

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 16/11 day of Nov 2005.

Hon'ble Mr. K.B.S. Rajan, Member (J)
Hon'ble Mr. A.K. Singh, Member (A)

Original Application No. 1488 of 1999

K.D. Singh, S/o Sri B. Singh
R/o Q. No. GT-5B, Larmour Bagh Cantt,
KANPUR.

.....Applicant

By Adv: Sri R.K. Shukla

V E R S U S

1. Union of India, through the Secretary, Ministry of Defence, Govt. of India, NEW DELHI.
2. The Secretary, Ordnance Factory Board, 10 A, Shaheed Khudi Ram Boase Road, CALCUTTA.
3. The General Manager, Ordnance Equipment Factory, KANPUR.
4. Sri L.S. Srivastava, Chargeman Gr II (NT-OTS), Through the General Manager, Ordnance Equipment Factory, KANPUR.

.....Respondents.

By Adv: Sri A. Mohiley
Sri A. Sthalekar

O R D E R

By K.B.S. Rajan, JM

An interesting question of law is involved in this case. The post of Chargeman Gr. II (NT) has three feeder grades, UDC, Supervisor (NT) and Telephone Operator. Thus, while seniority list is prepared for each feeder grade which is



independent of the other two grades, for the purpose of consideration for promotion to the post of Chargeman Gr. II (NT), a combined seniority list is prepared. Provision exists for re-designation from UDG to Supervisory (NT) and vice versa but with a rider that the seniority in the re-designated post shall be only from the date of such re-designation. Such a seniority list is maintained Factory wise. Provision also exists for mutual transfer from one Factory to another, subject to the condition that the person so transferred would retain his seniority or the seniority of the person with whom he is exchanging the place whichever is lower. (This sound system is on account of the fact that none other's seniority position should be hampered by permitting such mutual transfer, which is on the basis of individual interest of the persons concerned and not in public interest). Two individuals, one holding the post of Supervisor in one Factory (Ordnance Equipment Factory, Kanpur) and another holding the post of UDC in another factory (Metal and Steel Factory, Ichapur), applied for mutual transfer and the same was materialised. The request involved not only one of mutual transfer but also corresponding re-designation of the individuals (Supervisor to be re-designated as UDC and vice versa) as there was no vacant post of UDC in the

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OEF Kanpur, nor the post of Supervisor at Metal and Steel Factory, Ichapur. Undoubtedly, as per rules, since their undertaking to forego their seniority in the parent factory is a sine-qua-non for considering their case for mutual transfer, such an undertaking was given and it was clearly mentioned in the transfer order that the individual whose designation from UDC had been changed as Supervisor would reckon his seniority in the grade from the date he joined the other factory. Accordingly, the seniority of the individual who had been transferred to the OEF, Kanpur was reflected in the grade of Supervisor with effect from the date he joined the said factory. The question involved is, whether the said individual's seniority for the purpose of combined seniority position, should include the service he rendered as UDC also, as for the purpose of promotion to the post of Chargeman Grade II, the feeder grades are constituted by UDC, Supervisor and Telephone Operator.

2. Before plunging into the facts of the case certain rules relating to mutual transfer and affording of seniority are essentially to be considered and the same are as under:-

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(a) Vide order dated 15-10-1976 of the Ordnance Factory Board, fixation of seniority on mutual transfer is as under:-

"So far as the mutual transfer is concerned it may be stated that if 2 employees working in 2 different factories want to exchange position then is allowed subject to the condition that the person concerned would retain their seniority or the seniority of the person with whom they are exchanging the place whichever is lower. However, such transfers should be made only after obtaining the concurrence of cadre authorities and also after the Govt. servant concerned gives the necessary undertaking in writing. Further, it would not be advisable to approve such transfers in large numbers. In other words, such transfers may be allowed by the cadre authorities only under exceptional circumstances whether the denial of such transfers would cause the personal hardship."

(b) The forfeiting of the seniority would apply for all purposes like permanency, trade test, promotions etc., (order dated 28-08-1974 refers).

(c) Re-designation in identical scales is permissible subject to the condition that the seniority of the individuals in the revised trade/grade will be reckoned from the date of re-designation vide order dated 07-05-1979.

3. Now the facts capsule with terse sufficiency:

(a) The applicant joined the post of Security Assistant in 1981 and was promoted as Supervisor (NT) in 1986. The next grade in the hierarchy is the post of Chargeman Gr. II (NT). In the said Grade of Supervisor (NT), his seniority position as on 31-03-1995 was 5 date of seniority counting from 10-11-1986 (of the seniors to the applicant some having retired/promoted/died, only one was left, thus the effective position in the seniority of the applicant was 2).

