

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No:

261 of 1998

Date of Decision: 13.8.02

M. C. Rajan

Applicant.

Shri R. Ramamurthy

Advocate for
Applicant.

Versus

Union of India & ors.

Respondent(s)

Shri R. R. Shetty

Advocate for
Respondent(s)

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? ✓

(2) Whether it needs to be circulated to other Benches of the Tribunal? X

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this Tuesday the 13th day of August, 2002

Coram: Hon'ble Mr.B.N.Bahadur - Member (A)
Hon'ble Mr.S.L.Jain - Member (J)

O.A.261 OF 1998

M.C.Rajan,
Upper Division Clerk,
Reactor Control Division,
BARC, Trombay,
Mumbai 400 085.

(By Advocate Shri R.Ramamurthy) - Applicant

Versus

1. Union of India,
through the Secretary,
Department of Atomic Energy,
Government of India &
Chairman, Atomic Energy Commission,
Anushakti Bhavan,
CST Marg, Mumbai.
2. Head Personnel Division,
Bhabha Atomic Research Centre,
Government of India,
Central Complex, Trombay,
Mumbai.
3. Chief Administrative Officer,
Heavy Water Board,
V.S.Bhavan, 4th Floor,
Anushakti Nagar,
Mumbai.
(By Advocate Shri R.R.Shetty) - Respondents

ORAL ORDER

By Hon'ble Mr.B.N.Bahadur, Member (A) -

The applicant in this case has come up to the Tribunal seeking a number of reliefs as listed from sub-paras (a) to (j) of Para 8 of the OA. However, at the very start of the arguments on behalf of the Applicant, the learned counsel Shri M.S.Ramamurthy stated that he is restricting the reliefs only to those sought at sub-paras (a) to (e) of Para 8. In other words, the pleas for counting of service rendered by the applicant in Tuticorin for the purpose of seniority and eligibility to promotions. In fact, during the course of arguments made before us by the learned counsel on behalf of both sides, the learned

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counsel for the applicant made his submissions in two broad areas - the first being for counting of service for per se purposes of seniority and related benefits and the second for a plea to hold that Tribunal should, at least in respect of eligibility for promotion, count the service at Tuticorin.

2. The facts in the case as brought out in the OA are in a short compass, in that the applicant joined the respondents' department in 1969 and was posted at different places in the country and while being posted at Tuticorin Heavy Water Project was transferred to the BARC, Mumbai. It transpires from the documents on record that this transfer came as a result of the request made by the applicant for a transfer to Mumbai, although this fact does not get stated in the OA initially. The Applicant was given bottom seniority in the BARC, and hence the grievance and the seeking of the relief as discussed above.

3. The Respondents in the case have filed a Written Statement of reply, first taking the plea that O.A. suffers from the legal defect of seeking plural remedies. However, in view of the voluntary restriction of reliefs (para 1 above), this ground can no longer be pursued. The respondents then described the career progression of the Applicant in detail, with reference to Annexures appended to the Written Statement. The assertion is made that seniority in post of L.D.C., U.D.C., Senior Clerk, Selection Grade Clerk and Assistant is unit-wise, whereas the seniority from the post of A.P.O. onwards is centralised at the Department level. It is further asserted that since the

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Applicant was transferred from Tuticorin to Mumbai at his own request, the question of carrying seniority in the post of U.D.C. for the service rendered by him at Tuticorin "does not arise at all". The seniority will count from the date of joining at Mumbai i.e. 11.7.1983. In the long written statement further, the averments made in the O.A. are dealt with parawise.

4. We have seen all papers in the case and have heard Learned Counsel at some length viz. Shri M.S. Ramamurthy for Applicant and Shri R. R. Shetty for the Respondents. We must state that at one stage of hearing when Learned Counsel for Respondents had produced a copy of the seniority list, we had adjourned the case to enable the Learned Counsel for the Applicant to take instructions, if any, from the Applicant. The Learned Counsel for the Applicant made the point that while transferring the Applicant to Mumbai, it was not made clear to him that he would lose his seniority, both, for promotion and for purposes of eligibility for promotion. It was even asserted that the transfer to Mumbai is in public interest and, in fact, the request was for a Heavy Water Board posting in Mumbai and not for B.A.R.C. If a BARC posting was provided, then seniority could not have been deemed to have been lost. It was also argued that the applicant's was not a request transfer on forfeiture of seniority and that no orders were passed on the deputation status of the Applicant. The Learned Counsel also took the plea of discrimination vis-a-vis one Mr. Raste and another Mr. Panchal.

5. The Respondents then dealt at length with the second aspect that at least the Applicant should be held as eligible to

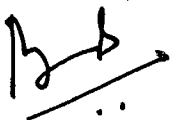
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reach the zone of promotion counting the Tuticorin service, even if his seniors in the Mumbai list were not eligible. The case law in the matter of Scientific Advisor to Raksha Mantri and another V/s. V. M. Joseph, [1998 SCC (L&S) 1362] and importantly, the case law in the matter of Renu Mullick Vs. Union of India & Another [(1994) 26 ATC 602] was relied upon.

