

53

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :HYDERABAD BENCH
AT HYDERABAD

O.A.No.562/90

Date of decision: 20-8-93.

Between

1. D.S.Narsingrao
2. Gangaram
3. S.Gnaneshwar Rao
4. N.Seshagiri Rao

... APPLICANTS

A N D

1. Electrical Mechanical
Engineer Records, Secunderabad-21.
2. Director General of E.M.E.(EME CIV),
Army Hqrs., DHQ, New Delhi-11.
3. Govt. of India, Min. of Defence,
New Delhi, rep. by its Secretary.

... RESPONDENTS

Appearance:

For the applicants : Sri D.Linga Rao, Advocate
for the Respondents : Sri N.R.Devaraj, Sr.CGSC

CORAM:

The Hon'ble Sri Justice V.Neeladri Rao, Vice-Chairman
The Hon'ble Sri P.T.Thiruvengadam, Member. (Admn.)

contd....2.

IS/10/21

(54)

-2-

J U D G E M E N T

(of the Bench delivered by Hon'ble Sri Justice V. Neeladri Rao, Vice-Chairman).

A decision has been taken by the Army Headquarters ~~to for~~ ~~for~~ employment of civilians in lieu of combatants under the provisions of AI 17/49 in regard to clerks(GD) and three other categories. In pursuance of it, EME Records Office Instruction No.29 dated 1-7-61 was issued. It is stated therein that the employment of civilians in addition to making up the deficiencies will also enable combatants to be withdrawn from the units authorised to employ civilians where necessary for meeting urgent demands of field/newly raised/reorganising units. Thus the employment of civilians in lieu of combatant clerks ^{in the offices} is intended to get the work of combatant clerks/done by the civilians when the combatant clerks are sent to field/newly raised/reorganising units. Instruction No.29 dated 1-7-61 envisaged appointment of civilians in lieu of combatant clerks from amongst the ex-servicemen of the category, registered in the nearest/local Employment Exchange. If such ex-servicemen are not available, the units were required to appoint the civilians in lieu of combatant clerks from amongst the candidates sponsored by the Employment Exchange. The four applicants ~~civilians~~ were appointed on 9-4-63, 29-7-63, 23-12-63 and 24-2-64 respectively as civilians in lieu of combatant clerks from amongst the candidates sponsored by the Employment Exchange. At the time of

contd...2.

(5)

appointment, certificates were obtained from these applicants and similarly appointed candidates ^{to the effect} that ^{are} they being employed in lieu of combatant clerks ~~and~~ and ~~that~~ they are likely to be rendered surplus and their services ^{will be} terminated on the availability of combatants. But instruction No.29 dt. 1-7-61 also provides that if and when vacancies become available in regular cadre of civilian clerks and Storemen, Records Office will consider the civilians employed in lieu of combatants in the above two trades for absorption in such vacancies in the order of their seniority on the basis of their dates of appointment. In pursuance of the above, applicants were required to give their options to move on proceeding against regular cadre of LDCs, to the units referred to in the respective orders. But when they declined the offer of absorption many times during the period 1970-1976, the respondent-administration have served notice of termination ~~of~~ ~~the~~ of service, on the applicants in 1976. Then the applicants accepted the offer of absorption as LDCs on their postings to the new stations like Kirkee, Baroda, Kamptee. On such absorption, the seniority of the applicants in the regular cadre of LDCs ^{was} ~~were~~ fixed from the dates of their respective joining ⁱⁿ the respective units, in accordance with the reference Civilian Personnel Routine Order (CPRO) 11 of 1975.

contd...4.

22/10/75

2. These applicants submitted representations from 1979 till 2-11-1983 requesting for fixation of their seniority by taking into consideration their service from the date on which they joined as civilian clerks in lieu of combatants. The same was negatived by Army Hqrs. No.00745/Seniority/EME.C³IV-3 dated 13-3-84. The All-India Defence Civilian Clerks' Association submitted letter No.AIDCA/510/88 dated 18-4-88 stating that the Central Administrative Tribunal, Madras Bench (Full Bench) decided in O.P.No.1854/85 on the file of the High Court of Kerala and registered as O.A. 201/87 on the file of C.A.T., Madras, on 5-10-87 (reported in 1988(1) ATR(CAT) 120/K.A.Balasubramaniam Vs. Union of India & ors.) that the entire regular service from the date of entry into service had to be taken into consideration for fixation of seniority even when there is a transfer from one unit to another and hence they requested for fixation of seniority on absorption as regular L.D.Clerks by taking into consideration their earlier service as civilian clerks in lieu of combatants. By letter No.66237/2/EME.C-IV-3 dated 6-7-88, the EME Records informed the respective units as under:

✓
"The judgment of the CAT Madras has been perused and it is observed that it pertains to only one individual and since it does not talk about the similarly affected personnel, no cognisance need be given to the above mentioned judgment."

contd...5.