(b) Respondent No. 2 had originally joined the Metal and Steel Factory, Ichapur as LDC and was promoted as UDC in 1980. He had in early 90s applied for mutual transfer to Kanpur, the other person at Kanpur wanting to go to Ichapur was one Shri. G.T. Midya, Supervisor (NT) who was senior to the applicant.

(c) The mutual transfer was no doubt approved but obviously subject to the undertaking relating to foregoing of seniority as per orders dated 28-08-1974 read with order dated 15-10-1976 referred to in the preceding paragraph. Again as regards re-designation and reckoning of seniority in the re-designated post, order dated 07-05-1979 was to be complied with.

(d) Respondent No. 4 had accordingly given the undertaking to forego the seniority, vide his consent letter

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dated 23-04-1993 and as regards reckoning of seniority in the re-designated grade, the authorities had published part II order dated 4-6-1993 which reads as under:-

"The seniority of Shri Srivastava, Supervisor 'B' will be reckoned in the grade of Supervisor 'B' at Ord. Equipment Fy, Kanpur from the date of his reporting at OEF, Kanpur."

- (e) On the joining of respondent No. 4 in the re-designated post of Supervisor 'B', his position in the seniority list was fixed at 10 date of seniority to count from 9-6-1993, the date he joined the said post at OEF Kanpur, vide seniority list as of 31-03-1995 (in which the applicant's position was No. 5).
- (f) In 1998 for one post of Chargeman Grade II (NT), the applicant was sanguinely hoping to be considered and promoted as he was comparatively at a higher position in the seniority list of one of the feeder grades i.e. Supervisor NT. However, to his shock and surprise, he found his name not being there but his junior's name (Respondent No. 4) in the promotion order.
- (g) It is this promotion order which the applicant has challenged in this O.A. The applicant had impleaded the said junior also as a private Respondent.

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4. The respondents (both official as well as the private respondent) contested the O.A. According to them, in view of the fact that the private respondent was holding the post of UDC in the Metal and Steel Factory, Ichapur, while preparing the combined seniority the same was also taken into account as in accordance with the provisions of order dated 15-07-1976 was that the person so transferred would retain his seniority or the seniority of the person with whom he is exchanging the place whichever is lower.

5. The applicant had filed his rejoinder, contending that when the name of the private respondent figured in the list of Supervisor (NT), there is no question of his service as UDC to be included for the purpose of working out the seniority position in the combined seniority.

6. Arguments were heard and written submissions filed were also considered. The entire pleadings were gone into and we have given our anxious consideration. The private respondent had been transferred on mutual transfer basis from Ichapur to OEF Kanpur. Earlier he was functioning as UDC and on his transfer he was redesignated as Supervisor and his name figured in the seniority of supervisor (NT) in OEF, Kanpur. Obviously, his name cannot figure in the list of

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UDC at OEF Kanpur. The said seniority list of Supervisor (NT) clearly stipulated that the said respondent's seniority is fixed w.e.f. 99-6-1993, the day when he joined OEF, Kanpur. This is exactly in accordance with the order dated 04-06-1993, referred to in para 3(d) above. When a combined seniority is prepared, obviously, the position of the said private respondent cannot be anything other than that he was holding as supervisor. As such, there is no question of his service rendered as UDC in Ichapur to be taken into account. It would have been a different matter had the said private respondent been holding the post of Supervisor (NT) in Ichapur since 1980 and had come over at OEF Kanpur without any change in designation. In that event, his seniority would be either w.e.f. 1980 or the date his counterpart (Shri G.T. Vidya) that is not the case here. The said private respondent had volunteered to forego his seniority in UDC and accept the seniority in the grade of Supervisor (NT) and the same is w.e.f. 9-06-1993.

7. The legal position is that when an individual requests for transfer from one unit to another, where separate seniority list is maintained for promotion, he has to accept the seniority as per the regulations and his past

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services are not counted for seniority, though the same would be counted for the purpose of services rendered. As for example, if eight years of service is prescribed as the minimum service required in the feeder grade, and if an individual has put in four years of service in an unit and applies for transfer to another, he would be afforded only the bottom seniority in the transferee department and **if he falls within the consideration zone** and if he falls short of the requisite service in the feeder grade in the transferee department, his previous service in the earlier unit would also be considered. That far and no further. In this regard the decision of the Apex Court in the case of **Dwijen Chandra Sarkar v. Union of India, (1999) 2 SCC 119**, refers, wherein the Apex Court has observed as under:-

