

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH AT JODHPUR

Original Application No. 125 of 2008

Reserved on: 9.7.2012

Date of order: 13.7.2012

CORAM

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER  
HON'BLE MR. B K SINHA, ADMINISTRATIVE MEMBER

Jai Pal (MES N.370140) son of Shri Karna Ram,  
Resident of 1/191, Housing Board Colony, Near  
Jawahar Nagar, Near Hanuman Mandir, Sriganganagar,  
At present employed on the post of MCM under  
CWE Sriganganagar.

....Applicant

(By Advocate Mr. J.K. *mishra*)

Vs.

1. Union of India through Secretary to the Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Engineer-in-Chief, AHQ, Rajaji Marg, Kashmir House, New Delhi.
3. Commander Works Engineer, MES, Sriganganagar.
4. Shri Jarnail Singh (MES No.369454) MCM Office of Garrison Engineer, Lalgarh Jattan, Sriganganagar.

....Respondents

(By Advocate Mr. Kuldeep Mathur with Advocate Niranjan Mathur for R.1to3)  
(Advocate Mr. Vijay Mehta for R.4)

ORDER

Per: B K Sinha, Administrative Member

In the instant case the applicant has challenged the validity of the order communicated vide E-in-C AHQ letter No.79040/RPO/EIC(1) dated 8 Oct 86 [A1] of the Director Personnel (MES) Engineer in Chief.

Relief sought:

The applicant has sought the following relief:

- (i) *That the order dated 11.7.1996 passed in OA No.1589/1993 TKK Joseph Vs. Union of India and ors by Madras Bench of this Hon'ble*

*Tribunal (Annexure A/6) may be declared as per incurium and having no applicability to the instant case.*

- (ii) *That impugned policy dated 8.6.1986 (Annexure.A1) may be declared illegal and the same may be struck down being unconstitutional.*
- (iii) *The impugned order dated 27.2.2008(Annexure.A/2) may be quashed and set aside. The respondents may be directed to treat the applicant as senior to the 4<sup>th</sup> respondent and hold a review DPC as directed by Command HQrs and allow all consequential benefits to the applicant, at par with his next junior including arrears of difference of pay along with market rate of interest.*
- (iv) *That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.*
- (v) *That the costs of this application may be awarded.*

2. This is a case which has been doing rounds of the court regularly in the sense that this is for the third time that this Tribunal considers it. The applicant had come for the first time vide OA 90/1999 decided vide 30.3.2001 over the question of determination of eligibility for notional promotion with retrospective effect. In the second round he challenged the order at A.1, the policy regarding the transfer of civilian employees under the Engineer-in-Chief, Army Headquarters on compassionate grounds. Simply put, the applicant was appointed as a Carpenter at Lalgarh Jattan under CWE Sriganganagar in the year 1988; was promoted to Carper H.S-II in 1987 and passed the Trade Test for promotion as Carper H.S-I on 1.5.1996. On 1.1.1996 there was a merger of Carpenter H.S.I and Carpenter H.S.-II as a consequence of which the applicant became Carper H.S-I. The case of the applicant is that one Jarnail Singh who had been admittedly appointed in the year 1981 at GE, Suratgarh under CWE Sriganganagar and opted for mutual transfer in 1984 to Lalgarh Jattan. The applicant claims that Jernail Singh who figures as respondent No. 4 in the instant case as a consequence of his transfer on compassionate grounds stood to be deprived of his seniority and should have been placed last at the end of the seniority list in force at that time of his reporting vide CPRO 73/73. Instead he was given seniority of 1980 when he had not even joined the service. This matter was brought before the DB of the Hon'ble Kerala High Court which upheld the policy enunciated in CPRO 73/73. The matter was further clarified vide CPRO 11/75 that the revised principle of seniority were applicable

with effect from 1st July, 1973. However, the Madras Bench of the Tribunal in OA 1589/93--TKK Joseph Vs. Union of India and another held that the new principle of seniority as enunciated by the Kerala High Court would apply from 16.12.1985. Prescription of this cut off date is under challenge by the applicant as being violative of Article 14.

3. The matter was heard and the Division Bench of this Tribunal vide order dated 5.9.2011 made a reference to the Full Bench in respect of the following:

**(i) The Hon'ble Division Bench of Kerala High Court, while upholding the judgment passed by the Single Bench of that court, had upheld the applicability of CPRO 73/73, resulting in the issuance of the impugned circular dated 8.10.1986 (Annexure.A/1). On the other hand, the Madras Bench of this Tribunal had placed reliance on the impugned circular Annexure.A/1, and said that the instructions would apply from the date mentioned in the circular, even though the circular itself was not under challenge before the Madras Bench of the Tribunal. The date of applicability of the revised instructions for determination of seniority has therefore to be determined, which would determine the vires of the impugned circular at Annexure-I which fixes that date to be 16.12.1985.**

**(ii) The second issue to be placed before the Full Bench is that when new units are created, and the existing incumbents find themselves involuntarily placed in the jurisdiction of the newly raised unit, whether in such a case CPRO 73/73 would be applicable or not, and as to whether, like in the case of Railways, in case of creation of new Zonal Railways/Divisions, non fortuitous level of seniority brought to his credit by the individual on the date of his finding himself placed involuntarily in the newly raised formation would guide his level of seniority in the concerned cadre in the new formation or not.**

