

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.395/1999.

Date of decision : 24th February 2003

Vir Bhisham

Applicant.

Shri S.P.Saxena

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri R.R.Shetty for Shri R.K.Shetty

Advocate for
Respondents.

CORAM :

Hon'ble Shri B.N.Bahadur, Member (A),
Hon'ble Shri S.L.Jain, Member (J).

- (1) To be referred to the Reporter or not? Yes
- (2) Whether it needs to be circulated to other Benches of the Tribunal? No
- (3) Library. No


(B.N.BAHADUR)
MEMBER (A)

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL.
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.395/1999.

Monday this the 24th day of February 2003.

Hon'ble Shri B.N.Bahadur, Member (A),
Hon'ble Shri S.L.Jain, Member (J).

Vir Bhisham,
Superintendent Gr.II E/M,
Office of Garrison Engineer (AF),
Lohagaon,
Dist : Pune.
(By Advocate Shri S.P.Saxena)

...Applicant.

v.

1. Union of India through the
Secretary,
Ministry of Defence,
New Delhi - 110 011.
 2. The Engineer-in-Chief,
Army Headquarters, DHQ P.O.,
New Delhi - 110 011.
 3. The Chief Engineer,
Southern Command,
Poona - 411 001.
 4. The Garrison Engineer (AF),
Lohagaon,
Poona - 411 032.
- (By Advocate Shri R.R.Shetty
for Shri R.K.Shetty).

...Respondents.

: O R D E R :

B.N.Bahadur, Member (A).

The case made out by the Applicant in his written pleadings, and through his Learned Counsel's arguments is as follows: That he was initially appointed as Sectional Officer in Beas Construction Board, Chandigarh (for short, the Board) under the Union of Government in the scale of pay of Rs.700-1200 w.e.f. 15.2.1974. Due to closure of the Board, a number of staff members, including the applicant, were declared surplus and transferred to Central Surplus Staff Cell under Government of India. Some 90% of them were then transferred to Ministry of

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Defence vide order dt. 9.5.1985 (Exhibit A-5) against the post of Superintendent Gr.II in the scale of Rs.425-700 in MES. Applicant was also transferred and his name appears at Sl.No.84 (Exhibit A-4). Learned Counsel for the applicant, Shri S.P.Saxena, during his arguments had taken us over in detail to the documents at Exhibit A-3 and A-4 and made the point that this re-deployment of surplus staff was stated, in the order, to be in public interest. This was one of the planks of his arguments made to further the case for seniority. True he said, that the pay scale was lower but the main point urged by Shri Saxena was that while other benefits may not be subject to protection, seniority (and past service for this purpose) had to be protected. Further details in the career are described in the OA, and a reference made to the decision of this Tribunal (Bangalore Bench) about directions for placing Superintendent Grade II employees in the higher scale.

2. The important point made is that Respondents indeed fixed the pay in higher scale as shown in Exhibit A-7 (page 35), as described by applicant in para 4.8 of the OA. However, the placement of the applicant in higher scale w.e.f. 1.1.1986 was disturbed by a subsequent order of Exhibit A-10 dt. 30th June, 1997 and that a representation was made by applicant.

3. Learned Counsel Shri Saxena, who argued the case in some detail, apart from making the point recorded above stated that the recovery was also a harassment to the applicant and that the Bangalore Bench has not interfered. In any case, seniority could not be affected.

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4. Shri Saxena depended on the following case law strenuously:

- i) Dwijen Chandra Sarkar and another Vs. Union of India and another (1999 AIR SCW 265).
- ii) Judgment in Karnail Singh Jandu & Ors. Vs. Union of India & anr. (OA No.214/HR/98 decided on 21.11.2000 a copy of which was provided).
- iii) Judgment in Shri Prayagrao Latoroo Paraskar Vs. Union of India & Ors. (OA No.866/93 - decided on 19.7.1995 by the Mumbai Bench - Camp at Nagpur).

We shall consider the arguments made ahead.

