

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No.537 of 1996

Present : Hon'ble Mr. Justice G.L. Gupta, Vice-Chairman
Hon'ble Mr. S. Biswas, Administrative Member

Phani Bhusan Dutta, S/o Late Mahendra Kr. Dutta, working as Sr. Auditor, Class V Section in the office of the Accountant General (Audit-II), West Bengal, 18, Rabindra Sarani (4th floor), Calcutta-1, residing at G-3, Nabadarsha, Birati, Calcutta-51

... Applicant

VS

1. Union of India, service through the Comptroller and Auditor General of India, 10, Bahadur Shah Zafar Marg, Indraprastha Head Post Office, New Delhi-110 002

2. Accountant General (Audit) 1, West Bengal, 4, Brabourne Road (2nd Floor), Calcutta-1

3. Account General (Audit) II, West Bengal, 18, Rabindra Sarani, Poddar Court (4th floor), Calcutta-1

... Respondents

For the Applicant : Mr. K. C. Saha, counsel
For the Respondents: Mrs. Uma Sanyal, counsel

: : Date of order: 30-04-2002

O R D E R

Per Mr. Justice G. L. Gupta.

The question involved in this case is whether the applicant is entitled to have the benefit of the service rendered by him in the Farakka Barrage Project (FBP for short) for the purposes of seniority in the grade of Upper Division Clerk (UDC).

2. The facts. The applicant was initially appointed on 16.11.1964 as UDC in the FBP. He worked there from 16.11.1964 to 11.12.1972, i.e., for 8 years 26 days. There was reduction of the establishment and shrinkage of the cadre in the FBP and therefore, a Special Cell was opened to absorb the staff of FBP to the other Ministry of Government of India. The candidature of the applicant was recommended to the Accountant General, West

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Bengal for absorption. Pursuant to the Memorandum dated 6.12.72 of the General Manager, FBP the applicant was released of his duties with effect from 11.12.72 as UDC to enable him to join under Accountant General, West Bengal vide office order dated 11.12.72. The applicant joined his duties under the said Accountant General as UDC on 12.12.72 after technical resignation as UDC in the FBP.

Thereafter the applicant made several representations to the competent authority for giving him the benefit of the past service of 8 years and 26 days rendered in FBP for the purpose of fixation of his seniority and promotion. To his representations dated 7.4.95 and 23.6.95 a reply was sent on 23.8.95 that in view of the extant orders and rules his prayer could not be granted.

The applicant's case is that when transfer TA was granted to him and earned leave, half pay leave etc. of the past service have been carried forward to his leave account, the service period of 8 years 26 days ought to have been added for seniority purpose also. It is stated that the applicant was promoted to the post of Sr. Auditor in the scale of Rs.1400-2600/- in September, 1989, whereas the persons junior to him had already been given promotion to the post of Senior Auditor in 1984 and thereby the applicant is getting less basic pay than his juniors. It is stated that similarly circumstanced UDCs who came from Post and Telegraph Department to the Accountant General Office have been given seniority keeping in view their past service.

It has been prayed that the service rendered by the applicant in the office of the FBP be taken into account for the purpose of fixing the seniority and promotion and he be given proforma promotion to the post of Sr. Auditor from the date his juniors were promoted.

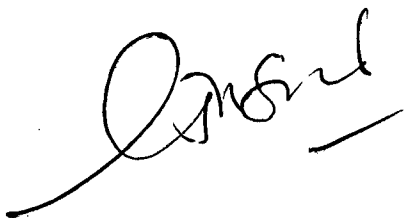


3. In the reply, the respondents' case is that the appointment of the applicant in the office of the Accountant General was made as a direct recruit and before joining service in the office of the Accountant General the applicant had been declared surplus. It has also been stated that the applicant had submitted technical resignation from the assignment in the FBP and he was fixed at the minimum of the time scale of Rs.130-300/in the office of the Accountant General and was treated as fresh recruit for all purposes. It has also been stated that in terms of O.M. dated 22.12.59 read with O.M. dated 30.11.63 and 6.2.69 surplus employees are not entitled to the benefit of the past service rendered in the previous organization. It has been stated that the case of ex-employees of the P & T Department stood on different footing. It has been denied that any of the juniors of the applicant was given promotion before 1989.

4. In the rejoinder, the applicant has stated that the promotion to the post of Sr. Auditor to his junior was given in the year of 1988 and not in the year 1977, as stated by him in his original application. It has been further stated that one Smt. Radha Rani Sen who was appointed as UDC in the Office of the Accountant General on 24.11.64 was given promotion superseding the applicant who joined as UDC on 16.11.64 in the FBP.

5. We have heard the learned counsel for the parties and perused the documents placed on record.

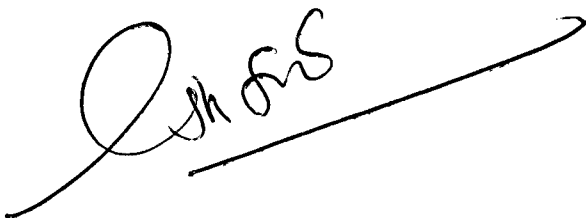
6. The contention of the learned counsel for the applicant was that there was no break in the service of the applicant as he had given technical resignation on 11.12.72 and joined in the



office of the Accountant General on 12.12.72 and therefore, for the purpose of fixing seniority, the service rendered by the applicant in the FBP, should be counted.

