

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 626/88
T.A. No. --

198

DATE OF DECISION 1-4-1992R.Srinivasan

Petitioner

Mr.S.P.Saxena

Advocate for the Petitioner(s)

Versus

Union of India and ors.

Respondent

Mr.P.M.Pradhan

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice U.C.Srivastava, Vice-Chairman

The Hon'ble Mr. M.Y.Priolkar, Member(A)

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

MD

(U.C.SRIVASTAVA)

(11)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.626/88

R.Srinivasan,
Works Manager,
Ordnance Factory,
Bhandara 441 906.

.. Applicant

vs.

1. Union of India
through
Secretary, (DP & S),
Ministry of Defence,
South Block,
New Delhi.
2. Chairman,
Ordnance Factory Board,
10A, Auckland Road,
Calcutta 700 001.
3. Director General of
Quality Assurance,
Ministry of Defence,
Production,
Sena Bhavan,
New Delhi - 110 001.
4. General Manager,
Ordnance Factory,
Bhandara 441 906.
5. Inspector/Quality
Assurance Officer,
Quality Assurance
Establishment,
Bhandara 441 906. .. Respondents.

Coram: Hon'ble Shri Justice U.C.Srivastava,
Vice-Chairman.

Hon'ble Shri M.Y.Priolkar, Member(A)

Appearances:

1. Mr.S.P.Saxena
Advocate for the
Applicant.
2. Mr.P.M.Pradhan
Counsel for the
Respondents.

ORAL JUDGMENT: Date: 1-4-1992
(Per U.C.Srivastava, Vice-Chairman)

The applicant entered the service on or about 1975. Thereafter he was transferred in Group 'A' to Ordnance Factory Board at Calcutta. By this application the applicant has challenged that the seniority list which has been referred to in the application be amended and in consequence he may be immediately

promoted to the scale of Deputy General Manager (Junior Administrative Grade) in keeping with the IOFS Officers who joined the service in 1976 and in the alternative he has prayed that the unjustified transfer from respondent No.3 to 2 involuntarily should be quashed. During the course of the argument learned counsel for the applicant stated that so far as the transfer is concerned he ^{not} would like to press the same in view of the decision by this Bench and he is confined ⁱⁿ his arguments only to seniority and consequential promotion to higher post.

2. The applicant was transferred to the Office of Inspector of Quality Assurance office, Bhandara on 31-12-1983. After the transfer applicant made several oral and written representations regarding prospects the career/~~proceedings~~ and service conditions. But apart from non committal reply he was not given any reply. But a seniority list was published by the General Manager, Ordnance Factory notifying the redesignation of the applicant as "Works Manager" which is a senior time scale post under the respondents 2 and 4. Applicant made representation against the same. According to the applicant officers joining the organised Central Services on selection by the Union Public Service Commission (UPSC) are entitled to seniority with reference to the date of publication of results by the UPSC, the Indian Ordnance Factories (IOFS) and the Defence Quality Assurance Service are two such services the recruitment to which is done on the basis of selection/recommendation by the UPSC. Consequent on the divergence of practices in the IOFS and the DQAS Officers who joined the IOFS in 1976 were promoted to the senior time scale in 1980 whereas the applicant who was appointed to the

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DQAS in 1976 was promoted to the senior time scale only in 1983. He is now being equalled in seniority with the officers who had joined the IOFS around 1979-80, that is, almost four years after the applicant's date of joining an equivalent post in another organised Group 'A' service. According to the applicant the promotion from the post of Works Manager to that of Deputy General Manager in the IOFS is made with reference to the date of publication of the results by the UPSC and ~~he was~~ the applicant has not been considered for promotion with reference to that date i.e. 1976 and promotion to the said post was not given to him though he ought to have been considered for promotion along with officers who joined the service in 1976.

