

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. No.246 of 1997

Present: Hon'ble Dr. B.C. Sarma, Administrative Member
Hon'ble Mr. D. Purakayastha, Judicial Member

Ashoke Kumar Goswami
Office Supdt. Gr.II/L.B. under

O.F.B., Dum Dum, Jessore Road

Calcutta-700 028

... Applicant

VS

1. Union of India
Through Secretary,
Ministry of Defence,
New Delhi

2. Chairman,
Ordnance Factories Board,
Auckland Place,
Calcutta-700 001

3. General Manager,
Indian Ordnance Factory,
Dum Dum, Jessore Road
Calcutta-700028

4. D.K. Bhattacharjee

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5.K.K. Chakraborty

6. P.K. Roy,

7. A.K. Rakshit
All working as OS Gr.II in the
Ordnance Factory, Dum Dum,±
Jessore Road,
Calcutta-700028

8. A.K. Goswami,

9. G.C. Roy,
All working as UDC in the Ordnance Factory,
Dum Dum, Jessore Road,
Calcutta-700028

... Respondents

For the Applicant : Mr. A.K. Banerjee, counsel

For the Respondents: Mr. M.S. Banerjee, counsel

Heard on 20.2.1998

: :

Date of order: 20.2.1998

O R D E R

B.C. Sarma, AM

The admitted position in this case is as follows:

The applicant was initially appointed as a Solderman with effect from 6.1.1961 at Gun and Shell Factory, Cossipore. He was promoted to Machinist 'C' and subsequently to Checker with effect from 19.12.1962. He was transferred from Gun and Shell Factory,
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Cossipore to Ordnance Factory, Dum Dum with effect from 1.4.1964 and promoted from Checker to Lower Division Clerk with effect from 27.3.1970 and from Lower Division Clerk to Upper Division Clerk with effect from 15.12.1980 and after granting notional seniority, as discussed by the respondents in their reply at sub-paras 'C' and 'd' of para 3, the seniority list, dated 1.1.1991, was published and as per that seniority, the applicant was promoted to the post of Upper Division Clerk to O.S. Grade II with effect from 31.12.93. During 1995 on a reference to Ordnance Factory Board Headquarters, it was clarified by OFB that in the light of judgments delivered by Central Administrative Tribunal, Madras Bench and Jabalpur Bench in OA No.108 of 1986 and O.A. No.434 of 1987 respectively, seniority in the post of Upper Division Clerk has to be reckoned from the date of holding of Lower Division Clerk post and not from holding any post in even lower grade i.e., Checker. It has also been clarified by Ordnance Factory Board Hqrs. that seniority in the grade of Lower Division Clerk will be reckoned from the date of holding the post of Lower Division Clerk even in respect of those who were Checkers prior to 22.5.1972 and promoted to Lower Division Clerk prior to that date. Accordingly, the seniority of the applicant vis-a-vis others was refixed and he has been reverted from the post of O.S. Grade II to the post of Upper Division Clerk by an order dated 24.2.97. The applicant made a representation against the said reversion, but that was turned down and hence, the petition.

2. The applicant contends in the application that since he has been enjoying the benefit of Lower Division Clerk, Upper Division Clerk and also the promotional benefit of O.S. Grade II as per the judgment of Hon'ble Apex Court in the case of Lalji Dube and others v. Union of India and others, reported in AIR 1974 SC 252, he cannot be reverted whimsically since such promotion was on the basis of the said Hon'ble Supreme Court's judgment. The applicant further contends that no opportunity was given to showcause against the purported order of reversion and hence he has prayed for quashing the seniority list and also the impugned order of reversion.



Contd...3/-

3. As stated already the case has been opposed by the respondents by filing a reply and the stand taken by the respondents has already been narrated in para 1 above. The respondents contend that the impugned order reverting the applicant from the post of O.S. Grade II to U.D.C. has been issued on the basis of the judgment passed by the Central Administrative Tribunal, Madras and Jabalpur Benches and hence there is no infirmity, as alleged by the applicant. They have, therefore, prayed that the application be dismissed on the ground that it is devoid of any merit.

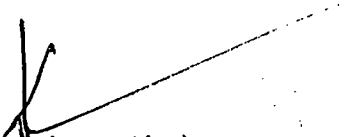
4. The matter has been carefully considered by us after hearing the submissions of the learned counsel of both the parties and perusing the records. We have also perused the judgments of the Hon'ble Apex Court in the case of Lalji Dube. We find that while this judgment has given the benefit of Lower Division Clerk to the persons holding the post of Checkers in different factories under the Ministry of Defence, Hon'ble Apex Court did not go into the question about the modality of fixation of inter-se seniority of such persons after ^{being} redesignated as Checkers and also those ^{who} were functioning as Lower Division Clerks. This question was subsequently dealt with by the two judgments of the Central Administrative Tribunal of Jabalpur Bench and Madras Bench and as per the said direction, the Army headquarters had also issued necessary instruction on the basis of which there was a stipulation that seniority in UDC has to be reckoned from the date of holding of LDC post and not from holding any post in even lower grade i.e., Checker. It has also been clarified that seniority in the grade of LDC will be reckoned from the date of holding the post of LDC even in respect of those who were Checkers. We find that the respondents have taken action on the basis of the said instruction from the Army headquarters, which was on the basis of the orders passed by the Central Administrative Tribunal, Jabalpur Bench and Madras Bench. The learned counsel for the applicant contends that no opportunity was given to showcase against the impugned order of reversion, but the records show, as per his own Annexure/C at p.23 that he was given a notice dated 11.2.97 asking him to file representation. We further note that the



seniority was revised, as set out in Annexure/D to the application and in that revised order mention was made about the judgments passed by the Central Administrative Tribunal, Jabalpur Bench and Madras Bench.

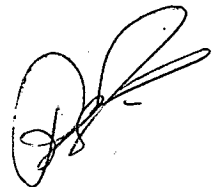
5. Mr. A.K. Banerjee, learned counsel for the applicant argues that the respondents have taken up pick and choose policy in fixing up seniority and he has cited instances of two other persons who were given seniority in the grade of UDC on the basis of the judgment of the Allahabad Bench. We would like to observe that the right of a Government employee accrues not from any comparison but from law. As we have already stated, the issue regarding the interse seniority of such employees was ^{gone into} ~~drawn~~ up subsequently on which two judgments were passed by the Jabalpur Bench and the Madras Bench and the applicant cannot derive any benefit on the face of such decision, particularly when the Defence authority had issued categorical instruction in this regard, which has not been challenged before us.

6. In view of the above facts and reasons we do not find any merit in the application. Accordingly it is dismissed without passing any order as to costs.


(D. Purkayastha)

MEMBER (J)

20.2.1998



(B. C. Sarma)

MEMBER (A)

20.2.1998