

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.**

Original Application No. 1202 OF 1994.

ALLAHABAD THIS THE 5th DAY OF SEPTEMBER, 2005

Hon'ble Mr. S.C. Chaube, Member-A
Hon'ble Mr. K. B.S. Rajan, Member-J.

Dharam Nath ' Singh, S/o Sri Dhan Raj Singh, R/o
R/141-B/5F. Om Gayatri Nagar, Telegarganj,
Allahabad.

.....Applicant.

(By Advocate : Sri C.M. Jha.)

Versus.

1. Union of India through Secretary, Ministry of
Defence, New Delhi.
2. Officer-in-charge, AOC Records, Secunderabad.
3. The Commandant, Central Ordnance Depot,
Chheoki, Allahabad.

.....Respondents.

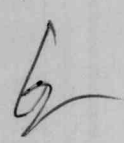
(By Advocate : Mr. Ashok Mohiley)

O R D E R

BY K.B.S. RAJAN, MEMBER-J

Facts of the case in hand having been
fully explained in the earlier order dated 2nd
May, 2002, the same is extracted in the
succeeding paragraphs.

By this O.A U/s 19 of the A.T. Act 1985 applicant has
challenged the order dated 8.6.1994 (Annexure-1) by which
the claim of the applicant for extension of judgment dated
15.10.1993 passed by this Tribunal has been refused on the
ground that the judgment can be implemented only with regard
to the applicants who had filed the O.A. Applicant has also
prayed that respondents may be directed to correct and refix
the seniority of the applicant taking into account his past
services rendered as Civil School Master prior to alternative



job was given on becoming surplus on disbandment of Unit, by extending the benefit of judgment of this Tribunal dated 15.10.1993 passed in O.A. no. 919 of 1991 and O.A. 921 of 1999. Applicant has also prayed for consequential benefits.

The facts giving rise to this application in brief are that applicant was appointed as Civilian School Master w.e.f. 18.8.1969 in the pay scale of the pay scale of Rs. 130-300 and was posted at 7, Field Regiment C/o 99 APO under the control of officer incharge AOC Records, Secunderabad. On disbandment of the unit applicant fell surplus and thereafter he was absorbed in alternative job in lower post as Store Keeper in the pay scale of Rs. 110-180/- w.e.f. 15.6.1976 and was posted at COD Cheoki, Allahabad. As the applicant was absorbed in lower post pay protection was given to him as Store Keeper. Some of the ex-civilian School master field O.A. no. 1640 of 1992 and claimed seniority on the basis of the inclusion of their past services as civilian school Master. This O.A. was allowed by order dated 3.8.1994. The SLP No. 730 of 1996 filed by Union of India challenging the order dated 3.8.1994 was dismissed on 28.12.1996. The matter, however, again reached before Hon'ble Supreme Court in SLP NP 6276 of 1995(filed against order dated 24.12.93 passed in O.A. no. 1232/91 by this Bench). Hon'ble Supreme Court while disposing of SLP by order dated 2.11.1995 gave the following order:

“ In view of the above position and the fact that the question raised by the petitioner for adjudication on merit would require production of additional evidence by the parties, it is not appropriate that the same be gone into in the first instance in these proceedings in the SLP after impleading the petitioners as parties in this list, when the respondents did not choose to implead them in O.A. filed by them in the Tribunal. The matter is left for adjudication on merit in the manner indicated above.”

In view of the aforesaid observation, O.A. no. 2317 of 1995 was filed by Mohindar Singh before Principal Bench of this Tribunal impleading present applicants as respondents which was allowed by order dated 8.7.1996. The operative part of the order reads as under:-

“In the conspectus of the facts and circumstances and the legal position as discussed above, we find that there is considerable merit in the application and that the applicant is entitled to the relief prayed for by him. The application is, therefore, allowed. It is declared that the civilian school master who were redeveloped as Store Keeper are not entitled to count their past services as CSMS for seniority in the grade of senior Store Keeper. We, therefore, direct the respondents to cancel all the orders by which the respondent nos. 4 to 8 were given seniority over the applicant and to restore the applicants seniority over the respondent nos. 4 to 8 and grant him the consequential benefits. Action in the above lines should be completed and orders issued within a period of 2 months from the date of receipt of this order.

The aforesaid order dated 8.7.1996 was challenged before Hon'ble Supreme Court in SLP 16966/96 which was

dismissed by order dated 3.9.1996. Union of India also challenged this order by filing a separate SLP No. 3717/97, which was dismissed by order dated 19.5.1997. The respondents then passed order 3.9.99 following the order of Principal Bench. The seniority which was extended earlier was taken back aggrieved by which O.A. nos. 836/99, 837/99, 838/99 and 866/99 were filed in this Tribunal. After considering the entire controversy the OAs were dismissed by a Division Bench of the Tribunal by order dated 7.9.2000. It was found that the applicant have been rightly deprived of the benefit of the seniority given to them on the basis of services rendered as civilian school master in pursuance of order dated 8.9.96 which has been confirmed by the Apex Court. As the controversy has already been settled by the aforesaid order, in our opinion, the present applicant is also not entitled for the benefit of the period he served as civilian school master."

