

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 125/ 2006

Friday, this the 22nd February, 2008.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE MRS O.P.SOSAMMA, ADMINISTRATIVE MEMBER

S.Subramanian,
Senior Auditor, A/c No.8333422,
Pay Accounts Office (Other Banks),
Defence Security Corps,
Mill Road, Kannur-670 013.

....Applicant

(By Advocate Mr V Ajith Narayanan.)

v.

1. Union of India
represented by its Secretary,
Ministry of Defence,
New Delhi.
2. The Controller General of Defence Accounts,
R.K.Puram, New Delhi.
3. The Controller of Defence Accounts,
Anna Salai, Theynampet,
Chennai-18.
4. The Assistant Controller of Defence
Accounts (In charge),
Pay Accounts Office (Other Ranks),
Defence Security Corps,
Mill Road, Kannur-670 013.
5. The Director,
National Savings Institute,
CGO Complex, 'A' Wing,
4th Floor, Seminary Hills,
Nagpur-440 006.
6. Regional Director,
Tamil Nadu, Kerala & Lakshadweep,
'C' Block, 'D' Wing, Rajaji Bhavan,
Basanth Nagar, Chennai.

....Respondents

(By Advocate Mr.TPM Ibrahimkhan, SCGSC)


This application having been finally heard on 22.1.2008, the Tribunal on 22.2.2008 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

This O.A is directed against Annexure A-8 order of 4th respondent, the Assistant Controller of Defence Accounts (In charge), Pay & Accounts Office (Other Ranks), Defence Security Corps, Kannur, dated 14.1.20-04 stating that the applicant's request regarding counting of his previous service rendered in the National Savings Organisation (NSO for short) for seniority/promotion etc. in Defence Accounts Department (DAD for short) was considered by the Controller General of Defence Accounts (CGDA for short) but the same was rejected. He has, therefore, prayed that the aforesaid Annexure A-8 letter may be quashed and set aside and direct the 2nd respondent to count the service rendered by him in the NSO from 15.2.1971 to 20.3.1994 also along with the service rendered by him in DAD and to refix the seniority in DAD with all consequential benefits.

2. The following few facts are relevant to appreciate the claim made by the applicant: The applicant rendered service with effect from 15.2.1971 to 19.12.1992 in the NSO under the Department of Economic Affairs. Vide Annexure A-1 order No.11377-393/Admn/8-31/92 Vol.III dated 24.6.1993 the applicant was rendered surplus but was permitted to continue as a surplus UDC in a supernumerary capacity in the NSO. In the very same order the surplus UDCs including the applicants were given option under Rule 29 of CCS (Pension) Rules, 1972. Their attention was also drawn to the facilities under Rule 48 and 49(a) of CCS (Pension) Rules, 1972 available to such premature retirees. Aggrieved by the aforesaid order, the applicant filed O.A.1345/1993 before this Tribunal for a direction to the respondents to increase the number of posts of




UDC in the Kerala Region for maintaining the ratio of 40:60 between UDCs and LDCs. The said O.A was disposed of, granting liberty to the applicant to make a detailed representation in this regard to the second respondent who in turn was directed to consider the same. The respondents in compliance of the aforesaid order, considered the representation of the applicant and disposed of it vide Annexure A-3 order dated 23.8.1994. As there was no scope to retain the applicant in NSO, the respondents relieved him from his duties in NSO from 23.8.1994 with a direction to report for duties as Auditor in the office of the ACDA, Incharge, PAO(ORS), Cannanore on redeployment. Accordingly, he joined the said office on 12.12.1994.

3. Thereafter, the third respondent vide Annexure A-4 letter dated 27.10.2003 conveyed the sanction of the PCDA(P) Allahabad for counting the service rendered by the applicant from 15.2.1971 to 23.8.1994 in NSO for the purpose of counting the qualifying service. The said service also made him eligible for grant of financial upgradation under para 14 of the ACP Scheme of the Central Government Civilian employees issued by the Government of India, Department of Personnel & Training OM No.35034/1/97-Estt(D) dated 9.8.1999 which is as under:

"14. In case of an employee declared surplus in his/her organization and in case of transfers including unilateral transfer on request, the regular service rendered by him/her in the previous organization shall be counted along with his/her regular service in his/her new organization for the purpose of giving financial upgradation under the Scheme."

4. While the matter was at rest, the applicant made the Annexure A-7 representation dated 4.8.2003 for restoration of his seniority in DAD from 15.2.1971 stating once again that his transfer from NSO to DAD with effect from 12.12.1994 was in public interest. It is in reply to the said representation dated 8.3.2003 that the 4th respondent has issued the Annexure A-8 impugned letter



dated 14.1.2004.


5. While claiming the period rendered in NSO before he was rendered surplus for the purpose of determining his seniority in DAD, the applicant has relied upon the judgment of the Apex Court in **Dharam Vir Singh Tomas v. Administrator, Delhi Administration and others** [1991 Supp (2) SCC 635].

