted on 08.9.1955 as L.D.C., and was promoted as Office Superintendent on 01.7.1981 and also got another promotion. The respondents contend that there is no force in the matter.

5. In the rejoinder, the applicant
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asserted that he was promoted on 10.6.1981 in the existing vacancy. His regular appointment which was made subsequently was also made in the existing vacancy. Other facts which were given in the O.A. were restated again.

6. The respondents filed supplementary counter-reply in response to the rejoinder of the applicant. It was reiterated that Shri S.K. Chandra was given further promotions because his seniority as Office Superintendent grade II was counted from 01.7.1981. It is reaffirmed that Shri S.K. Chandra was initially appointed as L.D.C. on 08.9.1955 prior to the appointment of the applicant on the same post and therefore the reference of Shri S.K. Chandra is misconceived.

7. Again supplementary rejoinder was filed and those very facts which were brought in the O.A. and first rejoinder, were reiterated.

8. We have heard the learned counsel for the parties and have perused the record.

9. The main question to be answered is whether the applicant should get the officiating period as Office Superintendent grade II included in the period when he was promoted on regular basis.

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Neither the applicant nor the respondents have cited any service rule on this point. The applicant attempted to compare his case with Shri S.K. Chandra who, according to the applicant was junior to him. The respondents controverted this fact and emphatically asserted that Sri S.K. Chandra was appointed as Lower Division Clerk on 08.9.1955 whereas the applicant was appointed in the same capacity on 05.12.1955. Although the applicant filed rejoinder and supplementary rejoinder but these dates were not disputed. Thus, Shri S.K. Chandra stands senior to the applicant.

10. The second point raised by the applicant is that he is post-graduate while Shri S.K. Chandra is matriculate only. The promotion to the post of Office Superintendent was not given on the basis of educational qualification. The applicant failed to cite any rule which may have prohibited the promotion of an employee who was matriculate only. As such, this plea does not help the applicant in any manner.

11. There is no dispute that Shri S.K. Chandra was promoted as Office Superintendent grade II on 01.7.1981 on regular basis whereas the applicant was promoted on 01.10.1983. There is no averment from either side that Sri S.K. Chandra was given

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officiating chance. It is true that the applicant was given officiating chance w.e.f. 10.6.1981 but the question will arise whether by having chance of officiation the period of officiation should be counted for the purposes of seniority on the post of Office Superintendent grade II. If it is allowed, the applicant shall stand senior to Sri S.K. Chandra who was initially inducted before the applicant. As a matter of fact, Sri S.K. Chandra should have grievance for not having been given the chance of officiation because of his seniority. Since Shri Chandra has not filed any reply and other respondents did not divulge any information on this point. We are not in a position to find out the truth. The fact, however, remains that Shri Chandra respondent no.4 was senior to the applicant and was substantively promoted prior to the promotion of the applicant. Thus, the applicant cannot be allowed to get equalion with or precedence over Sri S.K. Chandra.

12. The learned counsel for the applicant argued that the weightage of the period of officiation should have been given to the applicant whereas the learned counsel for the respondents opposed this preposition on the ground that there is neither any rule nor any case law. The learned counsel for the applicant, however, placed reliance on the decision in the case 'Kunjai Laxminarain Nayak Vs. Union of India and Others, (1987) 3 A.TC.62' decided by the New Bombay Bench of Central Administrative Tribunal. It was held that the

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services on ad-hoc promotion should be counted while determining seniority. The learned counsel for the respondents placed reliance on D.N. Agrawal and another Vs. State of M.P. and Others (1990) 12 A.T.C. 926 in which it was held that the appointments were made on ad-hoc basis for administrative exigency and under special circumstances, they would not be deemed to determine seniority for any purpose whatsoever. The facts of the case of D.N. Agrawal (supra) reveal that the applicants were ineligible to be appointed as Assistant Engineer initially. Mere citation of case will not suffice until and unless the similarity of facts and rules is also established or shown. In this case before us, neither the service rules are shown nor are disclosed the circumstances as to why ad-hoc appointment on the post of promotion was given to the applicant and was denied to Sri S.K. Chandra who was senior to the applicant. When Sri Chandra was promoted on regular basis on 01.7.1981, the applicant was not given such a regular promotion. It shows that the applicant was given adhoc promotion on administrative exigency only and thus he cannot get the benefit of the said period being counted for seniority purposes.

13. While dealing with the case of D.N. Agrawal (Supra), their Lordships of Supreme Court also discussed the law laid down in the case 'Baleshwar Dass Vs. State of U.P. (1980) 4 S.C.C. 226'

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where it was laid down that ad-hoc officiation could be counted for seniority if it is established that the post was held substantively or temporarily. If it was not so, whether the appointment was regular and not in violation of any rule, whether the approval of Public Service Commission was obtained and whether probation, medical fitness etc. were complete.

Examining the case from this angle, we find that the applicant has failed to furnish these details. For this reason also, we do not find that the case of the applicant is strengthened from the citation of the case 'Kunjai Laxminarain Nayak (supra).

14. On the consideration of this legal position, we conclude that the ad-hoc promotion of the applicant was not through proper procedure otherwise his senior should not have been ignored. The regular promotion of the applicant took place much after the promotion of Sri S.K. Chandra. As such, the applicant cannot get the benefit of the period of officiation.

15. On the basis of the discussion made above we come to the conclusion that there is no merit in the case of the applicant. The O.A., therefore, stands dismissed. No order as to costs.

Member (A)

Member (J)

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