

OA 82/95

RP 71/95

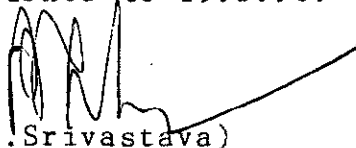
27.11.95


Mr. M S Ramamurthi with Mr. Dalvi, counsel for applicant.

Mr. V S Masurkar, counsel for the respondents.

Respondents are directed to file a reply to the RP No. 71/95.

Adjourned to 19.1.96.


(P.P. Srivastava)
Member(A)


(B.S. Hegde)
Member(J)

Reply of Applicant to
M.P. Secd-7
17-1-96

Per Tribunal Date: 19/1/96
Applicant in person by me
Advocate / Respondent by Mr. Masurkar
Counsel for out of office me
The matter adjourned to 29/1/96
for for order & reply in RA 71/95


Dy. Registrar

Per Tribunal Date: 29/1/96
Applicant in person by me
Advocate / Respondent by Mr. Masurkar
Counsel for out of office me
The matter adjourned to 9/2/96
for order in RA 71/95 & mt 446/95


Dy. Registrar

5
No appropriate Bench
is available. The
same is adj'd to
12.7.96

only
12/6

12/7/96-3

Heard Shri M.S. Ramamurthy for
Shri N.P. Dalvi, Counsel for
Applicant and Shri V.S. Masurkar,
Counsel for Respondents.

RP-71/95 is allowed and
OA is ~~not~~ restored.

OA is now admitted.

Matter be listed for completion
of pleadings before Registrar
on 18/9/96 & then can come
the list

12/7
1/0
(P.P. Srivastava)
M(A)

18/9/96
(B.S. Hegde)
M(J)

alop.

at 12/7/96
Order/Judgement despatched
to Applicant/Respondent(s)
on 24/7/96

26/7/96

Rejoinder of Applicant
recd. on 09.7.96

mg
26/7

(12)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 82/95

Date of Decision: 19th September, 97

K. Hanumanappa Applicant.

Mr. M S Ramamurthy Advocate for
Applicant.

Versus

U.O.I. & Ors. Respondent(s)

Mr. V.S. Masurkar Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. B.S. Hegde, Member(J)

Hon'ble Shri. P.P. Srivastava, Member(A)

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


M(A)

trk

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING No.6
PRESCOT ROAD, MUMBAI 400001

O.A.No. 82/95

DATED : This 19th September, 1997

CORAM : Hon'ble Shri B.S. Hegde, Member(J)
Hon'ble Shri P.P. Srivastava, Member(A)

Mr. K. Hanumantappa,
Assistant Director Gr.II,
Flat No.232 Type IV,
C.G.S. Colony,
Wadala (W),
Mumbai 400031,
(By Adv. Mr. M S Ramamurthi)

..Applicant

V/s.

1. The Western naval Command
Commander
Bhagatsingh Marg
Mumbai 400001

2. The Chief of Naval Staff
Naval Headquarters
New Delhi

3. Union of India
through Secretary
Ministry of Defence
New Delhi 110001

(By Adv. Mr. V S Masurkar,
Central Govt. Standing Counsel)

..Respondents

ORDER

[Per: P.P. Srivastava, Member(A)]

1. The Applicant is working as Assistant Director of Supplies Grade II in the scale Rs.2000-3500 in the office of Western Naval Command. The applicant was recruited as Assistant Director Grade II through Union Public Service Commission in the year ~~1965~~ ¹⁹⁷⁶ and joined services of Director General of Supplies and Disposals (DGS&D),

APB

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Bombay. The applicant has further submitted that the Government of India has taken a decision to transfer certain work from DGS&D to other user departments like Railways, Navy and other Ministries. The Government of India further decided that the work along with the post will be transferred to the different Departments as a policy of decentralisation. The applicant, as a result of this policy decision, was transferred to Navy vide letter dated 22.12.1992, which is placed at Annexure A. Thereafter the applicant exercised option for absorption and fixing of his seniority in the new department. The request of the applicant dated 5.4.1993 is placed at Annexure B, wherein the applicant had exercised his willingness to join Indian Navy and has asked for absorption and fixation of seniority as per rules. The applicant has submitted that the respondents have not taken any decision of fixing his seniority. Since the respondents have not taken any decision for absorbing the applicant in a similar cadre of Assistant Naval Stores Officer (ANSO) which is in the same grade as that of the applicant i.e., Assistant Director-II when he was working in DGS&D, he has approached this Tribunal through this O.A. to merge the seniority of the applicant in the cadre of ANSO and give him seniority from the date of his joining department as Assistant Director in DGS&D and for the consequential benefits.