7. On the other hand, the contention on behalf of the respondents was that the applicant was treated to have joined in the office of the Accountant General as a fresh recruit and therefore, there is no question of fixing his seniority taking into effect the date of his joining in the FBP. In this connection, he also pointed out that after resignation the past service stands forfeited in terms of the Rule 24 of the CCS (Pension) Rules, 1972. His further contention was that the averment, regarding the supersession of the applicant in the matter of promotion to the post of Sr. Auditor, is vague and no name of the person junior to the applicant has been given in the OA.

8. We have given the matter our thoughtful consideration. The appointment order of the applicant issued by the Accountant General, West Bengal is Annexure 'A/3' dated 23.11.77. A reading of the order makes it clear that the applicant was appointed as a fresher on purely temporary basis and his services were liable to be terminated under Rule 5 of the CCS (Temporary Service) Rules, 1965. It is obvious that the applicant never objected to the terms of the appointment letter. He did not challenge the terms of appointment order even after joining in the office of the Accountant General. Therefore, it has to be held that there was no connection of the applicant's service in the Accountant General with the service rendered by him in the FBP.

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9. It may be true that the applicant was declared surplus from the FBP and he was offered the appointment after being declared surplus, but that will not change the position, when the applicant accepted the terms of appointment stated in the appointment order, Annexure 'A/3'.

10. Even on assuming that the applicant should be treated as a surplus employee, it will not make any difference. No Rule or order has been brought to our notice showing that the surplus employee's seniority should be reckoned from the date of his original appointment. Without any specific provision the applicant is not entitled to have the benefit of the service rendered by him in the FBP for fixing the seniority in the cadre of UDC in A.G. West Bengal.

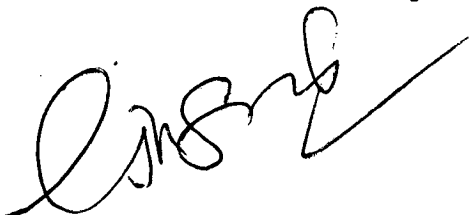
11. Here it is relevant to reproduce the O.M. dated 15.6.92 which has been printed in the Swamy's Complete Manual on Establishment and Administration at page 528:

"As per provisions of Rule 9 of Re-deployment of Surplus Staff and consolidated orders on seniority issued in Para 4.3.1 to 4.3.4 of O.M. No.22011/7/88-Estt. (D), dated the 3rd July, 1986, the re-deployed surplus employees are not entitled for benefit of past service rendered in the previous organization for the purpose of their seniority in the new organization. Such employees are to be treated as fresh entrants in the matters of their seniority, promotions, etc.

Many applications have been filed in the Central Administrative Tribunal claiming the benefit of pre-redeployment service for determining seniority in the new cadre on the ground that the redeployment is treated as transfer in public interest.

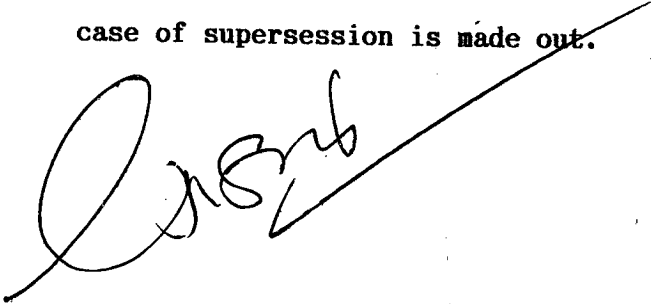
The issue raised was the subject-matter of the case and came to be finally decided by the Supreme Court. The Hon'ble Supreme Court has categorically held that such service does not count for determining seniority of the redeployed official in the recipient organization."

12. That being so, applicant is entitled to claim seniority on the basis of the past service.




13. As to the examples cited by the applicant that the Lower Division Clerks who were under the Post & Telegraph Department had been declared surplus and transferred and absorbed in the Accountant General in 1973 were given the benefit of past service in fixing the seniority, the reply of the respondents is that the employees who came from P&T Department or from the IA&AD were not surplus employees, but they had been transferred from their Departments to the Office of the Accountant General. It is obvious that the applicant is not similarly circumstanced employee to the employees of the P&T Department. Even on assuming that some surplus employees of Audit & Accounts Office were transferred and redeployed in the office of the Accountant General, the applicant cannot get the benefit of that action. No particulars of such employees have been given by the applicant and therefore, it is not possible to accept the plea of discrimination. Be that as it may, even if in some cases, orders had been issued by the respondent authorities de hors~~e~~ the Rules, this Tribunal cannot be justified in directing the respondents to follow the same practice.

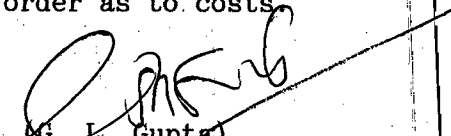
14. As to the supersession of the applicant by juniors also, there is nothing on record to believe. No instance of giving promotion to the junior has been given in the O.A. In the rejoinder, it has been stated that one Smt. Radha Rani Sen who was appointee of 24.11.64, has been given promotion prior to his promotion and he was an appointee of 16.11.64. It is obvious that Smt. Radha Rani Sen was appointed in the office of the Accountant General West Bengal in 24.11.64 and therefore, it was natural that she would get higher seniority than the applicant who joined in the A.G. as a fresh candidate on 12.12.72. Thus no case of supersession is made out.



15. For the reasons stated above, we do not find any merit in this O.A. Consequently, we dismiss it with no order as to costs.


(S. Biswas)

MEMBER (A)


(G. L. Gupta)

VICE-CHAIRMAN