

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 13th day of March 2001.

Original Application no. 776 of 1993.

Hon'ble Mr. Rafiq Uddin, Judicial Member

Hon'ble Mr. S. Biswas, Administrative Member

Sri Kanhaiya Lal,

S/o late Sri S.L. Shukla,

R/o Bara Sirohi, IIT, Kanpur, working as

Darwan in Small Arms Factory,

KANPUR NAGAR.

... Applicant

C/A Shri R.M. Shukla

Versus

1. Union of India through Secretary,
Ministry of Defence,
NEW DELHI.
2. The Secretary, Ordnance Factories Board,
10 Auckland Road,
CALCUTTA.
3. The General Manager, Small Army Factory,
KANPUR.
4. Sri B.P. Tewari working as Jamadar Darwan
in Small Arms Factory,
KANPUR.

... Respondents

C/Rs. Sri A. Mohiley

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O R D E R(Oral)

Hon'ble Mr. Rafiq Uddin, Member-J.

The applicant who is working as Darwan in Small Arms Factory Kanpur has challenged the order dated 9.9.92 passed by the General Manager Small Arms Factory, Kanpur (respondent no. 3). By the said order Sri B.P. Tewari (respondent no. 4) has been made senior to the applicant.

2. The applicant was appointed on 12.03.1966 on the post of Darwan. Later on he was made quasi permanent on 12.3.69 on the post of Darwan. The name of the applicant was mentioned at sl. no. 41 in the seniority list dated 01.01.1990 (annexure 6), whereas Shri B.P. Tewari has been mentioned at sl. no. 43 in the said list of Darwan. Thus the applicant was senior to respondent no. 4. The respondents has, however, by impugned order has made Shri B.P. Tewari senior to the applicant and also provided promotion on the post of Jamadar Darwan illegally. It is contended that the respondent no. 4 being junior to the applicant cannot be promoted before the applicant and the applicant is entitled for correct seniority in the seniority list as well as promotion on the post of Jamadar Darwan.

3. Heard learned counsel for the rival contesting parties and perused the record.

4. It is an admitted fact that Sri B.P. Tewari was appointed on the post of Watchman on 06.07.64 at 126 MC/MF, Kanpur. It is also admitted that Sri B.P. Tewari came to be appointed to Small Arms Factory w.e.f. 07.02.69 on the post of Darwan. It is further contended by the

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learned counsel for the applicant that Sri B.P. Tewari cannot be treated as senior to the applicant. It has, however, been clarified and explained on behalf of the respondents that the case of Sri B.P. Tewari was re-considered for determining his seniority vis-a-vis, the applicant and other person in terms of instructions contained in Ministry of Home Affairs memorandum no. 30/44/48-Appts. dated 22.06.1949 forwarded by Director General Ordnance Factories letter no. 1342/OF/12A(TE) dated 23.02.1950. As per instructions shown in this letter the seniority of the person employed on any particular date should be determined on the basis of length of service in that grade as well as service in an equivalent grade. Since, Sri B.P. Tewari, was transferred to Small Arms Factory w.e.f. 07.02.1969 from 126 MC/MF, Kanpur, he was given seniority in Small Arms Factory, Knapur from the date of transfer i.e. 07.02.1969 in terms of instructions contained in Home Ministry OM no. 9/11/55/RPS dated 22.12.1959 and decision no. 10 of Appendix 34 of CSR Vo. IV (1986) which provided that the seniority of surplus staff should be determined with reference to the date of his selection for redeployment in the recipient organisation. Accordingly, Sri B.P. Tewari was assigned seniority from 07.02.69 i.e. the date on which he had joined Small Arms Factory, Kanpur. It is further clarified that the instructions contained in OM dated 22.12.59 were made applicable to Ministry of Defence w.e.f. 22.5.72 vide Ministry of Defence no. 1717(3/71/D)(FY-II) dated 26.08.72 circulated vide Ordnance Factory Board letter no. 284/A/NI dated 01.09.72. Therefore, the provisions contained in these instructions

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were not applicable in the case of Sri B.P. Tewari, who had joined Small Arms Factory w.e.f. 7.2.69 and his seniority was determined on the basis of old OM dated 22.06.49.

5, It has been clearly stated by learned counsel for the respondents vide para 21 of their CA that Sri B.P. Tewari was transferred to this factory under the surplus adjustment scheme, due to declaration of surplus in the erstwhile unit namely 126 MC/MF, Kanpur under the surplus adjustment scheme. Now the main question for consideration is whether Sri B.P. Tewari is entitled for fixation of his seniority w.e.f. 6.7.64 or w.e.f. 7.2.69. It appears that the respondents have assigned ^{him} seniority w.e.f. ~~7.2.69~~ ^{6.7.64} as per instruction in OM dated 22.6.49. The seniority of a person on any particular date should be determined on the basis of length of service in that Grade as well as in equivalent grade. In our considered opinion ~~that~~ ^R in determining the seniority of Sri B.P. Tewari the respondents have not committed any error because his seniority is to be determined from the date of ^{his} appointment in terms of OM dated 22.6.49. The respondents have accordingly rectified their mistake by assigning seniority to Sri B.P. Tewari from 6.7.64 i.e. the date on which he has joined the service and not w.e.f. 7.2.69 i.e. on the date he has transferred to the present organisation namely Small Arms Factory as a result of certain surplus. It is also relevant to mention that no RA has been filed by the applicant contesting the claim of the respondents regarding applicability of the

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OM dated 22.6.49.

6. For the reasons stated above, we do not find any merit in the OA and the same is dismissed accordingly.

S. Bani
Member-A

Rajendra
Member-J

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