

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD

Dated : Allahabad this 13th day of Dec 1995.

Original Application No. 1882 of 1994.

Hon'ble Dr R.K.Saxena, J.M.

Hon'ble Mr S. Dayal, A.M.

L.M.Srivastava, .

S/o Shri R.B.L.Srivastava

C/o Er. Arvind Kumar Srivastava

Type IV/3 Circuit House Coloney

Drumond Road, Allahabad.

..... Applicant.
(By Advocate Sri A.B.Lall Srivastava)

Versus

1. Union of India through The Secretary
Govt. of India, Ministry of Defence,
New Delhi.

2. The Chief of the Air Staff,
Air Headquarters, Vayu Bhawan,
New Delhi.

3. The Air Officer Commanding
Air Force Station, Manauri,
Allahabad

.... Respondents

(By Advocate Sri N.B. Singh)

ORDER

(By Hon'ble Dr R.K.Saxena, J.M.)

The applicant has approached this Tribunal to seek a direction to the respondents for determination of his seniority with effect from the date of initial appointment with consequential benefits of arrears of pay and allowances

and further promotion as well.

2. The brief facts of the case are that the applicant was appointed as Graduate Civilian School Master in No.2 E.M.E. Centre, Allahabad in the scale of Rs.130-300(Pre-revised). He joined as Graduate Civilian School Master on 2.8.63 and worked in that capacity till 20.8.1966. On disbandment of E.M.E. Centre, Allahabad because of the movement of the unit to border areas, the applicant was declared surplus on 20.8.1966. He was served with one month's ^{notice} as he was temporary employee. Since, the applicant has given his willingness to serve on any other post in any other unit, he was appointed as Lower Divisional Clerk in the scale of Rs. 110-180 and was posted to 17, Wing, Air Force, Gorakhpur. According to the applicant, he had joined ^{the} 17 Wing, Air Force on 29.8.66 after availing usual time. He was also allowed benefits of transfer, TA, joining-time and the salary of rejoining time. His salary was fixed at Rs.110/- which was subsequently raised to Rs. 149/- by awarding 3 increments of Rs.3/- each. It appears that the applications for the post ~~as~~ Civilian Store Keeper from amongst the departmental eligible candidates, were invited, and the applicant had also applied therefor. He was, however, appointed as Civilian Store Keeper with effect from 5.7.68 in the scale Rs. 150-300 at 24 ED Air-Force Station, Manauri, Allahabad. His pay was fixed Rs.150/-. He then continued as such.

3. The contention of the applicant is that there was a scheme for promotion of reclassification to Civilian personnel adjusted at lower grade which was issued by the Ministry of Defence with the concurrence of Finance(Defence). According to this scheme, the Civilian Personnel serving in

the defence installation, and if declared surplus, eligible for alternative appointment either in the same or equivalent grade in the same or other defence installation provided the vacancies in the equivalent grade ~~for~~ ^{were} available. If the vacancy was not available for the equivalent grade, such Civilian Personnels were required to be adjusted in the lower post either for the same or other defence installation. It was also stipulated in the said scheme that if the Civilian personnel ~~was~~ ^{given} appointment in the lower post, they shall carry the higher grade in which they worked for more than 6 months in the said higher grade. The contention of the applicant is also to the effect that he had rendered service for 3 years and 26 days (from 28.6.66) as Graduate Civilian School Master in the ^{therefore,} scale of Rs.130-300, he was ^{by} entitled to be adjusted on any such post which carried equivalent grade of Rs.130-300. In any case, even when he was offered post of LDC which was in lower grade, his salary which was drawn him as Graduate Civilian School Master, ~~can~~ ^{not} be reduced. In this connection, reliance was placed on Para 19(A) of SAO-8/8/76 of the Army Headquarter letter No. AO 69/81. It is also the claim of the applicant that the said benefit was not extended to the applicant and thus he was put to financial loss as well as his promotion was denied. The applicant also averred that similar point was raised in the cases in OA No. 434/86 Shyan Lal Dubey vs. Union of India decided by this Bench on 17.8.90, in OA No. 919 of 1991 Jagdish Singh vs. Union of India & Others decided by this Bench on 15.10.93 and in O A No. 916 of 1991 Jagdish Kumar Vs. Union of India. In all these cases, the applicant was Civilian Personnel and on ~~there~~ ^{their} being declared surplus, they were given appointment in other installation of Army. They were, however, given the benefit in the sense that their previous service was