6. The Learned Counsel for Respondents, Shri R. R. Shetty, after reiterating the legal pleas of limitation/delay and laches, and the aspect that this would unsettle settled seniority positions, then went on straight to rely on the case law in the matter reported in 1998 SCC (L&S) 1134 viz. Union of India & Others V/s. K. Savitri & Others. It was argued by Shri Shetty that the Applicant had clearly asked for a Mumbai posting and placed reliance on the letter at page 107 (Annexure R-1). He also made the assertion that even if the applicant was provided a posting in the Heavy Water Board Establishment at Mumbai, he would stand to lose seniority, as it is incorrect to say that the seniority at Heavy Water Board was centralised at All India level. It was argued that here was an official who, after getting what he wanted, now comes 15 years after the event asking for seniority benefits, and certainly delay and laches was a weak point in his case. In regard to eligibility referred to above, Learned Counsel Shri Shetty opposed the submissions made on behalf of Applicant and stated that providing of such a relief would mutilate against the concept of bringing a person at a lower seniority, when he/she asked for a transfer on request. This would provide him a wrong route to the very benefit that is taken away from all those who come on request transfer and lose

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seniority. The Learned Counsel depended on the seniority list to state that the relief sought was in fact a theoretical nature, in that, there are a large number of persons who would be senior to the Applicant, even assuming Tuticorin service to be counted. Learned Counsel for the Applicant, Shri Ramamurthy, replying briefly stated that he had no instructions on the seniority list and it be, atleast, held by the Tribunal that Applicant had eligibility for consideration for promotion on the basis of Tuticorin service.

7. Let us go to the first point about the transfer, being a transfer on request. A very perusal of the total papers in the case, and more especially the letter at page 107, clearly shows that Applicant's was a request transfer made on the plea that the he was suffering from certain health problems and also indicating in detail as to how his coming to Mumbai would benefit him in meeting his health problems. Nowhere does it say that it was a conditional or contingent to a posting in the Heavy Water Board Unit in Mumbai only. It was a request for meeting what was undoubtedly genuine problems and a request for transfer to Mumbai, per se. The argument taken about the Heavy Water Board posting and this transfer being a transfer in public interest are clearly arguments of convenience, taken years after the benefit has been provided. It is a clearly laid policy that persons seeking transfer on personal grounds do lose seniority, and to argue that he should have been made aware of it in the order of transfer and that too now, will not hold any force.

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8. In fact even on this point it can be stated that the very indication as seen from the papers on the record to the effect that the applicant was asked to meet his expenses on TA/DA etc. right at the time of his transfer were also clearly indicative of this being a transfer on request. This stand deserves to be rejected. Learned counsel for Respondents has stated that even if the Applicant had been posted in Mumbai in the Unit of Heavy Water Board, he was losing seniority; here the Applicant had joined another Unit i.e. BARC and hence can be assumed to have full knowledge of loss of seniority that is entailed in such posting.

10. Now once having come to the conclusion that Applicant's was a posting on request, it certainly entails loss of seniority. The benefits that are claimed cannot be provided. Nevertheless we had a careful look at the seniority list especially since it is important for dealing with the second aspect regarding prayer made for declaring the Applicant at least for being eligible for consideration for promotion. Firstly the correctness of seniority list is not denied. In fact, if there was a claim to be based on it, the Applicant should have annexed it with proper pleadings as to which individual has affected his cause. It is seen that even for argument sake, if the Tuticorin service of the Applicant is counted, the Applicant is clearly junior to a number of persons, and in that case it cannot today be held to be an aggrieved person in this regard. We are in fact informed by learned counsel Shri Shetty that the person at no.4 in the

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seniority list viz.; Smt.P.G.Kurup, UDC has been promoted as Assistant only as late as in July, 2002. We will not make a further analysis as these are not even pleadings.

11. We now come to the important point made by us in regard to the second part of the pleadings made viz. that the Tribunal should hold that the Applicant will be eligible for consideration for promotion as and when occasion arises by counting his Tuticorin service even if that means that some seniors in Mumbai in the new seniority list are not eligible. The case of Renu Mullick (supra) has been strenuously depended upon. In this regard we are not going to this aspect relating to prayer for directions as sought for, the reason that the Applicant has not become a person aggrieved, yet. In fact, the providing of this kind of direction would mean providing something as if it is incorporation of rule made by us in a vacuum. Such a kind of exercise cannot be undertaken by this Tribunal. Reliefs are provided to persons aggrieved. Hence we are not going into the implications of the case of Renu Mullick (supra) or the other case cited, since these kinds of reliefs can be considered only if and when grievance occurs.

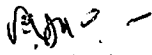
12. As regards the names cited in the OA where the Applicant is aggrieved in their being promoted to higher ranks are of three

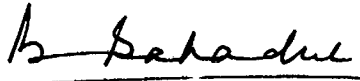


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persons as listed therein viz. Shri P.V.Padmanabhan, Shri Y.U.Madke and Smt.T.P.Nair. The plea is discrimination. A perusal of the dates from which these persons LDCs, UDCs, Senior Clerks etc (page 20 of the OA) shows that all these persons are undoubtedly senior to the Applicant. This is an admitted position also when this fact was pointed out during arguments. In service law no claims can be made on the basis of seniors having been provided promotion, and hence this cannot be a valid argument. Hence there is no force in the arguments of the Applicant. Similarly, the points raised at Page 134 of the Paper Book are met satisfactorily, by the Respondents, in their statement made at Page 163 (Para 19).

13. In view of the discussions made above, no case for interference is made out by the Applicant. Specifically, the reliefs at Paras 8 (a) to 8 (e) are rejected. Liberty is provided to the Applicant to come upto the Tribunal as per law in respect of other reliefs viz. reliefs listed in sub paras of 8 (f), (g) and (h). Such OA shall be considered only if filed within eight weeks from the date of receipt of copy of this order. The OA is disposed of accordingly. No costs.


(S.L.Jain)
Member (J)


(B.N.Bahadur)
Member (A)

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