5. Respondents have filed a written statement. Their Learned Counsel Shri R.R.Shetty appearing for Shri R.K.Shetty made the following points of arguments/defence: That the matter was governed by the orders in CPRO 73/73 and stands covered by the case of Balbir Sardana Vs. Union of India & Ors. (a copy of which was annexed at R-3 page 61). He also sought support from another matter decided by Hon'ble Supreme Court in the case of Union of India and Ors. Vs. K.Savithri reported at 1998 SCC (L&S) 1134. In fact, Learned Counsel rested most of his case as being covered by these judgments. He also referred to the O.M. of 16.6.1992 (a copy of which is annexed at page 66 as Exhibit R-5) and argued that the benefit of seniority was being claimed indirectly by applicant. Further, that there is no challenge to the CPRO 73/73 or the Rules or the DOPT OMs.

6. Rejoinding, briefly, Learned Counsel Shri Saxena made the point that the OM of 15.6.1992 did not exist at that time and no retrospectivity could be sought to be given to it at a later stage. He reiterated that support is available to applicant from

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Sarkar's case. It may be recapitulated here that the relief sought by the applicant as contained in para 8 are as follows:

- "(a) to declare that the applicant is entitled to be placed in the scale of Rs.1640-2900 w.e.f 1.1.1986.
- (b) to declare that the applicant is also entitled to be placed in the next higher scale of pay of Rs.2000-3500 w.e.f. 1.1.1991.
- (c) to declare that the pay fixation for the applicant vide special Pt.II order dt. 16.8.1996 published by G.E. (AF) Lohogaon is correctly done.
- (d) to pass any other orders which may be considered necessary in the facts and circumstances of the case.
- (e) to award cost of the application"

7. After considering the arguments made on both sides, and going through the papers in the case and the case law, it is clear that the basic question to be decided in this OA is as to whether, given the facts of the applicant's case, he will be entitled to counting his past service for the purpose of seniority.

8. It is seen clearly from the papers, and indeed not disputed, that the applicant was transferred to the surplus cell from the Beas Constructions Board. His nomination along with a large number of others is indeed done vide order dt. 9.5.1985 (Exhibit - A-3) which is a letter written to the Army Headquarters. Guidance is provided to the Army Headquarters in this letter about how posting may preferably be done at nearby station, how age limits and educational qualifications etc. are to be treated to relaxed in respect of these employees including applicant etc. In para 8 of the said letter, it is recorded as below :-

"The maximum permissible stay on the rolls of the Central

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(Surplus Staff) Cell of this Department is expiry on the 31st May, 1985, and unless they are absorbed elsewhere in the meantime their services will stand terminated on that date. It is therefore requested that the orders of their appointment/posting may kindly be issued within a fortnight."

9. It is therefore, observed that indeed it is a case of placement of surplus staff, and that even protection against termination of services was not available to such staff after a given period, as can be seen from the above quoted para 8.

10. The point regarding the factum of surplus staff etc. is being stressed above with a view to firstly analyse whether the case/s cited by the Learned Counsel for Respondents would apply to the present O.A. We first examined the case of Union of India and Ors. Vs. K.Savitri which is decided by the Hon'ble Supreme Court. There also, the issue relates to the counting of service of re-deployed surplus staff. It has been held by the Hon'ble Supreme Court, with reference to the relevant rules, that the services rendered in previous organisation/s by such staff is not to be counted and seniority cannot be provided. In fact, the orders of the Tribunal in that particular case are quashed. While we have seen the other case laws cited by applicant, i.e. orders by different Benches of this Tribunal, these will not provide help to the applicant when the matter is settled at the level of the Supreme Court. Indeed Paraskar's case is decided in 1995, whereas, the Hon'ble Supreme Court has made the Judgment in Savitri's case in March, 1998. The law settled in the case of Dwijen Chandra Sarkar (supra) would not apply as the issue of placement of employees declared surplus is not involved there, but in that case (Sarkar) the issue is of departmental transfers

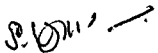
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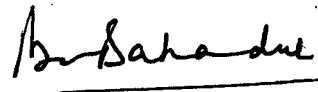
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where seniority has been protected. In view of the above discussions and the facts that the issue involved has been settled at the highest level no case could be made out for interference by the Tribunal as sought by the applicant.

10. However, the applicant has a case against recovery proposed or made. The Hon'ble Supreme Court has settled this very clearly. We shall provide this benefit.

11. The prayers made in the OA are rejected. However, no recovery of amounts given prior to date of impugned order shall be made. If made, it shall be refunded (no interest). The OA stands disposed of accordingly. No costs.


(S.L. JAIN)
MEMBER (J)


(B.N. BAHADUR)
MEMBER (A)

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