

Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

...

O.A. No. 1640 of 1992

A.M. Upadhyaya and others ... Applicants.

Versus

Union of India
and others ... Respondents.

...

Hon. Mr. S. Das Gupta, Member (A)
Hon. Mr. T.L. Verma, Member (J)

(By Hon. Mr. S. Das Gupta, Member(A))

Five applicants have joined together in this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985 praying for the relief of a direction to the respondents to allow the applicants seniority from the date of their appointment as Civilian School Master with all consequential benefits.

2. The brief facts of the case are that the applicants were initially appointed as Civilian School Masters in the pay scale of Rs. 130-300 in various defence establishments on various dates ranging from 1.10.1963 to 17.12.1967. They were declared surplus in their respective units on various dates and were adjusted on the posts of Store Keepers/ Lower Division Clerks in other defence units. However, they were allowed protection of pay. In course of time, The applicants were promoted to the post of Senior Store Keepers/U.D.Cs. which carried a same scale of pay as the posts of Civilian School Masters. On the basis of this fact, the petitioners

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claim that their cases are fully covered by the case of Shyam Lal Dubey decided by this Bench of the Tribunal in O.A. No. 434 of 1986. The decision of this case was followed in several other cases based on similar facts. A copy of the judgment and order dated 17.8.1990 is at Annexure- A 9. The petitioners claim that on the basis of the decision in Shyam Lal Dubey's case they should also be granted seniority in cadre of Senior Store Keepers/UDC's w.e.f. the date of their initial appointment as Civilian School Masters.

3. The respondents have contested the claim of the applicants in their written statement. While, there is no dispute regarding basic facts, the respondents contend that the applicants were absorbed in lower grades only after they were given their willingness and that the units in which they were initially appointed as Civilian School Masters and the unit in which they were absorbed on being declared surplus are different and as such they are not entitled to any benefit of seniority of past service as Civilian School Masters. They have also averred that the applicant's seniority was initially determined as long back as on dates ranging from 9.12.1967 to 21.3.1977 and as such, they cannot challenge their seniority at this later stage.

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4. We have heard the counsel for both the parties and carefully gone through the records of the case.

5. We have first considered the question of limitation as raised by the respondents. There is no doubt that the seniority of the applicants was assigned many years back, However, since similar matter was adjudicated in Shyam Lal Dubey's case, the petitioners, if they are in the same footing as Shyam Lal Dubey, can claim the benefit of the judgment in Shyam Lal Dubey's case without their claim being time barred provided they have filed this application within the period of limitation from the date of judgment in S.L. Dubey's case. The S.L. Dubey's case was decided on 17.8.1990, We find that there after the applicants had represented ^{to} the respondents for being granted them seniority on the basis of S.L. Dubey's case. These representations were turned down by identical letters dated 21.5.1992, placed at Annexures- A 1 to A 4, wherein, it has been stated that the judgment passed in S.L. Dubey's cannot be complied with as a general in the absence of specific instructions/amendment on the existing rules by higher authorities. *The application, having been filed on 13.11.1992 is well within the period of limitation.*

6. The facts of the case are, nodoubt, ~~per~~ in pari materia ^{with} that of S.L. Dubey's case. The respondents, however, have cited the decision of the Supreme Court in the case of Balbir Sardana Vs.

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Union of India and others, in Civil Appeal No. 628 of 1988 which is quoted in O.M. dated 15.6.1992 issued by the Department of Personnel and Training on the subject of past service rendered in the previous organisation not to be counted in the recipient organisation for seniority. /promotion in the case of officials redeployed through surplus staff cell. A copy of the said O.M. in which the judgment of the Supreme Court has been reproduced is at Annexure- C.A. 7. The respondents contend that on the basis of ^{the} law laid down in Balbir Sardana's case the applicants cannot be granted seniority as prayed for by them.

7. We have carefully gone through the judgment of Balbir Sardana's case. In this case the appellant was Section Officer in the Central Small Industries Organisation under the Ministry of Industries. The said Organisation was transferred to the Central Public Works Department (C.P.W.D. for short) on the recommendation of Staff Inspection Unit of the surplus cells scheme and redeployment. ~~In the organisation,~~ the appellant along with others was rendered surplus and he was appointed as temporary Section Officer in CPWD. The appellant claimed the benefit of seniority of his past service, but this was denied. The Supreme Court dismissed the appeal ~~on~~ basically on the ground "that," it is not a case of transfer of one unit or one wing of the department along with the posts to

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the other department of the wing or the unit. The staff inspection unit, recommended to completely wind up CSIO and transfer the existing work to the CPWD. That recommendation was accepted by the Central Government. Consequently, the staff assessment was made and some of the staff were found to be surplus. Admittedly, the appellant was found to be one of such surplus staff. Instead of terminating the service of the appellant due to becoming surplus on the handing over of the works from CSIO to CPWD. They appointed the appellant afresh in the CPWD with the conditions enumerated therein.*

8. It will, therefore, be seen that the case of Balbir Sardana can be clearly distinguished on facts from that of as S.L. Dubey's case or the case before us. In the instant case, the petitioners were not declared surplus in one department and adjusted in another department, They were declared surplus in some units of the defence department and re-absorbed in other units of the same department. In our view, therefore, the decision in S.L.Dubey's case which was followed consistently by this Bench of the Tribunal in subsequent cases is squarely applicable to the case before us.

9. In view of the foregoing, the application is allowed. The petitioners shall be granted seniority

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in the cadre of Senior Store Keepers/ U.D.Cs.
from the date of their initial appointment as
Civilian School Masters in equivalent pay scales
with all consequential benefits. There will be
no order as to costs.

J. Sharma
Member (J)

W. P.
Member (A)

Dated: 03 July, 1994
Agm.
(n.u.)