4. The Hon'ble Full Bench vide its order dated 27<sup>th</sup> March, 2012 considered the issue and set them at rest as follows:

**(16) The first point in reference is therefore answered by stating that the Executive was not within its powers to have arbitrarily prescribe the artificial cut-off date of 16.12.1985 for the revised principles of seniority to be made applicable, as was sought to be made through its letter dated 8.10.1986 (Annexure.A/1 of the present OA).**

**(17) Coming to the second issue, the arguments advanced by both the parties were considered in detail. It is noted here that it has already been held by the Hon'ble Supreme Court that the Indian Railway Establishment Manual (IREM) Vol.I (revised edition 1989) lays down good law, and the principles laid down in Para 313-A of the IREM relating to assignment of seniority to re-deployed surplus staff, Para 314 relating to determination of seniority when the date of**

*appointment to a grade is the same, and Para 320 relating to the relative seniority of employees in an intermediate grade belonging to different seniority units appearing for a selection/non-selection post in higher grade, have been upheld to have laid down good law. Therefore, in parallel cases, in the present respondent department also, if and when new seniority units are created, and the existing incumbents find themselves involuntarily placed in the jurisdiction of the newly raised seniority units, they would carry their non-fortuitous level of the seniority brought by the individuals joining the group, on the date of the individual finding himself placed involuntarily in the newly created seniority formation, and since this would not be a case of compassionate voluntary/request transfer from one seniority unit to another, the instructions of CPRO 73/73 would not be applicable in such cases.*

5. This Tribunal heard the learned counsel for the parties. While submitting to the finding of the Hon'ble Full Bench, the only argument made for the applicant was that the second term of reference is not relevant to this case as the dispute relates to the simple issue that whether the Respondent No.4 stood to lose his seniority as a consequence of the transfer on compassionate grounds. The learned counsel for the respondents argued that the claim of the applicant was time barred as it related to the year 1984.

***Case cited by the Respondent No.4:***

(I) **Vijay Kumar Kaul and others Vs. Union of India and others, (2012) (134) FLR 8 (SC) (Civil Appeal Nos.4986-4989 of 2012).**

6. The argument of the respondents has been considered. The applicant has agitated this issue on several occasions. He made several attempts to get his case redressed and also filed an OA 90/1999 which was dismissed as being hopelessly barred by time[R1]. However, he made representations which was disposed of vide the communication dated 13<sup>th</sup> August, 2007 from the Headquarters, Chief Engineer, Western Command, Chandimandi as under:

***"1. Reference your HQ letter No.30224/47-EIC-II dated 31 May 2007.***

***2. In this connection it is submitted that as per CPRO 73/73, seniority of industrial personnel posted from other area on compassionate grounds/mutual basis will be counted from the date they have reported in new area. According to CPRO 73/73 the seniority of Shri Jarnail Singh should have been counted from the date he has reported to CWE Sriganganagar area i.e., 17 Nov 1984 whereas he was given the seniority in carp HS-II w.e.f 15 Oct 1984 based on his date of appointment (i.e., 23 Jul 1981). Though Shri Jaipal filed OA 90/1999 on***



*the matter, Hon'ble CAT Jodhpur dismissed the same being time barred.*

**3. It is further intimated that consequent on implementation of restructuring policy, both the above mentioned individuals have been given placement as MCM wef 20 May 2003 while Shri Jarnail Singh stands at Ser No.3 in the placement order Shri Jaipal is at Ser No.4.**

**4. Shri Jarnail Singh reported CWE SGNR area from CWE Bikaner ie., 17 Nov 1984 and PTO to this effect published by copy of GE Lalgarh Jattan PTO No.47 dated 19 Nov 1984 under which the causality regarding TDS of Shri Jarnail Singh published is enclosed herewith as desired please."**

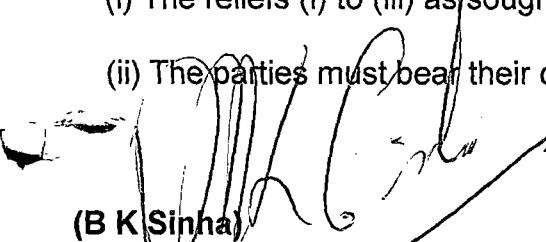
7. The instant OA flows as a consequence of the above communication. Hence,

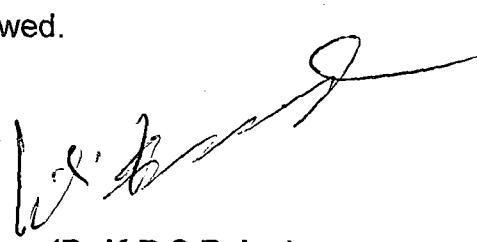
This Bench is of the opinion that the application is not barred by limitation of time. At the same time we also find that the reference point No.2 made earlier by this Tribunal is not relevant facts of the instant case as what is under challenge is the basic principle of laws of seniority as a consequence of compassionate transfer which has been set adequately at rest by the Hon'ble Full Bench. The seniority to be decided as a consequence of merger/re-deployment of staff is not under challenge and, hence, is not an issue here.

8. In view of the afore discussions we direct herewith as follows:

(i) The reliefs (i) to (iii) as sought by the applicant are allowed.

(ii) The parties must bear their own costs.

  
(B K Sinha)  
Administrative Member

  
(Dr. K B S Rajan)  
Judicial Member

pps.