"It was held that seniority and eligibility are different concepts. It was directed that the appellant be given promotion as Inspector only when she would fall within the zone of consideration as per her seniority reckoned in the transferee Department. When her turn based on the service seniority in the transferee Department arrived, if any question as to her eligibility for promotion should arise, i.e., whether she had 5 years as UDC or a total of 13 years as UDC and LDC, for computing the said period of qualifying service, the past service in the Central Services and Customs Department should also be counted. Kuldip Singh, J. observed: (SCC p. 377, paras 10 & 11)

"We are of the view that the Tribunal fell into patent error in dismissing the application of the appellant. A bare reading

62

of para 2(ii) of the executive instructions dated May 20, 1980 shows that the transferee is not entitled to count the service rendered by him/her in the former Collectorate for the purpose of seniority in the new charge. ... But when she is so considered, her past service in the previous Collectorate cannot be ignored for the purposes of determining her eligibility as per Rule 4 aforesaid. Her seniority in the previous Collectorate is taken away for the purpose of counting her seniority in the new charge but, that has no relevance for judging her eligibility....

* * *

The Rule nowhere lays down that ... the service period of 5 years and 13 years is not applicable for an officer who has been transferred from one Collectorate to another on his own request."

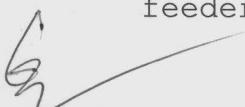
8. As such, affording seniority of 1980 (the date when the said respondent was promoted as UDC) is thoroughly illegal as the same would affect not only the promotion of the applicant but all others whose seniority in the grade of UDC or Supervisor reckons between 1980 to 1993.

9. The respondents have, in their written submission referred to the ad hoc service of the applicant followed by regular service and contended that the applicant is not entitled to the counting of seniority taking into account the ad hoc service and for this purpose, they have referred to certain decisions, including the case of Neki Ram and Ors vs Ama Raamgodaru (2001 (9) SCC 503). This has no relevance to the issues involved in this case. Similarly their contention about the seniority position in the



grade of Security Assistant and consequent change in the seniority of the applicant in the grade of Supervisor vis-à-vis two other individuals, Shri Y.C. Pandey and Shri D.P. Sharma is out of place as the matter herein confines only to the seniority position of the applicant and the private respondent. No opinion is expressed by us about the inter-se seniority position of the aforesaid individuals and the applicant in the grade of Supervisor (NT).

10. Thus, the respondents have erred in considering the respondent No. 4 for promotion to the post of Chargeman Grade II (NT), by taking into account his seniority as of UDC in the Ichapur Factory. The combined seniority list for promotion to the post of Chargeman Gr. II (NT) should take into account the seniority of the Private Respondent only w.e.f. 9-6-93, the day he was borne the strength of OEF Kanpur. It is only when he falls within the zone of consideration, that he could be considered for promotion to the post of Chargeman Gr. II (NT). A review DPC has thus become necessary to consider filling up of the vacancy arisen in early 1998 and for this purpose, a combined seniority list of UDC, Supervisor (NT) and Telephone Operator should be prepared afresh and the eligible persons in the feeder grade falling within the zone of



consideration should be considered and the suitable among them, as per rules, should be promoted. Such promotion shall be from the date the private respondent has been promoted, with notional fixation of pay from such date till the date the individual assumes the higher responsibility. However, in so far as the private respondent is concerned, there shall be no recovery on account of his erroneous promotion.

11. The applicant has prayed for a direction to the respondents to promote the applicant from the date the private respondent was promoted.

* Obviously his intention is that replacing the private respondent by his promotion would affect the promotion of the private respondent. But, what is to be seen is that when the vacancy for Chargeman II (NT) was only one, it may not be possible to accommodate two persons in the same post. Necessarily, a Review DPC should be convened as stated in the preceding paragraph.

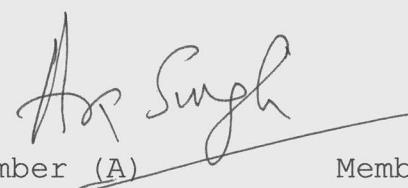
12. The OA succeeds to the above extent. The respondents are directed to conduct a review DPC and consider those candidates falling within the zone of consideration for promotion to the post of Chargeman Gr. II (NT) as stated above. The promotion shall be notional from 03-04-1998 till the individual actually holds the higher post and

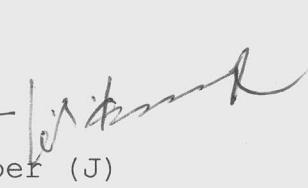
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notional increments be given to such promotees. If the applicant falls within the zone of consideration and is found suitable and promoted, he would be promoted as state above. The review DPC be conducted within a period of three months from the date of receipt of a copy of this order and till then, the private respondent shall not be reverted.

No cost.



Arvind Singh
Member (A) 

Nitin
Member (J) 

/pc/