2. The OA was dismissed by the said order, and the matter was taken up with the Hon'ble High Court of Judicature at Allahabad which by its order dated 21-03-2005 has held as under:-

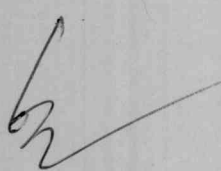
"By the impugned order the CAT has refused to allow the benefit of past services to the petitioner upon his re-employment on the ground that the SAO 4/S/53 (in respect of its clause no. 2) deals with cases of transfer where as the petitioner's case was not one of transfer but was of re-employment after discharge from the earlier employment. Admittedly both the employments are under the Central Government and the opening words of SAO 4/S/53 copy of which has been annexed as Annexure-8 to this Writ Petition are reproduced below:

"The undersigned is directed to say that the Governor General in Council has been pleased to decide that the following concessions shall be granted to such existing temporary Government servants as are discharged from one Central Government and re-employed in another such office."

These opening words have not been appreciated by the Tribunal.

In our opinion, the use of the word 'transfer' in clause 2 has to be read in context of those opening words which indicate the purpose for which the said office memorandum has been issued. In the circumstances, we set-aside the impugned judgment of the Tribunal dated 2.5.2002 (Annexure-6) to this Writ Petition and remand the matter back to the CAT for fresh consideration.

The Central Administrative Tribunal will dispose of the said matter, if possible, within three months of the date on which certified copy of this order is presented before the CAT."




3. The OA deserves to be allowed from two angles. First, it is seen from the letter dated Nil passed by the respondents rejecting the request of the applicant vide his representation dated 21st May, 1994, that the rejection was on the ground that "*Extension of benefits of Judgment dated 15th Oct 1994 (sic 1993) passed by Hon'ble Central Administrative tribunal Allahabad cannot be extended to other employees and made universally applicable as the implementation of judgment is applicable to the petitioners only.*" The facts in the case of the said judgment (Jaivir Singh vs U.O.I and others in OA 919/91 and V.P. Shukla vs UOI in OA 921/1991) are identical with that of the instant case. It is settled law that *when a citizen aggrieved by the action of a government department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to court. (Amrit Lal Berry v. CCE, (1975) 4 SCC 714, at page 728)* This has been emphasized in the V Central Pay Commission Report at para 126.5 as under:-

"We have observed that frequently, in cases of service litigants involving many similarly placed employees, the benefit of judgments is only extended to those employees who had agitated the matter before the Tribunal/Court. This generates a lot of needless litigation. It also runs contrary to the judgment given by the Full Bench of the Central Administrative Tribunal, Bangalore in the case of C.S. Elias Ahmed and others vs UOI and others (OA 451 and 541 of 1991), wherein it was held that the entire class of employees who are similarly situated are required to be given the benefit of the decision whether or not they were parties to the original writ. Incidentally, this principle has been upheld by the Supreme Court in this case as well as in numerous other judgments like G.C. Ghosh vs UOI (1992) 19 ATC 94 (SC) dated 20-07-1988; K.I. Shepherd vs UOI (JT 1987 (3) 600); Abid Hussain v s UOI (JT 1987 (1) SC 147) etc., Accordingly we recommend that

decisions taken in one specific case either by the judiciary or the Government should be applied to all other identical cases without forcing the other employees to approach the court of law for an identical remedy or relief. We clarify that this decision will apply only in cases where a principle or common issue of general nature applicable to a group or category of government employees is concerned and not in matters relating to a specific grievance or anomaly of an individual employee."

4. In view of the above firm position, the OA has to be allowed.

5 Secondly, as observed by the Hon'ble High Court, SAO 4/3/63 the very purpose of the said order is to give adequate concession to those who are discharged due to on reduction of establishment and re-employed in another office. Para 2 of the said SAO reads, "Where the transfer is not in the public interest but in the interest of the individual Government Servant, the past service rendered by him will not count for seniority in the new office and the seniority in the new office will be reckoned only from the date of joining. Where however, the transfer is made in the public interest past continuous service will count for seniority under the relevant rules and orders." The restriction of loss of seniority would thus apply only to those who had applied for transfer from one department to another and this does not apply to those who were by the Government accommodated in some other department on account of reduction of the earlier establishment. Needless to mention that the




applicant who was a civilian School Master was to be rendered surplus due to reduction of establishment and consequently he was accommodated as store keeper. He is thus, entitled to count the past service in the grade of 130 - 300 in the new organization as well. As such, the all the benefits made available to Jaiver Singh and Others (vide Order dated 1510-1993 in OA 919/91 and 921/91) are available to the applicant in this OA as well.

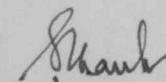
6. The O.A. is therefore, allowed. The applicant is entitled to count his past service rendered as Civilian School Master in the grade of 130 - 300 in his new assignment as Store Keeper and his seniority shall be refixed in the said grade and he is entitled to all the consequential benefits such as (a) promotion to the higher post of Senior Store Keeper, keeping in view his service as Civilian School Master, fixation of pay from the day his junior was promoted, promotion to any other further higher post at par with his junior in the post of Senior Store Keeper. The Respondents are, therefore, directed to fix the seniority of the applicant in the post of Store Keeper, keeping in view the services rendered by the applicant as Civilian School Master and after so re-fixing the seniority, conduct review DPC and if found fit, the applicant should be promoted as Senior Store Keeper from the date his junior was promoted and a like exercise be conducted in respect of further

62

promotion as well. The fixation of pay on the basis of the decision of the Review DPC should also be effected and the arrears of pay and allowance thereof should be made available to the applicant. The entire exercise be conducted within a period of 10 months from the date of receipt of this order.

7. Under the circumstances, there shall be no order as to costs.


MEMBER-J


MEMBER-A

GIRISH/-