taken into consideration of purposes of seniority and the salary was fixed keeping the grade in which they had worked ^{in view.} prior to their being declared surplus. It is, therefore, contended on behalf of the applicant that he can not be denied the same benefit.

4. The respondents have resisted the case on the ground that it is barred by limitation. The applicant ^{has} come before this Tribunal after 28 years and therefore the OA is not maintainable. It is further pleaded on behalf of the respondents that the applicant was declared surplus and he was subsequently absorbed as LDC and that appointment was fresh. Therefore the service which was rendered by him as Civilian School Master, ^{cannot} be taken into consideration. It is ^{convinced that} also ^{convincing} the judgment ^{of} the cases quoted by the applicant, ^{was} based on different facts and therefore ratio was not applicable in this case.

5. We have heard the learned counsel for the applicant and the respondents and have perused the record.

6. The first question which arises is whether the OA, has been filed within the period of limitation. The contention of the respondents is that the point of refixation of seniority and of determination of salary has been raised by the applicant after 23 years and therefore, the OA is barred by limitation. There is no doubt that the applicant who was initially appointed as Graduate Civilian School Master on 2.8.63, was declared surplus on 20.8.66, and was re-appointed and joined 17 Wing Air Force on 29.6.66. Thereafter he had been given ^{appointment} ~~promotions~~ in the said 17-Wing Air Force, and his pay was fixed from time to time on revision of the grade on promotion. The contention of the learned counsel for the applicant, however is that

there is continuing course of action against the question of seniority and of fixation of salary remained always in dispute. The reliance was, however, placed on the decisions of this Tribunal in O A No. 434 of 1986 Shyam Lal Dubey vs. President of India and others rendered on 17.8.90, O A No. 919 of 1991 Jaivir Singh vs Union of India and others decided on 15.10.93, O A No. 916 of 1991 Jagdish Kumar and others vs. Union of India and others decided on 10.7.94 and such other decisions. In the case of Shyam Lal Dubey, the Tribunal did not consider the point of limitation because the ^{aid} question was not raised. In such a situation, the decision of case of Shyam Lal Dubey can be of no help to come to ^a particular conclusion.

7. The Tribunal in case of Jagdish Kumar and others (Supra) had clearly decided the question of limitation and had held that the cause of action in the case should be taken to have arisen on the pronouncement of the judgment in Shyam Lal Dubey's case. It was further observed that in that view of the matter, the application could not be treated as time-barred. It has been disputed on behalf of the respondents if the judgment in any other case, may be the ground of cause of action. In other words, the learned counsel for the respondents pleaded that the judgment rendered in Shyam Lal Dubey's case can not give and ~~pay~~ ^{be} on the basis of cause of action to the present applicant. We also feel that for giving rise ^{of} particular cause of action, ^{to} the judgment of any case may not be ground. On this point, we respectfully do not feel inclined with the observation made by the Bench in Jagdish Kumar's case.

