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**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH**

2006 J. U.
OA No.805/2011

Allahabad this the 30th day of July J. U. 2012

Hon'ble Mr. A.K.Bhardwaj, Member (J)
Hon'ble Ms. Jayati Chandra, Member (A)

L.S.Srivastava
Son of Shri I.B.Srivastava,
Resident of H.No.778, MIG 'H'Block,
Vishwa Bank Colony,
Barra, Kanpur Nagar.

... Applicant

(By Advocate Shri R.K.Shukla)

VERSUS

1. Union of India, through the Secretary
Ministry of Defence, Deptt.of Defence
Production and Supply, Govt. of India,
New Delhi-110011
2. The Addl. D.G.O. F,
Ordnance Equipment Factories Group Hqrs.,
"Ayudh Upaskar Bhawan,
GT Road, Kanpur Nagar.
3. The General Manager,
Ordnance Equipment Factory,
Kanpur.
4. The Principal Controller of Defence Accounts,
(Pensions), Draupadi Ghat,
Allahabad.
5. The Branch Manager,
Allahabad Bank, Barra Branch,
Kanpur Nagar.

... Respondents

(By Advocate Shri H.Singh)

ORDER

Mr.A.K.Bhardwaj, Member (J):

Applicant was initially appointed as Labourer 'B' in Industrial Establishment of Metal & Steel Factory (MSF), Ishapore w.e.f. 27.12.1962. Subsequently he was appointed as Checker in Non Industrial Establishment w.e.f. 5.04.1965 and was promoted as LDC w.e.f.22.11.1971 in said factory. Applicant got further promotion as UDC

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w.e.f. 1.10.1980. While working as UDC in aforementioned factory, he applied for his mutual transfer to Kanpur giving an undertaking to forgo his seniority vide his consent letter dated 23.04.1993. In acceptance of his such request, he was transferred out of MSF (Ishapore) in the existing grade of UDC w.e.f. 4.6.1993 (AN) vide factory order Part-II No. 1429 dated 12.07.1993. Thus seniority of applicant in the grade of Supervisor 'B' at Ordnance Equipment Factory, Kanpur was to be reckoned from the date of reporting on the said post at the place of his transfer. One Shri K.D.Singh, Supervisor, OEFC filed OA 1488/1999 before this Tribunal which was disposed of in terms of order dated 16.11.2005. As per said order, a fresh combined seniority list of persons holding the post of UDC, Supervisor and Telephone Operator, Grade-1, as on 1.01.1998, was prepared to fill up the vacancies occurred w.e.f. 1.04.1998. Name of persons falling in the zone of consideration was put up before review DPC. The persons so recommended by review DPC were given promotion notionally from the date mentioned against their names. The name of applicant who was promoted to the post of Charge man-II (NT) w.e.f. 1.04.1998 as well as Charge man-I (NT/OTS) w.e.f. 1.08.2002 was deleted from the list of promoted persons vide Factory Order No. 366 dated 23.02.2006 as on the basis of his seniority he was not to be included in the zone of consideration. Admittedly, no recovery was made from the applicant by the factory management, keeping in view the order dated 16.11.2005 passed by this Tribunal in OA No. 1488/1999. In the aforesaid order, this Tribunal also viewed that the promotion of applicant to the post of Charge man, Grade-II (NT) on the basis of seniority as UDC from 1.10.1980 was erroneous as his seniority was to be reckoned w.e.f. 09.06.1993. RA No.02/2006 filed by applicant in OA 1488/1999 was disposed of in terms of order dated 27.02.2006 with a direction to

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respondent that consequent reversion of applicant, if any, to be resulted on account of deletion of his name from the list of the persons to be promoted as Charge Man-II and Charge Man-I, was to be regulated by the Department by following relevant rules and instructions on the subject. In the meantime, respondents issued order dated 23.02.2006 showing the name of applicant deleted from the list of persons promoted as Charge Man Gr.II (NT/OTS) and Charge Man Gr.I (NT/OTS) w.e.f. 1.4.2008 and 1.8.2002. Applicant made representation on 30.03.2006 to respondents questioning the deletion of his name from promotion order, in terms of aforementioned order dated 23.02.2006. Following the judgment of this Tribunal delivered on 16.11.2005 in OA No. 1488/1999, respondent rejected the said representation. Copy of order dated 18.4.2006 passed by respondent is placed on record as Annexure CA-9 to reply. Applicant has filed present OA questioning the order dated 23.02.2006 and consequent corrigendum issued by respondent modifying PPO dated 8.06.2006. He has not challenged the order of rejection of his representation, mentioned above.

2. It is noted that in OA 1488/1999, applicant was respondent No. 4. In the said OA, Tribunal noted the question involved for its determination as under:-

“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.”

Having noted the said question, this Tribunal answered the same as under:-

“7.The legal position is that when an individual requested for transfer from one unit to another, where separate seniority list is maintained for promotion, he has to accept the seniority as per the regularizations and his past 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 services 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 , (1991) 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 of para 2 (ii) of the executive instructions dated May 20, 1980 shows that the transferee is not entitled to count 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 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 reliance for judging her eligibility....."

The rule nowhere says that the 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 effect not only the promotion of the applicant but all others whose seniority in the grade of UDC or Supervisor reckons between 1980 to 1993."

From the aforementioned, it is clear that the service rendered by applicant between 1980 till 1993 was not to be taken into account for the purpose of determination of his seniority in OEF Kanpur. Being not in


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zone of consideration, applicant could not be considered for promotion for the post of Charge Man Grade-II and Charge Man Gr.1. The order dated 23.02.2006 assailed by applicant had been issued in implementation of order of this Tribunal. We do not find any reason to take a view different from one taken in OA No.1488/1999. Normally, the contention of applicant that his name was deleted from the promotion order without issuing show cause notice would have force but in present case, his name was deleted in implementation of order of this Tribunal. As such, the plea so raised cannot be accepted. Once this Tribunal found the consideration of applicant for his promotion on the basis of his seniority as UDC w.e.f.1.10.1980 as illegal, even after giving the applicant notice to show cause and getting his response, respondents could not have taken a view different from one taken in OA No. 1488/1999. Thus, it could be useless for them to give a show cause notice to applicant and call for his reply.

3. In the circumstances, we do not find any infirmity in the order passed by respondent deleting the name of applicant from the order of promotion to the post of Charge Man II (NT/OTS) and Charge Man-1 (NT/OTS) w.e.f. 1.04.1998 and 1.8.2002. Since we do not find any infirmity in deletion of name of applicant from promotion order, consequent direction for corrigendum amending the PPO of applicant is not called for. In their counter reply, respondents have already taken a stand that they have not recovered any excess amount paid to applicant as Charge Man Gr.I and Grade-II during the period he worked on said promotional post. OA is accordingly dismissed. No cost.



(Jayati Chandra)
Member (A)


(A.K.Bhardwaj)
Member (J)