

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 420/89 ~~XXXXXX~~ 1990

DATE OF DECISION 31.12.1990

C.P.Madhusoodanan Applicant (s)

Shri M.Girijavallabhan Advocate for the Applicant (s)

Versus

Union of India represented by Secretary, Ministry of Defence and 2 others Respondent (s)

Mr. NN Sugunapalan, SCGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji - Vice Chairman

The Hon'ble Mr. A.V. Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? W
4. To be circulated to all Benches of the Tribunal? W

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 14.7.1989 filed under Section 19 of the Administrative Tribunals Act, the Applicant who has been working as Assistant Store Keeper, Naval Stores Depot, Cochin under the Southern Naval Command has prayed that his casual uninterrupted service from 3.4.79 should be reckoned for the purpose of seniority with all consequential benefits. He has also prayed that a review D.P.C. should be directed to be convened for review of the Select List at Annexure-D for promotion as Store Keeper

on the basis of his revised seniority. The brief facts of the case are as follows.

2. According to the applicant he was appointed as Assistant Store Keeper with effect from 3.4.79 against an existing vacancy and in accordance with the order dated 23.11.1988 (Annexure-A) he was appointed as Assistant Store Keeper on a quasi permanent basis with effect from 3.4.82. He had never any break in his service from 3.4.79. His grievance is that in the Seniority List published on 28.11.1985 (Annexure-B) he was shown at Sl.No.261 by counting his seniority on the basis of 12.8.80 as the date of regular appointment as Assistant Store Keeper instead of 3.4.79. His representation dated 20.3.88 (Annexure-C) challenging the wrong seniority did not evoke any response but on the other hand in the Select List for ~~the~~ promotion as Store Keeper at Annexure-D his name was not included whereas those who are junior to him were included. If his seniority had been fixed on the basis of his continuous service from 3.4.79 he would have come between Sl.Nos 207 and 208 of the Seniority List and ~~thus~~ ^{thus} figured in the Select List.

3. According to the respondents, the applicant was appointed as Assistant Store Keeper on a casual basis from 7th March, 1979 and on expiry of the first engagement he was given further appointment against short-term vacancies from 3rd April, 1979 and absorbed against a permanent post with effect from 12.8.80. They have referred to the Ministry of Defence's letter dated 24th November, 1967 (Annexure-R.1) in accordance with which casual employees who were absorbed against regular vacancies were eligible for seniority from the date of their continuous casual service prior to their absorption. However, in accordance with the amendment issued on 27.5.1980 (Annexure.R.2), casual employees who were absorbed after the issue of that corrigendum, the service rendered on casual basis prior to regular absorption would not count for seniority. According to them as the applicant was absorbed in a permanent vacancy on 12.8.80 ie., after the issue of the Corrigendum dated 27.5.80 he was not entitled to count his casual service for seniority. The respondents, however, have conceded that his casual service was continuous from 3.4.79 and he was granted periodical increments from that date. They have also conceded that on completion of three years of service,

PT

he was granted quasi permanency also but they have argued that grant of quasi permanency status and seniority are two different issues. They have gone to the extent of arguing that the grant of quasi permanency to the applicant was itself erroneous.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The admissibility of continuous casual service prior to regularisation for the purpose of seniority in the context of the Ministry of Defence's letter dated 24.11.67 and the corrigendum issued on 27.5.80 was considered by the Full Bench of this Tribunal in O.A.434/89 and O.A.609/89 in its judgment dated 29.11.90. The Full Bench inter alia decided as follows:

"The benefit of seniority to casual employees who were regularised in accordance with the Ministry of Defence letter dated 24.11.1967, can be given from the date of initial appointment on a casual basis, if the breaks in service are condoned, irrespective of the availability of a regular vacancy. The corrigendum issued on 27.5.1980 will not apply to regularisation from dates prior to the date of its issue, as in the present case."

In the above light, the case before us boils down to the question whether the applicant was regularised before 27.5.80 or after that. If it is decided that he was regularised before that date, he would be entitled to reckon his entire service from 3.4.79 for seniority in the grade of Assistant Store Keeper, otherwise not. The

crucial document to decide this issue is the order dated 23.11.83 at Annexure-A which reads as follows:

"DECLARATION AND ORDER OF APPOINTMENT UNDER RULES 3 and 4 OF THE CENTRAL CIVIL SERVICES (TEMPORARY SERVICE) RULES 1965.

In pursuance of Rules 3 and 4 of the Central Civil Services (Temporary Service) Rules, 1965 I Commodore K.K.Malhotra, Chief Staff Officer (P&A) being satisfied, having regard to the quality of work, conduct and character of Shri C.P.Madhusoodhanan, ASK that he/she is suitable to be appointed in a quasi-permanent capacity under the Government of India in the post/grade of Assistant Store Keeper with effect from 3rd April, 1982 hereby appoint the said Shri C.P.Madhusoodhanan in a quasi-permanent capacity to the said post/grade with effect from the said date."