3. The respondents have opposed the claim of the applicant and pleaded that for promotion to JAG in IOFS, Officers with 5 years of service in the Senior Time Scale are ~~not~~ eligible for consideration ^{the same} and ~~which~~ has no relevance to joining IOFS. The applicant's contention that he is senior to these officers already promoted to JAG is not borne by the facts. At the time of transfer from DGI to DGOF the applicant was holding the post of SSO-I. The scale was similar to that of Senior Time Scale in IOFS. Accordingly his seniority among IOFS officers was fixed on the basis of their dates of holding the Sr. Time scale posts, i.e. posts in the grade of Rs.1100-1600. Hence the seniority of officers appointed to higher grade of Rs.1100-1600 in the lower grade of Rs.700-1300 has no significance. Seniority can be reckoned in the grade which the officer was holding at the time of transfer. Since the applicant has been appointed to the grade of SSO-I in the scale of Rs.1100-1600 his date of appointment to the grade

of SSO-II loses its significance. His seniority has been correctly fixed amongst Works Managers of I.O.F.S. as per the rules on the subject and in consultation with Ministry of Defence. Regarding the incidence of Shri V.Srinivasan pointed out by the applicant it has been stated that he has not been given out of turn. He was holding the post of SSO-II (Rs.700-1300) whereas the applicant was holding the post of SSO-I (Rs.1100-1600) Both were fitted in the appropriate corresponding scales in IOFS. Both the officers were given the benefit of the services in the grade which they were holding for fitment of seniority. At the time of promotion Shri V.Srinivasan had completed the qualifying period of service required for promotion to Senior Time Scale in IOFS and as per his seniority he was senior enough to be promoted on the basis of the vacancies available and after recommendation by the Departmental Promotion Committee which made recommendation in his favour.

4. The applicant has given more incidences. He has given the name of three officers who have been promoted within $3\frac{1}{2}$ to 4 years of their service in the grade of SSO Gr.II and also the names of ~~three~~ ^{SSO-I to PSO} officers who were promoted from ~~SSO~~ to ~~PSO~~ in less than 5 years of service ~~and also~~ SSO ~~Gr~~ I. He also contended that there was no adherence of rules by the respondents. According to the applicant Officers in the grade lower than that of the applicant have been given the benefit of service rendered by them, the applicant has been put to disadvantage. JSO's have been upgraded to AWMs, SSO-II's have been given the benefit of four years Time Scale promotions but the same has been denied to the applicant. In support of

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his contention that the applicant's seniority should be reckoned from the date he was initially appointed in the Defence Ministry the applicant has made ~~xxreference~~ reference to the case of Sumitra Kumar Basu and Ors. v. Union of India, decided by the Calcutta Bench of the Tribunal, (1987)3 ATC 64 which was not the case of this department. In that case some employees, transferred to another department in order to avoid retrenchment. It was held that these employees will not lose their original seniority in the new department where they, transferred. A reference has been made to the case of Defence Ministry itself decided by the Division Bench of this CAT Bombay Bench reported in (1990)12 ATC 317 ~~wherein~~ ~~xxxxxx~~ Jagat Bandhu Roy v. Ministry of Defence, New Delhi and others, wherein it was held that: the applicant ^{was} initially appointed as Assistant Manager in Accelerated Freeze Drying Factory, Hazratpur, Agra on July 12, 1969. On stoppage of production in that factory the applicant ^{was} not referred to the surplus cell but transferred as Assistant Manager in High Explosive Factory at Kirkee from December, 9, 1977. It was held that in view of the fact that applicant's appointment in Kirkee factory was on transfer and not a fresh appointment, he was entitled to fixation of seniority from original appointment i.e. July 12, 1969. In that case reliance was placed on Sumitra Kumar Basu's case cited above. The principles laid down in the above ^{also} cases, found support in the Supreme Court judgment in the case of K. Madhavan v. Union of India, AIR 1987 SC 2291. It was held that "It will be against all rules of service jurisprudence, if a government servant holding a particular post is transferred to the same or an equivalent post in another government department, the period of his service in the post before his transfer is not taken into consideration in computing his seniority in the transferred post. The transfer cannot wipe out his length of service

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in the post from which he has been transferred. It is a just and wholesome principle commonly applied where persons from different sources are drafted to serve in a new service that their pre-existing total length of service ~~xxx~~ in the parent department should be respected and presented by taking the same into account in determining their ranking in the new service cadre".

5. The applicant's case is on better footing as he has been transferred from one wing to another wing. Consequently the applicant is entitled to count the entire period of service towards his ~~xxx~~ seniority and he cannot be denied the same. In view of the fact that various promotions have taken place during this period the applicant will be given his due seniority with effect from the date he was appointed in SSO-II though notionally but he will be entitled to consequential benefits hereinafter. The application stands disposed of with the above observation and there will be no order as to costs.


(M.Y.PRIOLKAR)
Member(A)


(U.C.SRIVASTAVA)
Vice Chairman

MD