2. Counsel for the applicant has argued that the applicant was transferred in the interest of



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administration as the work of procurement of certain stores was transferred to the indenting Ministry including Naval department along with staff of DGS&D. The applicant was transferred along with post to Naval department. The original order in this respect is placed by the applicant on record through rejoinder at Exhibit "A" dated 30.12.1991. The subject matter of OM dated 30.12.1991 is 'Centralised Purchase of Stores and equipments required by Central Government Departments - Review Policy thereof'. In para 2 it has been mentioned that the policy has been reviewed by the Government and it has been decided that ^{procurement} ~~pronouncement~~ against ad hoc indents may be transferred from Directorate of Supplies and Disposals, Bombay to the indenting Ministries/Departments alongwith corresponding number of officers and staff of the Directorate of Supplies and Disposals, Bombay required to deal with the work. In para 3.3 of this O.M it is mentioned that the staff would be on deputation and they will have an option to get absorbed in the receiving Ministry/Department if they so choose. From this it is clear that the applicant was transferred from DGSD to the Western Naval Command in the interest of the administration. Learned Counsel for applicant has also brought to our notice another letter dated 6th September, 1990, exhibit 'B' to the rejoinder, wherein in para 4 it has been mentioned that in so far as the transfer of officers and staff is concerned, it will be necessary to treat them on deputation till they are

[Signature]

(17) (16)

finally absorbed by the receiving Ministries/Departments with due safeguard to their seniority and promotion prospects. Counsel for applicant also brought to our notice the Department of Personnel and Training, Estt (D) Sec. which is placed as Exhibit 'E' to the rejoinder and the same reads as under :

"Ministry of Defence may please refer to their I.D. Notes No. 23(1)/93/D(O.I)/D(MC) dated 6.4.95 on the above subject. In so far as fixation of seniority of such of the employees are transferred from one cadre to another alongwith their posts is concerned, their cases will have to be treated as one of merger of cadres in which the same is fixed on the basis of length of service subject to maintenance of original inter-se-seniority within each cadre. Therefore, the benefit of the past service rendered by these officers from DGS&D will have to be given in the matter of seniority in the cadres in which they are merged. If, however, they are not merged into any cadre and continued as isolated posts or as separate seniority units then there would be no question of redetermining their seniority w.r.t. any other cadre. Their attention in this regard is also drawn to the provisions contained in para 3.12.4 of O.M. No. 14017/12/87-Estt.(D) dated 18.3.88 regarding the desirability of encadring isolated posts into organised cadres/services or to a group of similar isolated posts to provide enough avenues of promotion."

Since this note deals with the subject matter and the DOPT has opined that the benefit of past service rendered by the officers of DGSD will have to be given in the matter of seniority in the cadres in which they are merged and hence it is contended that the Respondents Administration has no alternative but to give seniority to the applicant from the date of appointment in the Naval Stores Department. Counsel for applicant had also submitted another letter dated 18.07.1995, Exhibit 'F' to

APL

rejoinder, wherein a decision was taken regarding seniority of U.D.C, L.D.C, Stenographer. Para 3 reads as under :

"DOP&T have now clarified that in so far as the fixation of seniority of such employees who are transferred from one cadre to another alongwith their posts is concerned their cases will have to be treated as one of merger of cadres in which the same is fixed on the basis of length of service subject to maintenance of original inter seniority within each cadres."

Counsel for applicant argues that since the UDC, LDC, Stenographer were also transferred in the similar circumstances as that of the applicant viz., transfer of workload from DGS&D to Western Naval Command, the case of the applicant is required to be treated on similar lines.

3. Counsel for the respondents has argued that the case of the applicant is required to be considered on the basis that he is transferred from one department to another because of reduction in cadre and hence the seniority of the applicant would be below all those who are already in service in the new department on the date of joining of the applicant. However, the Learned Counsel for the respondents could not produce any letter or instruction that the applicant is transferred from DGS&D to Western Naval Command was as a result of shrinkage of cadre/surplus staff of DGS&D. Counsel for applicant further argued that the case of the applicant



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was considered on his representation and the Ministry of Defence has replied vide their reply dated 12.04.1994 that either the applicants post has to be treated as an isolated post or he could be given the lowest rank in the seniority of ASNO on the date of the permanent absorption in Navy. This letter is placed at Annexure R-E of the O.A. at page 22.

4. After considering the contents of this letter we are of the view that this letter is not consistent with the views expressed by the Department of Personnel and the decision taken concerning UDC, LDC etc., who were similarly placed as that applicant in as much as the applicant was also transferred due to transfer of work from DGS&D to Navy. Counsel for the respondents has also argued that the decision which has been taken in the case of UDC, LDC would not apply in the case of the applicant as the post of LDC, UDC exist in Navy the LDC, UDC who were transferred. have been merged with the LDC, UDC of the Naval department. Counsel for the respondent has also argued that in the case of the post of Assistant Director of DGS&D the merger of post with ANSO cannot be considered.

5. However, after considering the various factors we are of the view that the argument of the learned counsel for the respondents is not acceptable in not taking the past



(20/19)

service of applicant as Assistant Director, DGS&D for merger of his post into ANSO in the Navy and we see no reason why the applicant's post cannot be merged with the cadre of ANSO.