The operative part of the said judgment reads as follows:

"3. It was said that he was declared surplus and therefore, he was not entitled to be placed in the Selection Grade. There are two difficulties in accepting this contention. Firstly, he was senior to respondent 5, then he ought not to have been declared surplus. Secondly, even according to Rule 47(4) of the Delhi School Education Rules, 1973, he was entitled to carry his seniority to the school where he was posted on being declared surplus. Therefore, by being declared surplus he could not lose his seniority. So far as the qualifications go, it is clear from Annexure 'A' that he was M.A., B.Sc., (Ag.), M.Ed., whereas respondent 5 was B.A. B.Ed. This would show that he was better qualified than respondent 5 and even on that ground he was entitled to be placed in selection grade.

4. For the above reasons we are of the opinion that he was wrongly bypassed and he ought to have been placed in the Selection Grade on the date his junior, respondent 5, was placed therein. We direct that he be placed in the Selection Grade w.e.f. the date his junior, respondent 5 was granted that benefit and he may be granted all monetary benefits accruing from such placement within a period of three months from today. The appeal is allowed accordingly with no order as to costs."

6. The respondents in the reply statement have contended that as per rules the surplus employees will have to be treated as juniors in the new Department. As regards the counting of past service rendered in the previous Department for the purpose of grant of financial upgradation under the ACP Scheme, the respondents have submitted that granting of financial benefit under the ACP Scheme and counting of the past service for the purpose of seniority in the new Department are entirely two different issues. They have also submitted that there is no more controversy about the declaration of surplusage of the UDCs from NSO as this issue has already been finally settled in the order dated



24.8.2000 in the earlier O.A.1255/1997 filed by the applicant before this Tribunal and in para 8 of the said order, it was categorically stated that it was an admitted fact that as per letter dated 29.12.1992 the applicant was declared surplus and hence his contention that neither any order declaring him UDC was issued nor any order made him as surplus cannot be accepted. They have also relied upon their order Annexure R 3(E) dated 24.6.1993 by which all these surplus staff of the NSO including the applicant were declared as surplus with effect from 15.12.1992 and given option under Rule 29 of the CCS (Pension) Rules, 1972 by which the surplus employees can retire from service or seek premature retirement under Rules 48 and 48(a) of CCS (Pension) rules, 1972. They have annexed a copy of Annexure R 3(D) letter dated 17.11.1994 addressed to the applicant stating that he could report for duty in the office of PAO (ORS) DSC, Cannanore on the basis of the reliving order from NSO Trivandrum as no formal appointment orders were required in his case as he was already being a permanent employee. Again in reply to his representation dated 29.1.1996 for counting his past service, the respondents vide Annexure R 3(B) dated 5.6.1996 invited his attention to the Government of India, DOPT OM No.1/18/88-CS.III dated 1.4.1999 wherein it has been specifically stated as under:

"No change is contemplated in the present policy that the past service rendered prior to redeployment should NOT count towards SENIORITY in the new organization/new post to which a surplus employee joins after he is redeployed."

7. We have heard Shri V Ajith Narayanan for applicant and Shri TPM Ibrahim Khan, SCGSC for respondents. In our considered opinion, the present application is not only frivolous but also is an abuse of the process of law. The prayer of the applicant in this O.A is to direct the 2nd respondent (his present office) to count the service rendered by him in the NSO with effect from 15.2.1971 to 23.8.1994 for the purpose of determining his seniority in the DAD. His contention is that the respondents have technically never declared him as

surplus UDC and has not issued any order readjusting him as a surplus employee. This issue was considered by this Tribunal in the earlier O.A No.1255/1997 filed by him and in the order of this Tribunal dated 24.8.2000 it was categorically stated that the applicant himself has admitted that he was declared surplus on 29.12.1992 and therefore his stand that he was neither technically declared as surplus staff nor has been readjusted as surplus staff is nothing but repetition of the same old contention. The respondents have again, with documentary evidence, proved that not only that the applicant was declared surplus with effect from 15.12.1992 but he was also given the options under Rule 29/48/48(a) of the CCS(Pension) Rules, 1972 for retirement. He did not make any options. Again, he was informed on 17.11.1994 that being a surplus staff he could join the new office without any formal appointment. However, he continued to make representations. The respondents, again on 5.6.1996, informed him that the service rendered by him in NSO cannot be counted for the purpose of determining seniority in the new organization relying on the Government of India, DOPT OM dated 1.4.1999. Moreover, the new contention of the applicant that his case is to be reconsidered in view of the judgment of the Apex Court in **Dharam Vir Singh Tomas v. Administrator, Delhi Administration and others** (supra) has also no force as the said judgment is based on the specific rule contained in Delhi School Education, Rules, 1973. The Rule applicable to the Government of India and the respondents herein are entirely different. We, therefore, dismiss this O.A. There shall be no order as to costs.

Dated, the 22nd February, 2008.


O.P.SOSAMMA
 ADMINISTRATIVE MEMBER


GEORGE PARACKEN
 JUDICIAL MEMBER