

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.248/2003

.....Friday.....THIS THE^{24th} DAY OF FEBRUARY, 2006

CORAM

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

G.Srinivasan S/o Late P.K.Gangadharan
aged 47 years
Lower Division Clerk
Office of the Chief Engineer (Naval Academy)
Kochi, Naval Base Post
Kochi.682004.Applicant

(By Advocate Mrs.Shruti Sareen for Mr. K.P.Dandapani)

V.

- 1) Union of India, represented by its
Secretary, Ministry of Defence
New Delhi.
- 2) The Engineer-in-Chief
Army Headquarters
New Delhi.
- 3) The Chief Engineer,
Southern Command,
Pune.1.
- 4) The Chief Engineer,
Naval Academy, Kochi.
Naval Base Post,
Kochi-682004.Respondents

(By Advocate Mr.TPM Ibrahim Khan, SCGSC)

The application having been heard on 15.2.2006, the Tribunal on 24.
2.2006 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant's grievance is that ever since he was appointed as Lower Division Clerk (LDC for short) with effect from 18.3.78 he has not been granted any promotion and he has been stagnating on the same post even though some of the similarly situated persons have been granted promotion to the next two higher posts.

2 The brief facts of the case are that the applicant was initially appointed as LDC in the Office of the Chief Engineer, Bhatinda Zone, Bhatinda on 18.3.78. On his request the third respondent, namely, the Chief Engineer, Southern Command, Pune granted him inter command posting and transfer vide Annexure.A2 order dated 12.6.82. Along with him, one Shri Sasi CK, LDC was also posted from the office of the Chief Engineer, Western Command to the Chief Engineer, Southern Command. The applicant has submitted that according to the Recruitment Rules there is no direct recruitment for the post of Lower Division Clerks and Upper Division Clerks of MES. LDCs with 8 years of regular service are eligible to be considered for promotion as UDCs. Since the applicant has joined in 1978 he became eligible to be considered for promotion to the post of UDC in the year 1986 but he was not promoted but his juniors had been given promotion. The respondents have published a seniority list of LDCs of Southern Command in 1996 and the applicant's name appeared at Sl.No.461 showing his date of appointment as 18.3.78

duly reckoning his initial appointment. However, when the Seniority List was published in 2001 his name was shown at Sl.No.136 showing his date of appointment as 23.8.1982, ie., the date he joined the Southern Command. The applicant had made a representation for assigning him the right seniority in the grade with effect from 18.3.78 pointing out that though Shri Sasi C.K who had been transferred along with him and joined the Southern Command on 8.8.82 was initially appointed as LDC on 1.7.72, he was given promotion to the post of UDC on 30.4.88 and further as Assistant on 11.12.2002. According to the applicant since Shri Sasi C.K had joined the Southern Command only on 8.8.82, without reckoning his seniority from the date of his appointment, he could not have been given promotion as UDC on 30.4.88. He has also submitted that one Mr.P.V.Francis who was working as an LDC from 1983 in the Western Command was transferred on request to the Office of CE, Cochin Zone on 6.5.87, and one Shri R.Mani who joined as LDC on 19.11.83 in Southern Command on request had joined the Cochin Zone on 11.11.87. Both of them have been promoted as UDCs with effect from 23.1.2003 (A8). The applicant has further submitted that this Tribunal in OA 1372/96, OA 1217/98 and OA 2043/93 filed by similarly placed persons held that on inter-divisional transfers, the seniority have to be protected and promotion cannot be denied.

3 The Respondents in their reply has stated that the applicant was initially appointed in the Western Command and he was

transferred to the Southern Command on his specific request on compassionate grounds and reported for duty on 23.8.82. They have relied upon the instructions contained in Civil Personnel Routine Orders (CPRO for short) 73/73 wherein it has been stated that in order to safeguard the interest of displaced government servants appointed to the Central Services after partition, credit of the previous service was being given to them for determination of their seniority vide order No.241/50. As it was not possible to regulate the seniority of only displaced government servants by giving them credit for previous service, those instructions were made applicable to all categories of persons appointed to Central services subsequently. Since the displaced government servants have been by and large absorbed in the various central services and their seniority has been fixed with reference to previous service rendered by them, it was decided by the Government vide Office Memorandum No.10(1)/60/D (Appts) dated 11.3.65 (Annexure.R1) that the seniority of persons appointed, thereafter, to Class I and Class II posts in the lower formations will be determined in accordance with general principles of seniority. Vide CPRO 11/75, the general principles of seniority have been again made applicable in respect of individuals adjusted under surpluses and deficiencies scheme and transferred on compassionate grounds with effect from 1.7.73. Accordingly, those who were transferred on compassionate grounds on or after 1.11.73 were not entitled to get the benefit of their previous service

