

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Allahabad this the 11th day of July, 2001.

CORAM :- Hon'ble Mr. Justice R.R.K. Trivedi, V.C.
Hon'ble Maj. Gen. K.K. Srivastava, A.M.

Original Application No. 1899 of 1993.

Uttam Chand S/o Sri Kundan Ram, UDC Labour Bureau
R/o 127, Ram Nagar, Shahjahanpur.

.....Applicant

Counsel for the applicant :- Sri K.C. Saxena
Sri R.K. Gupta

V E R S U S

1. Union of India through the Secretary, M/o Defence,
New Delhi.
2. The ADGOF, OEF Group, Head Quarters, Kanpur.
3. The General Manager, OCF, Shahjahanpur.

.....Respondents

Counsel for the respondents :- Km. Sadhna Srivastava

O R D E R (Oral)

(By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.)

By this application under section 19 of the Administrative Tribunal's Act, 1985, applicant has prayed that his seniority may be counted from 10.10.1961 when he had joined service as L.D.C in Ordnance Clothing Factory, (O.C.F.), Shahjahanpur and in the alternative from the date he was confirmed by the D.G.O.F vide his letter dated 16/19.02.1973. He has also prayed that

the factory order dated 14.01.1977 be declared illegal and unlawful. He has claimed consequential benefits also.

2. The facts ~~which are in dispute~~ giving rise to this application are that applicant joined as L.D.C on 10.10.1961 in pay scale of Rs. 110-3-131-4-155-EB-4-175-5-180 on probation of six months period. Applicant completed period of probation successfully which was communicated by factory order dt. 20.04.1962. In the list, name of the applicant was at Sl. No. 2 when he completed his period of probation on 20.04.1962. Applicant was continued to serve as L.D.C when he was asked to appear in the test for appointment as Tailor 'B' in a lower pay scale. Applicant appeared and he was declared successful in the test and by order dated 21.03.1964 he was transferred from Non-Industrial Establishment (N.I.E.) to Industrial Establishment (I.E.) in scale of Rs. 85-2-95-3-110-EB-3-128. It shall be useful to produce here the factory order dt. 21.03.1964 :-

" The following transfer from N.I.E to I.E from LDC (O/G) to Tailor 'B' grade in the scale of Rs. 85-2-95-3-110-EB-3-128 is ordered with effect from 23rd March, 1964. "

3. It appears ^{quite} ~~acute~~ strange why the applicant agreed for transfer from L.D.C to the post of Tailor 'B' in a lower scale. It has been stated in the O.A that applicant was pressurised by the factory officers as there was shortage of tailors in the factory and he was compelled to join as Tailor against his wishes. Applicant continued to represent his case ^{for transfer} from I.E to N.I.E on the post of L.D.C. His request was ultimately accepted and by order dated 21.08.1965 he was transferred from I.E to N.I.E as L.D.C. His pay was fixed at Rs. 116/- P.m.. For this transfer also applicant was required to appear in the

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test though he was exempted from type test. Applicant joined as L.D.C w.e.f 23.08.1965 with a gap of one year five months. After applicant re-joined as L.D.C, he was confirmed on the post and was also granted promotion as U.D.C. He filed representation claiming benefit of past services which he rendered as L.D.C from 10.10.1961 to 22.03.1964 for the purpose of seniority which was rejected by order dated 27.12.1985. This order said that his seniority as L.D.C ^{shall be} ~~is~~ counted only ^{from} ~~on~~ 23.08.1965. Applicant again made representation which was rejected on 08.05.1993. Then he approached this Tribunal and filed this O.A on 16.12.1993.

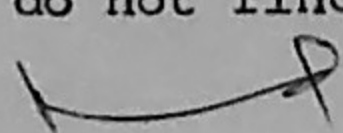
4. Sri K.C. Saxena, learned counsel for the applicant has submitted that applicant can not be transferred from higher post to lower post with lower pay scale. A clear injustice was done to the applicant in arbitrary manner and to meet interest of industry, applicant was forced to join a lower post. Learned counsel has submitted that the applicant was never willing to work as Tailor but he was forced by factory management as there was shortage of Tailors. It is also submitted that on transfer, applicant was given pay scale of 116/- and not 110/- which also shows that his interest was ~~not~~ ^{was} protected and he was allowed to re-join on the same pay scale from which he had left the N.I.E. Learned counsel has submitted that the respondents have illegally rejected the claim of the applicant. He has placed reliance on the judgement of Hon'ble Supreme Court in the judgement of Shiv Kumar Sharma Vs. Haryana State Electricity Board and Ors. 1988 (ATC) 792 and Henary Johnson Vs. Delhi Administration and 4 others (1992) 20 ATC, 816 and and A. Sagayanathan and Ors. Vs. DPO, Southern Ry. AIR 1991/SC pg. 424.



