

THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
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Original Application No.808/92  
SUBHASH CHANDRA GAUTAM .....Applicant.

Versus

Union of India & others ...Respondents.

HON'BLE MR MAHARAJ DIN MEMBER (J)  
HON'BLE MISS USHA SEN MEMBER (A)

(BY HON'BLE MISS USHA SEN - A.M)

The counsel for the parties were heard.

2- In this application, the applicant has sought the relief <sup>of</sup> reckoning his seniority on the basis of the date of initial appointment in service rather than the date of confirmation. He has also sought the relief of quashing the transfer order dated 29-05-92 (Annexure -A).

During the course of hearing his counsel stated that he withdraws the relief regarding the transfer.

3- The facts of the case are briefly narrated below.

4- The applicant was appointed to a temporary post of Time Scales Clerk w.e.f. 19-6-79 vide the order dated 18-7-79 (Annexure I). His services were terminated on 24-8-79 under Rule 5 of the C.C.S.(T.S.)Rules, 1965. On appeal he was reinstated on 27-3-80 but disciplinary proceedings were started against him on 31-7-80 (reference his representation dated 23-12-91 at Annexure 3) for the charge of misappropriation of trunk call charges of Rs.70/-.

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The proceedings culminated with a punishment order dated 18-1-86 reducing his pay by five stages in the time scale for a period of one year without cumulative effect besides recovery of Rs.70/- from him which he had failed to deposit in Govt. account.

5- The applicant was confirmed on 1-3-90 in the post to which he was appointed (Annexure 2). He observed from the seniority list of Telegraph Assistants ( redesignated name of Time Scales Clerk) which is placed as Annexure CA-2 that those who had been appointed after him were senior to him. The names of some such persons have been listed by him in para 4(xv) of the application. He learnt that the list had been prepared on the basis of the date of confirmation rather than the date of appointment. He made a representation dated 23-12-91 (Annexure 3) to respondent No.2 challenging the basis and requesting for fixation and <sup>fixation</sup> promotion of seniority on the basis of date of appointment. This representation has been rejected.

6- The respondents have contended that in terms of the Govt. O.M. dated 28-3-88(Annexure CA-1), the seniority is to be determined with reference to the date of confirmation rather than the date of initial appointment. They have further stated in para 23 of

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their Reply that as his service record was not satisfactory because of misappropriation of Government money for which disciplinary action had been taken against him, he was not found fit for confirmation and had to lose his seniority.

7- The counsel for the applicant has cited the case of ~~Shiv~~ Kumar Sharma vs. Haryana State Electricity Board and others A.I.R.-1988-S.C.-1673 in which the Supreme Court had stated, "The question of seniority has nothing to do with the penalty that was imposed upon the applicant. It is apparent that for the same act of misconduct the applicant has been punished twice, i.e., firstly by the stoppage of one increment for one year and secondly by placing him below his juniors in the seniority list." The applicant had also pleaded in his representation dated 23-12-91 ibid that the disciplinary proceedings/ were started against him on 31-7-80 could be finalised only after a long period of six years vide the punishment order dated 18-1-86. He further quoted the case of S.B.Patwardhan versus State of Maharashtra ( 1977)3 S.C.R. -755, M.R.-1977 SC.-2051 wherein it had been observed by the Supreme Court that, " confirmation is one <sup>of the</sup> ~~of the~~ inglorious uncertainties of Govt. service.....confirmation does

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not have to conform to any set rules and whether an employee should be confirmed or not depends on the sweet will and pleasure of the Government."

In another case viz. that of Direct Recruit Class II Engineering Officers Association and others vs. State of Maharashtra reported in A.I.R.-1990 Supreme Court 1607 it was held by the Supreme Court that once an incumbent is appointed to a post according to rule his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. This was also referred to by the counsel for the applicant.

8- In the light of our examination of the case and the judgments of the Supreme Court cited above, we deem it fit and do hereby order that the seniority of the applicant be determined on the basis of the date of his appointment in the post ~~in service~~ rather than the date of his confirmation. The application is thus allowed to this extent. No order as to cost.

*Ush. L*  
MEMBER(A)

*Dinesh*  
MEMBER(J)

DATED: Allahabad, February 16, 1994.  
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