

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION No.1118/1995

WEDNESDAY, THIS THE 18TH DAY OF DECEMBER, 2002

HON'BLE MR. GOVINDAN S. TAMPI .. MEMBER (A)

HON'BLE MR. A.K. BHATNAGAR .. MEMBER (J)

Shyamji Mishra,  
aged about 52 years,  
S/o late Shri Shitala Prasad,  
R/o House No.C-2/5, Nihalpur,  
Allahabad. ... Applicant

(By Advocate Shri Rakesh Verma)

Versus

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

2. Officer-in-Charge,  
AOC (Records),  
Secunderabad.

3. The Commandant,  
Ordnance Depot, Fort,  
Allahabad. ... Respondents

(By Advocate Ms. Sadhna Srivastava)

O R D E R

Hon'ble Mr. Govindan S. Tampi, Member (A) :

Reliefs sought for by the applicant in this O.A.  
are enumerated as below:-

a) To issue a writ, order or direction in the nature  
of certiorari quashing letter No.6957504/SK/CLV/  
CA-6/A-2/43, dated 25.4.1995, passed by the  
respondent No.2, as communicated to the applicant  
vide letter dated 10.5.1995, issued by the respon-  
dent No.3 (Annexure-A-I);

AM

...2..

- b) To issue a writ, order or direction in the nature of mandamus directing the Respondent No.2 and 3 to re-fix the seniority of the applicant as Senior Store Keeper in the pay scale of Rs.130-300/- from the date of initial appointment as Civilian School Master in the same pay scale, i.e., from 1.9.1966 extending benefits of the judgment of this Tribunal dated 15.10.1993 and 3.8.94 delivered in O.A. No.919/1991 connected with O.A. No.921/1991 - Jaiveer Singh & others Vs. Union of India & Others and No.1640/1992 - A.M. Upadhyay & others Vs. Union of India & others;
- c) To issue a writ, order or direction in the nature of mandamus directing the Respondent Nos.2 and 3 to accord all consequential benefits to the applicant such as promotion to the next higher post with salary thereof as a result of re-fixation of seniority;
- d) To issue any other suitable writ, order or direction in the facts and circumstances of the case which this Tribunal deems fit;
- e) To award cost of the petition.

2. The applicant in this case is aggrieved by the order dated 25.4.1995 of the respondents granting him seniority as Civilian School Master Assistant Store Keeper with effect from 1.9.1966, keeping in mind the services rendered by him as Civilian School Master having identical pay scale before having been declared surplus. He is seeking the benefit of the Tribunal's orders in the case of Jaiveer Singh & Others Vs. Union of India & Others (O.A. No.919/91 and V.P. Shukla & Others Vs. Union of India & Others O.A. No.921/1991 and two others. The applicant was initially appointed on 1.9.1966 as a Civilian School Master in Defence Establishment in the pay scale of Rs.110-180/- later corrected to Rs.130-300/-. On the disbandment of the unit

where he was working, he became part of the Surplus and Deficiency Scheme and absorbed as Civilian Assistant Store Keeper (CASK) on 19.11.1969 in the lower scale of Rs.110-180/-.. His pay was again protected in place in the scale of Rs.130-300/- with effect from 19.11.1969. He was subsequently promoted as Senior Store Keeper in the scale of Rs.130-300/-. Thus, he was throughout in the said scale of Rs.130-300/- and not in the lower scale of Rs.110-180/-. Therefore, the pay scale which he was enjoying in his earlier position as a Civilian School Master and subsequently as CASK and Senior Store Keeper was the same and therefore, past service rendered by him in his earlier job was liable to be added to his present service for fixation of seniority. In fact, such a dispensation was made in the case of one Shri K.V. Rao, who was similarly situated and a number of other persons, who have approached the Tribunal. The respondents have however, not done the same to the applicant's cost and prejudice. The decisions of the Tribunal in the case of Jaiveer Singh and V.P. Shukla are to be extended to him as well, his being similarly placed. The respondents have however not acceded to the same by holding that as he was not a party in Jaiveer Singh's case, he cannot get the benefit. In fact, the Tribunal had directed in Jaiveer Singh's case that necessary amendment should be made by the respondents so that similarly placed individuals also could get the benefit. As the same has not been done, this O.A. has been filed.

