

In the Central Administrative Tribunal
Calcutta Bench

OA No.1439/97

Present : Hon'ble Mr. Justice G.L.Gupta, Vice Chairman
Hon'ble Mr.S. Biswas, Member(A)

- 1) Kohinoor Prakash Shah, S/o Shri R.Shah, aged about 31 years working for gain as Orderly, Factory Health Clinic, residing in Or.No.M-128 Dum Dum Estate, Calcutta-28
- 2) Umesh Ch. Dey, S/o Late P.K. Dey, aged about 32 years working for gain as Orderly, LIE, now residing in No.379, M.N.K. Road, Calcutta-36
- 3) Nirmal Das, S/o Late M.G. Das, aged about 32 years, working for gain as Orderly/GM's Sectt. now residing at Airport 1 No. Gate, Italgacha Road, Pritilata Sarani, Calcutta-79
- 4) Montu Mondal, S/o Late S. Mondal, aged about 30 years, working for gain as Orderly S.O., now residing at 51/1/AM Neogipara Road, Calcutta-36

...Applicants

-Vs-

- 1) Union of India, Service through Secretary, Ministry of Defence, New Delhi-1
- 2) Secretary, Ministry of Defence, New Delhi - 1
- 3) General Manager, Ordnance Factor, Dum Dum, Calcutta-28
- 4) Director General, Ordnance Factories, Calcutta-1

....Respondents

For the applicants : Mr.B.C. Sinha

For the respondents : Mr.S.K. Dutta

Date of Order 29.7.02

ORDER

Mr.S.Biswas, Member(A) :

In this application under Sec.19 of the Administrative Tribunal Act, 1985, the petitioners seek the following relief :

i) a direction to the respondent authorities that consequent upon his redesignation/conversion him non-Industrial Establishment (Gr.D) his entire seniority from the date of appointment be counted. Further he sought quashing of the order dated 22-6-95 (A4 to the OA).

2. The applicants' case is that they were non-Industrial Group D employees under the respondents. They were asked to opt for Industrial Establishment from NIE by signing a prescribed format for option as contained in the circular No.1/111 dated 26-6-93 (A/3 to the OA). The declaration is appended below the circular for filling

and signing by the Optee. This Circular is also preceded by another circular dated 19-12-91 (A1 to the OA). The policy for transfer of NIE Gr.D Staff to IE equivalent was also pronounced in this Circular of D.G. O.F.

3. The applicants opted for the transfer by signing the declaration by merely filling up their name/P.O. No./Sec and designation. There was no whisper in these Circulars that they would be required to compromise their seniority as a sequel to this transfer. When this matter of transfer was reopened after a long time by this order dated 19-12-91 etc., all that precondition was spelt in para 3 of the letter was that the redesignation to the optee was subject to approval by the O.F. Board on the same terms and conditions applied in cases of compassionate ground appointments in NIE. It was further envisaged that redesignation would be considered further on the basis of the seniority of the volunteers.

4. To their utter shock however they found that in the respective P.O. Part II dated 27-7-93 and 22-6-95, orders of redesignation, their seniority was treated as forfeited and it was held to be reckoned from the date of their redesignation - irrespective of what their original seniority in NIE was there before redesignation. The cause of action has statedly arisen here as the applicants vis-a-vis their counterparts Group-D labourers from I.E. stand to lose a number of years of Group D service which they had put in in NIE before redesignation and coming over to IE on transfer. In the result the respondents did not call and consider the applicants for trade test held vide order No.293 Part I dated 29-11-95 (A8) - though the applicants clearly had 3 years service in Group-D had their services prior to redesignation would have been ~~corrected~~ considered

5. We have heard the counsel of both the rival parties and perused the documentary submissions carefully.

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6. The moot point for consideration is whether after transfer and redesignation on option from NIE to IE by the applicants, they are eligible to count their past services in the NIE in computing their seniority in the present redesignated posts (IE) like their counterpart Group D labourers who come from I.E. itself. Secondly, whether there is any force in the allegation that the applicants were illegally asked to forfeit their past seniority and that the policy set out in the circulars stipulated no such surrender of seniority of the past and equivalent Group D services.