8. In case there had not been the decision by the Bench in the case of Jaivir Singh, the position would have ^{difficult and} been pointed simple. The Bench while disposing of the

case of Jaivir Singh held as under:-

" It is to be noted that while rejecting the representation of the applicant vide Annexure A-1, it has been observed that judgment passed by the Court in case Shri Shyam Lal Dubey can not be applied with ~~as general rule~~ in the absence of specific instructions/ amendments of adjusting rule by the higher authorities. (Annexure A-1). Thus, benefits of counting of seniority as prayed for by the similar situated person was not extended to the applicant because that the rules in this connection were not amended nor any direction in this regard was issued. The persons like the applicants who were entitled to get the benefit of counting of their seniority on the basis of the ~~represented~~ ^{repealed} pronouncement made by the Tribunal, are being compelled to approach to Tribunal and involve themselves in the litigation merely because of the act that the existing rules in this ~~receipt~~ ^{respect} were not amended. We, therefore, observe ^{amendments} that the department should make necessary rules so that the other similar ^{the} situated persons may not be compelled to approach the Tribunal and involve themselves in litigation for getting benefits on the basis of the pronouncement already made by the court!"

(Emphasis supplied)

9. By this observation, the Tribunal had given ~~enough~~ a long rope to similar ^{the} situated persons for getting benefits by way of amendment of rules; and if rules were not amended, they got opportunity to approach the Tribunal. This judgment in Jaivir Singh's case is not reported to have been challenged or reversed. Thus, the judgment holds good and non-compliance of the observation made therein, gives cause of action

to every similar ⁸situated person. On the basis of this observation of the Bench of this Tribunal, we come to the conclusion that the present OA, before us can not be held to be barred by the limitation.

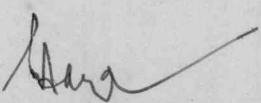
10. The next question is if the applicant is entitled to the benefit of redetermination of seniority and salary. The ~~genesis~~ ⁸ of this benefit lies in the decision of Shyam Lal Dubey's case. If we compare the facts of the case of Shyam Lal Dubey's case with the case of present applicant, we find ~~identical~~ ⁸ of the facts as well as of the dispute. Sri Shyam Lal Dubey was also appointed ~~of as~~ ^{ment} Civilian School Master in the defence established ^{ment} on 1.10.63 in the grade Rs.130-300. On the disbandment of the unit, Shyam Lal Dubey was also declared surplus and was ~~abserved~~ on the post of Checker with effect from 28.9.66 in Gun Carriage Factory, Jabalpur. He was ~~abserved~~ in the lower grade of Rs.105-135 and salary was fixed Rs. 111/- Shyan Lal Dubey had claimed the benefit of seniority as UDC with effect from 1.10.63 (the date of his initial appointment as Civilian School Master) in the light of the para 19(A) of the Army Head-quarter's letter No. 69/81 which read :-

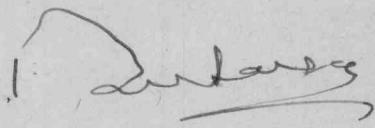
"An individual posted in lower scale of pay due to non-availability of matching scale of pay, will be allowed to carry his previous scale of pay alongwith him, even if he was officiating in it".

11. The Tribunal held that the applicant, Shyam Lal ^{was} Dubey entitled for the said benefit because the concerned authorities ~~had~~ given the benefit to one Sri K.V.Rao who was a similar ⁸situated person. The observation of the Tribunal was :-

"It is plain, therefore, that the benefit of the service which Sri Rao had rendered as Civilian School Master, had been given to him for the purposes of determining his seniority. We find, therefore, the applicant was similarly situated as Sri Rao and, therefore, there was no reason as to why the benefit of Sri Rao be not given to the applicant."

12. In this case we find that the benefit of Para 19(A) of the Army Headquarter's letter No.69/81 was given to Sri K-V.Rao. It was granted to Shri Shyam Lal Dubey on the basis of the decision of the Tribunal; and two other persons namely Jaivir Singh and Jagdish Kumar & Others on the decision of the Tribunal in other cases. The case of the present applicant namely Sri L.M. Srivastava is identical and his case is identical to the above persons particularly to Shyam Lal Dubey and therefore, there is no ground that the benefit should not be extended to him. We, therefore, direct the respondents to extend the benefit of refixation of seniority and salary to the present applicant as was done in the case of Shyam Lal Dubey. The OA is decided accordingly with no order as to costs.


(S. Dayal)
Member (A)


(Dr R.K.Saxena)
Member (J)