The respondents themselves have conceded that the applicant was given quasi permanent status as he had completed three years of service. In accordance with Rule 3 and 4 of the Central Civil Services (Temporary Service) Rules, 1965, quasi permanency is given only on completion of three years of temporary service and not otherwise. Three years of casual service cannot qualify for quasi permanency. The fact that the applicant was given quasi permanency from 3.4.82 shows that the respondents had recognised the entire service from 3.4.79 to be temporary regular service and not casual service. This is further corroborated by the fact that the respondents have conceded that the applicant was being given periodical increments right from 3.4.79. A casual worker is not entitled to periodical increment. Further, one

may note that whereas his service for quasi permanency has been recognised from 3.4.79 the respondents have conceded that he was employed on a casual basis as Assistant Store Keeper on 7.3.79. Therefore, it cannot be stated that his casual service was erroneously taken to be temporary regular service for the purpose of quasi permanency. ^{Ths.} Date of commencement of casual service being 7.3.79 is different from the date of commencement of service, which has been recognised for quasi-permanency as 3.4.79. The respondents' plea that quasi-permanency was given erroneously cannot be accepted at this stage when they themselves have not done anything to rectify the mistake till now when about seven years have elapsed after the order of quasi-permanency was passed on 23.11.83. Further the order of 23.11.83 giving the applicant quasi-permanent status with effect from 3.4.82 was passed under Rules 3 and 4 of the Central Civil Services (Temporary Service) Rules and not in accordance with the order of the Ministry of Defence dated 24.11.67. It is true that the corrigendum of 27.5.80 states that casual services prior to regularisation would not count for quasi-permanency but it also states that seniority and quasi-permanency will be governed by orders issued from time

to time. The respondents have clinched the issue in the order of quasi-permanency itself at Annexure-A by declaring unambiguously that the quasi-permanency is conferred under Rules 3 and 4 of the Temporary Service Rules. The respondents have cryptically without specifically denying the averment of the applicant that he was regularised with effect from 3.4.79, simply stated that "the applicant was absorbed into a permanent post with effect from 12.8.80". For the purpose of seniority absorption in a permanent post or temporary post is not relevant. What is relevant is whether the applicant was regularised or not. Since the facts of this case are self-evident and show that the applicant was absorbed in a temporary vacancy with effect from 3.4.79 and given quasi-permanency, after completion of three years of temporary regular service on 3.4.82, the applicant will have to be deemed to have been regularised with effect from 3.4.79. This date being prior to the date of issue of corrigendum dated 27.5.80, in accordance with the decision of the Larger Bench the applicant will be entitled to the benefit of seniority with effect from 3.4.79 in the grade of Assistant Store Keeper. Since in the impugned (Annex-B) seniority list amongst the Assistant Store Keepers whose date of entry in service for the purpose of seniority is 3-4-79 Shri S.K.Kasi at Sl.No.208 was born on 12.9.55

while the applicant was born on 26.4.54 he should be placed above Shri Kasi and below Shri A.K.Balachandran at Sl.No. 207 whose date of birth is 15.2.52 and who was also appointed as Assistant Store Keeper on 3.4.79. Since S/Shri S.K.Kasi and G.N.Muraleedharan Nair included in the impugned Select List at Annexure-D, ^{one thus h} ~~both~~ both ~~h~~ junior to the applicant, the applicant also should be considered for promotion as Store Keeper by a review D.P.C. as claimed by him.

5. In the conspectus of facts and circumstances, we allow the application and declare that the applicant should reckon his service from 3.4.79 for the purpose of seniority in the grade of Assistant Store Keeper and ^{be} placed between Sl.Nos. 207 and 208 in the ^{Seniority} ~~new~~ List at Annexure-B. We further direct that on the basis of the revised seniority, the respondents should convene a ^{Review} D.P.C. to consider the applicant for inclusion in the Select List for promotion to the grade of Store Keeper and if selected place him in an appropriate place in the Select List at Annexure-D. It is clarified that the respondents need not assess those who have already been included in the Select List. It is further directed that the applicant if selected should be notionally promoted

-: 9 :-

to the grade of Store Keeper from the date the
officer² immediately below him in the Select List was
so promoted, with all consequential benefits of pay,
allowances and seniority in the grade of Store Keeper.
Action on the above lines should be completed within
a period of three months from the date of communication
of this order. There will be no order as to costs.


(A.V. HARIDASAN) 31/12/90

JUDICIAL MEMBER


(S.P. MUKERJI)
31.XII.90
VICE CHAIRMAN

31.12.1990

Ks.