3. According to the applicant, being similarly placed as Jaiveer Singh, V.P. Shukla, Jagdish Kumar, A.M. Upadhyay and Shyamlal Dubey, etc., who have been given the above benefit, he also should have been given the same, services rendered by him as Civilian School Master, was expected to be added to the service in the present job as CASK, the fact that he had not approached the Tribunal earlier should not come in the way of his getting his rights as the Courts have held so many times. These pleas have been reiterated by Shri Rakesh Verma in his oral submissions.

4. In the reply filed by the respondents, and reiterated by Ms. Sadhna Srivastava, it is pointed out that on 1.9.1966, he was appointed as temporary Civilian School Master in the grade of Rs.110-180/-, but that he was placed in the scale of Rs.130-300/- only with effect from 1.9.1968, after becoming a Graduate. On being declared surplus, he was placed in the pay scale of Rs.110-180/- and he continued to be in the same scale till on the basis of representations made by him, he was allowed the previous scale of Rs.130-300/- on 20.4.1983. The applicant's representation for counting his previous service for the purpose of seniority on the basis of the judgment of the Tribunal in the case of Jaiveer Singh and V.P. Shukla & others was not agreed to as the decision passed by the Tribunal in those cases were not universally applicable and the applicant was not a party in those cases.

Respondents pray that number of Civilian School Masters on being rendered surplus are adjusted in the equivalent lower posts under the provisions of SAO 8/S/76. Such absorptions are ordered only after the willingness was taken from the concerned individuals. In the case of the applicant, the protection of the previous pay scale was granted only on 24.8.1983. The fact that his services has been protected by providing an alternate job and his pay has been protected cannot further be extended to grant him seniority keeping in mind the post earlier held by him. DOPT's O.M. issued on the basis of the Hon'ble Supreme Court's decision dated 29.6.1992 in the case of Balbir Sardana & Ors. Vs. Union of India, has directed that redeployed surplus employees are not entitled for the benefit of past service for the purpose of seniority. The applicant's reference to the decisions of the Tribunal would not come to his help ad he was not a party in those O.As. He was a surplus man who was adjusted and provided a job with pay protection and he cannot thereafter ask for anything more, especially as he was not returned to his parent unit against a vacancy which occurred within one year. He cannot get the benefit of seniority as he claims. It is also pointed out by the respondents that the case of Shri Rao cited by him was not similar to his case and he cannot seek any benefit from the same.

5. The learned counsel for the applicant reiterated his pleas during the oral submissions and states that he has to be given the benefits of his earlier service as Civilian School Master for counting his seniority in the new post of Store Keeper. On the other hand, Ms. Sadhna Srivastava had referred to a number of decisions of the Tribunal to show that the present application is without merit and cannot be endorsed. She therefore, pleaded that the same may be rejected.

6. We have carefully considered the rival contentions. What is being prayed for by the applicant, who after being declared surplus Civilian School Master, was adjusted in a different posting is the grant of benefit of the service rendered by him in the earlier post for the purpose of seniority in the new post of Civilian Assistant Store Keeper/ Senior Store Keeper. A large number of decisions on the point are available. The Hon'ble Supreme Court had held that service rendered in the grade in the post in an earlier organisation cannot be considered as a service in the new organisation for surplus staff, in Union of India & Others Vs. K. Savithri & Ors. (1998 SCC (L&S) 1134). Same is the decision of the Principal Bench issued on 3.6.2002 in O.A. No.1981/1996 filed by Shri Surinder Singh & Others.

Ans

The decision of this very Bench passed while disposing of a few O.As on 7.5.2000 as well as order dated 4.10.2002 passed by dismissing O.A. No.1715/1994 are also in the same line. As a matter of judicial discipline, this Bench also has to follow the above decisions. Even otherwise, the applicant's interests having been protected by giving him an alternate job while he was rendered surplus and protection of pay also having been granted, the applicant cannot ask for anything more. We are totally convinced that the applicant has not made out any case at all for our intervention.

7. The O.A. therefore fails and is accordingly dismissed. No costs.

MEMBER (J)

MEMBER (A)

p.s.p.

*Yashpal*