on reporting to the new units. Since the applicant was transferred from the Western Command to Southern Command on 23.8.82 on his request on compassionate grounds, according to the respondents, in terms of CPRO 73/73 read with CPRO 11/75 he is not entitled to get the benefits of his previous service for the purpose of seniority in the new unit. They have also submitted that the Seniority List last circulated during 1990 was amended later on based on the aforesaid CPRO 73/73 and CPRO 11/75 and shown the date for reckoning seniority of the applicant as 23.8.82. Regarding the cases of Shri Francis and Smt. R.Mani, respondents have submitted that apart from promotion of LDCs with 8 years of service, there was also provision for promotion against 25% quota after passing the departmental examination. Shri Francis and Smt.Mani have got their promotion on passing the departmental examination and since the applicant has not qualified in the departmental examination, he cannot claim parity with them. As regards the specific averment of the applicant regarding Shri Sasi C.K who was transferred and posted along with him vide AnnexureA2 order dated 12.6.82 to the Southern Command, the respondents in their reply has stated that "the averments in paragraphs 6&7 of the OA are admitted." They have not denied the fact that Shri Sasi C.K, who was also similarly placed as the applicant, has been given promotion as UDC and again as Assistant taking into consideration of his previous service in the Western Command.

4 The applicant in the rejoinder stated that the only question for consideration is whether he is entitled to carry with him the benefit of seniority from the date of his initial appointment to the post of LDC in Western Command for the purpose of granting him promotion as UDC in Southern Command. The applicant rebutted the contention of the respondents that the applicant is not entitled to count his previous service for the purpose of seniority for promotion based on the instructions contained in CPRO 73/73 as mentioned earlier. The submission of the applicant is that the said order is applicable only to Class I and Class II Officers in the lower formation of Ministry of Defence. The second respondent, namely, the Engineer-in-Chief, Army Headquarters, New Delhi had subsequently issued order No.79040/RP05/EIC(1) dated 8.10.86 (Annexure.A.10) clarifying that the revised principle of seniority were made applicable to defence formation with effect from 1.7.73, but no instructions were issued by the Army Headquarters to the Chief Engineer, Commands on the presumption that revised rules of seniority are applicable to civilian personnel transferred from other departments to the MES under surplus/deficiency scheme and on compassionate grounds and not to MES civilian personnel when posted/transferred on compassionate grounds within the MES. Thereafter, the revised principle of seniority was made applicable to the MES with effect from 16.12.85 in case of transfer of industrial personnel on compassionate grounds within the MES units and the past cases were not to be re-opened. Now the

industrial personnel seeking transfer on compassionate grounds from one CWE area to another CWE area whether within the same zone/command or outside zone/command are not entitled to the benefit of previous service for the transfer on promotion/confirmation. An individual seeking transfer on compassionate ground will be assigned seniority only from the date they report for duty in the new formation. The Applicant has contended not only that the above instructions are applicable only to the industrial personnel but also the effective date of the order is from 16.12.85. Since the applicant was transferred to Southern Command on 12.1.82 this order will not be applicable in his case on two counts, one that he is a non-industrial personnel, secondly he was transferred to the Southern Command before the effective date of 16.12.85.

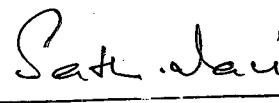
5 We have heard counsels for the parties at length. We have also perused the documents made available on record. It has been seen that the practice of giving credit to the previous service to the displaced Government servants appointed to the Central Services after partition was extended to all categories of persons appointed to Central Services and the same was prevalent till 1.7.73 when the general principles of seniority have been made applicable. However, the said principles were made applicable to the MES only w.e.f 15.12.1985 and further it was *confined only to the *industrial personnel. The applicant was initially appointed as LDC on 18.3.78. He was granted the inter-command posting and transfer on

12.6.1982 along with Shri Sasi C.K who was appointed initially on 1.7.72. Both are similarly placed. The applicant has made the specific averment in the OA that without reckoning his seniority from the date of his initial appointment w.e.f 1.7.72 Shri Sasi could not have been given promotion as UDC w.e.f 30.4.88 and the Respondents in their reply has admitted it. In view of the above admission of the Respondents that in the case of Shri Sasi C.K who is similarly placed with the applicant, his seniority from the date of his initial appointment has been reckoned for the purpose of his promotion to the post of UDC, the Respondents are directed to reconsider the case of the Applicant and similar benefits may be granted to him also by promoting him as UDC and Assistant taking into consideration of his initial date of appointment as LDC with all consequential benefits including pay and arrears. The Respondents shall pass appropriate orders within a period of three months from the date of receipt of this order. There shall be no order as to costs.

Dated this the 24thday of February, 2006


GEORGE PARACKEN
JUDICIAL MEMBER

S.


SATHI NAIR
VICE CHAIRMAN