7. The respondents counsel has placed before us an order/circular dated 27-1-1980 on the subject of redesignation by ~~the~~ transfer from NIE to NE of Class IV staff NIE.

Serially

8. In this Circular of 1980, there was a clear stipulation ~~on~~ in para 4 and 5 as reproduced below :

"4. Before redesignation is accepted, a written undertaking from the individual that he is willing to forego all the benefit of NIE service like seniority etc. (except pension)....

5.on redesignation to labourer the seniority of the individuals in the I.E. for the purpose of future promotion will be reckoned from the date of redesignation".

9. Some limited exception was also made to regularisation of messenger boys attaining 18 years which does not attract any of the applicants.

10. The claim of the applicants that they were grafted to Group-D I.E. post by redesignation and transfer as per the given option without any words of surrender of past services, has been disputed by the respondents on the basis of this 1980 circular which as we have emphasised and seen contained a clear adverse stipulation clause regarding how the past services of the incumbents undertaking to do so, would go ^{after the} ~~an~~ redesignation and therefore, it would not be reckoned in the I.E. Group D posts.

11. The learned counsel for the respondents also placed reliance on the words "I understand all the implications of my request for transfer from NIE to I.E. as labour Gr.B (US)". *in the option letter*

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12. In appreciation of the submissions, we have also considered the fact that certain other individuals like S. Balmiki and S.D. Sharma's Case, are not comparable to this context as they hailed from the I.E. Organisation itself and suffered no redesignation by transfer from NIE like the applicants. They were either labourers of I.E. or line mistry who belonged to skilled category. They were not required to compromise their seniority like the applicants from NIE seeking grafting on compassionate grounds in their own interests of better job future which IE had offered to them.

13. We are not able to factually accept the contention of the respondents that the option letter dated 26-6-93, contained any specific acceptance that their past services in Group D would be forfeited. In any case this option/undertaking was made in response to the immediate policy circular dated 26-6-93 - which is silent on how the past services of the incumbent is to be dealt. Even the circular dated 19th December, 1991 is silent on any such stipulation which would adversely tell upon the past seniority of the applicants. This circular only spells the fact that these appointment on transfer and redesignation would be simply treated as compassionate appointment.

14. It therefore does not follow that these intervening circulars dated 19-12-91 and 26-6-93 revived the policy pronouncements of 1980 order - which were not even referred to the recent orders. Hence, the applicants had no knowledge of these preconditions, when exercising the option.

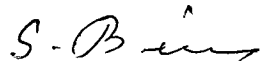
15. However, the applicants had all the same accepted the orders of redesignation dated 27-7-93 and 22-6-95, containing these stipulation in seniority which has seemingly and adversely affected their career prospects and they immediately took the matter with the respondents authority through their representations for redressals which till date have not been replied.

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16. In our considered view since this transfer was to be finally treated as a compassionate transfer as per the order dated 19-12-91 the applicants deserved placement in the seniority list accordingly without being asked to forfeit "eligibility" for appearing in the trade test for higher posts in consideration of their past service and strictly this request would not amount to questioning the seniority of the I.E. employees, who enjoy longer years of skilled job experience and position than the newly grafted NIE entrants. They could be placed at the bottom, but granted eligibility for appearing in the Trade Test by virtue of their past service, as per rules obtaining in the matter, i.e. compassionate transfer.

17. For the present, we remand the pending representations to be considered by the respondents in the light of our observations within 3 months of communication. Further, the respondents would pass appropriate and reasoned orders.

18. The OA stands disposed of. No costs.



(S. Biswas)
Member (A)



(G.L. Gupta)
Vice Chairman