6. The applicant had been transferred to the Naval Department in 1992 and from then has been struggling for fixation of seniority which has not been finalised. The letter issued by the respondent administration dated 12.4.94 does not seem to be based on the policy decision of the Government of India and is contrary to the advice given by the Department of Personnel. Taking into consideration all the available record and after hearing both the learned Counsel we are of the view that the applicant is entitled to be absorbed in the cadre of ANSO with seniority from the date of his recruitment as Assistant Director DGS&D. The post of Assistant Director which the Applicant had held be treated as merged with the post of ANSO from the date of his joining the Naval Department, and the applicant would be entitled to be promoted to the next higher grade from the date his junior in the Naval Department is promoted. The applicant would be entitled to all the consequential benefits on his absorption as ANSO in the Naval Department and is entitled for seniority in the grade of ANSO and for notional fixation in the promotional grade from the date his junior was promoted, but will be




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entitled for actual payment of arrears from 2.12.1993 i.e., prior to one year to the date of filing of this O.A., which in this case is 2.12.1994. Implementation of this judgement and payment of dues should be done within a period of three months from the date of receipt of this order. The O.A. is disposed of with the above direction. There would be no order as to costs.


(P.P. SRIVASTAVA)
MEMBER (A).


(B. S. HEGDE)
MEMBER (J).

(22)

order/Judgement despatched
to Applicant/Respondent (s)
on 23/7/98

24/7/98

CP NO 50/98
fixed for order
on 9.11.98
(urgent circulation
kept in 'c' folder)

MB
6.11.

Dated: 9.11.98 (77)

Shr Manne for Shr D.V.
Gangal, Counsel for the
applicant.

Heard the learned
Counsel for the applicant
issue notice on C.P. 50/98
returnable by 18.12.98.

18/11
JCLH

(D.S. Bawga) (R.G. Vaidyanatha)
M(A) VC

Notices issued to
Applicants on

Notices issued to
Applicant/Respondents on

27/11/98

30/11

(204) (23)

Dated: 18-12-98 (77)

Shri S.V. Marne, Counsel for the
applicant. Shri V.S. Masurkar, Counsel
for the respondents.

Shri Masurkar wants time to
file reply to C.O. 50/98. Reply by 8.2.1999.

[Signature]
(D.S. Bawga)
M(A)

[Signature]
(R.G. Vaidyanatha)
V.C.

[Signature]

8/2/99-56

Reply to C.O. 50
on 21/12/98

24/12

[Signature]

Heard Shri D.V. Gangal for
Applicant, Shri V.S. Masurkar
for Respondents.

Adjourned to 19/2/99.

Affidavit of application
to C.O. 50/98 on
03-02-99

[Signature]
(D.S. Bawga) (R.G. Vaidyanatha)
M(A) V.C.

alyp.

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Dated: 19.2.1999 (33)

Shri D.V. Gangal, Counsel
for the applicant. Shri V.S.
Masurkar Counsel for the
respondents.

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24/2

Adjourned to 5.3.1999.

(D.S. Sawant)
M/A)

(R. G. Vaidyanatha)

61) 05.03.1999

C.P. NO.: 50/98.

Shri ~~M.S. Ramamurthy~~ ^{D.V. Gangal} for the applicant and
Shri V.S. Masurkar for the Respondents.

2. This is a contempt petition filed by the applicant challenging that the respondents have not given him proper position in the seniority list in pursuance of the order of the Tribunal dated 19.09.1997. The respondents have filed reply opposing the C.P. We have heard the Learned Counsels appearing on both sides.

3. Referring to certain documents, the Learned Counsel for the applicant contended that applicant should be shown as senior to one Mr. V. P. Menon but the respondents have not accepted the claim of the applicant and

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contd..

thereby they have violated the order of the Tribunal. The Respondents' Counsel submitted that Mr. Menon was appointed on 26.04.1976 whereas the applicant was appointed on 12.09.1977 in the parent department and therefore cannot claim seniority over Mr. Menon. The Learned Counsel for the applicant joined issue on this point and contended that Mr. Menon was appointed in 1978, whereas the applicant was appointed in 1977. Therefore, the applicant should be shown as senior to Mr. Menon.

4. After hearing both sides, we find that the point involved is a disputed question of fact, which cannot be decided in the C.P. In pursuance of the order of the Tribunal, the respondents have held the D.P.C. and gave notional promotion to the applicant from 01.08.1989. Nodoubt, the applicant is entitled to seniority in the grade of ANSO from the date of his initial appointment in the parent department. Now there is serious dispute about the date of appointment of Mr. Menon. Mr. Menon is not a party to this proceedings. Therefore, in a C.P. we cannot go into the disputed question of facts, namely - whether the applicant is senior to Mr. Menon or vice-versa. Therefore, we are not expressing any opinion on the rival contentions. This is not a case where any ground is made out for initiating action for contempt, but however, we give liberty to the applicant to make a proper representation to the respondents within two weeks to claim his proper position in the seniority list and in such an event, the administration should

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consider the same and pass a speaking order either accepting or rejecting the representation within four weeks. If the applicant is still aggrieved about his position in the seniority list vis-a-vis Mr. Menon, his remedy is to take appropriate legal action to agitate his claim.

5. With the above observations, the C.P. is discharged.

(D. S. Baweja)
Member (A)

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(R. G. Vaidyanatha)
Vice-Chairman.