5. Km. Sadhna Srivastava, learned counsel for the respondents on the other hand has submitted that the claim of the applicant is barred by time as the representation was rejected in 1985 and cause of action arose to the applicant in that year. As limitation started running it could not be stopped by filing another representation which was rejected in 1993. It has been submitted that the application is liable to be rejected on the ground of limitation. It has been further submitted that the applicant voluntarily appeared in the trade test of Tailor 'B'. There is nothing on record to show that he was compelled or he was joined the post in lower pay scale to honour wishes of factory authorities. Learned counsel has submitted that as there was break in service, the applicant has rightly been allotted seniority from 23.08.1965 and no interference is called for by this Tribunal.
6. We have thoroughly considered the submissions of counsel for the parties and also perused the material on record.
7. As question of limitation has been raised by learned counsel for the respondents and it relates to jurisdiction of the Tribunal, it has been considered first. It is true that the applicant's initial representation was rejected in 1985 then he made another representation which was rejected in 1993. There is delay in approaching the Tribunal but under section 21 in special cases, Tribunal has been given power to condone the delay. Considering the peculiar circumstances of the case, we are of the opinion that the delay, if any, ^{in the interest of justice,} in filing O.A may be condoned and the same is here by condoned.



8. After we perused the materials filed by parties, we do not find any consent/request on the part of the applicant on which basis he may have volunteered to join another post in lower pay scale. The case setup by the respondents is of denial and it has been stated that the applicant himself appeared in the trade test. However, the facts and circumstances, if are scrutinized carefully it appears that the applicant had not opted to join the post in lower scale on his own and there was some understanding to bring him back to N.I.E. though this understanding has not been mentioned specifically in related documents, but they contain such facts which make its presence very probable. The order dated 21-03-1964 (Annexure 8) which has been quoted above, the word 'transfer' has been used, while relieving the applicant for joining N.I.E. In normal course, if it was a fresh appointment after the trade test, the word 'appointment' may have been used. It clearly shows that the then factory management was careful to protect the interest of the applicant. The purpose of trade test may have been only to judge the suitability of the applicant in working as Tailor. There appears element of truth in the case pleaded by the applicant that there was shortage of staff for tailoring work and he had agreed to honour the wishes of his senior officers. The applicant remained away from the post of L.D.C. only for a period of one year and five months. He had started making representations soon after he joined as Tailor 'B' and his request was ultimately accepted and he was allowed to join as L.D.C. on the same pay i.e. Rs.116/- from which he had left the N.I.E. On the contrary, others who were also transferred alongwith applicant were given minimum pay scale i.e. Rs.110/-. This difference in fixation of pay also points out that the applicant was allowed to join as L.D.C. in continuity of his previous service. We do not find any explanation



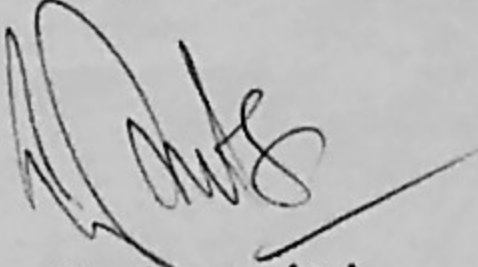
in counter reply filed by the respondents in fixing the pay of the applicant at Rs.116/- on 23-08-1965. The above circumstances clearly demonstrated that the applicant was kept away for a short period from his post of L.D.C. in the interest of industrial work and he had agreed to work on a post with lower pay scale only to honour the wishes of the then management. In the facts and circumstances of the case, the inference suggested on behalf of respondents is quite improbable and against human nature. There is nothing on record to show that the applicant could have willingly agreed to sacrifice better service and pay scale for any other benefit even in remote future. In such a case of involuntary deviation for short period from the regular line, one like the applicant, should not be allowed to suffer, more so, when he did it in the interest of factory work.

9. In our opinion, the applicant is entitled for the relief of seniority w.e.f. 10-10-1961. However, he will not be entitled for any monetary benefit except for a notional benefit of seniority for the purposes of pay fixation and placement in seniority list above those who were junior to him as L.D.C. but were shown senior to him on account of his temporary absence from the cadre of L.D.C.

10. For the reasons stated above this OA is allowed in part. The respondents are directed to count the seniority of the applicant from the date 10-10-1961, when he joined as L.D.C. The applicant shall, however, not be entitled for any monetary benefit. Benefit of seniority shall be notional for the purposes of



pay fixation and placement of the applicant in seniority list above those who were junior to him. The order shall be given effect within four months from the date a copy of this order is filed before the competent authority. There shall be, however, no order as to costs.



Member (A)



Vice Chairman

Dube/