4/10/88
7/11

57

This application was filed on 21-6-90 praying for declaration "that the applicants are entitled for determination of their seniority from the date of their initial appointment in the LD Clerk category and consequentially the applicants are entitled for promotion to the post of UD Clerks on the basis of such seniority and also in terms of the principle of law decided by the Central Admn. Tribunal with all consequential benefits including arrears of pay and retrospective promotion and other attendant benefits by holding the action of the respondents in not reckoning their entire service from the date of initial appointment in the cadre for promotion while considering the said service for increments and pension and the denial of the same for promotion is as illegal, arbitrary, discriminatory and subversive of Articles 14 and 16 of the Constitution of India and pass such other order or orders as this Hon'ble Tribunal may deem fit."

3. It was pleaded for the respondents that this O.A. is barred by limitation as the cause of action had arisen more than three years prior to the commencement of Administrative Tribunals Act. It was further pleaded for the respondents that the civilian clerks in lieu of combatant clerks and the regular civilian cadre in the Army ~~had~~ ~~been~~ do not belong to the same service. While the recruitment of clerks in the regular civilian

contd...6.

STW 7

cadre is from the open market, the recruitment of civilian clerks in lieu of combatant clerks is from out of the ex-servicemen who got their names registered in the Employment Exchange/the candidates sponsored by the Employment Exchange. It is also the case of the respondents that when the civilian clerks in lieu of combatant clerks face retrenchment on the return of the combatant clerks, those civilian clerks in lieu of combatant clerks were being considered for absorption in the regular civilian cadre and when the former do not belong to the regular civilian cadre till they are absorbed in that cadre, they cannot claim that their service as civilian clerks in lieu of combatant clerks also has to be taken into consideration for fixation of seniority.

4. CPRO 11/75 lays down that no benefit of past service is given to the surplus staff adjusted in other grades/service/units for the purpose of fixation of seniority in the grade in which they are adjusted subsequent to 1-7-73. Admittedly the applicants here were adjusted in the regular civilian cadre subsequent to 1-7-73. They originally belong to the service of "Civilian Clerks in lieu of Combatant Clerks" and they were adjusted in the regular civilian cadre. The contention for the applicants that as they discharged in the service of Clerks/both the categories, they have to be treated as belonging to the same service cannot bear countenance for the recruitment to both the categories is not same and there was no common seniority for both the categories.

58

5. It was next urged for the applicants that even assuming that the two categories referred to do not form part of the same service, still the service in the former category has to be taken into consideration for fixation of seniority on absorption in the latter category and if it is not so taken, it will be discriminatory. But even 1988(1) ATR(CAT) 120 (Balasubramaniam's case) (Full Bench judgment of Madras Bench of C.A.T.) referred to ~~above~~ in the representation dated 18-4-88 by the All-India Defence Civilian Clerks' Association does not support the contention for the applicants. The point that had arisen for consideration in Balasubramaniam's case is as to whether the service in one unit could be reckoned as part of qualifying service or not for the purpose of promotion in the unit to which he is transferred. While referring to CPRO 11/75 it was observed in the above judgment that "these instructions, from their wording, govern only determination of seniority. It is in that context stated that the benefit of past service cannot be given to the transferred employee. They do not further say that the past service will be wholly wiped off and will not be counted for any purpose whatsoever. Eligibility of LDCs has to be determined with reference to the statutory rules governing promotion to the cadre of UDC." Lower down it was further observed as under:

"When an LDC appointed as a casual LDC or adhoc or temporary LDC, is made permanent, he is not immune from transfer. He may be

contd...8.

1089

60

transferred on administrative grounds or on his own request. Even when a request is made unless it is agreed to by the competent authority transfer is not effected. On such transfer his posting in the unit does not constitute a fresh appointment. However, such transfer is likely to disturb the seniority of LDCs of the unit to which he is transferred. Although logically he should take the place which should be assigned to him as per his length of service in the grade of LDC, the instructions specifically declare that so far as seniority is concerned he will be placed as the junior-most LDC in the new unit. This is only disability attached to him which is on transfer on compassionate grounds. The Instructions do not further declare that the service rendered in the grade of LDC in the other unit will be totally wiped off. In fact his service in the other unit is counted for the purpose of lien, annual increments, crossing E.B., pension, etc. If it is to be ignored for the purpose of determining his seniority in the grade of LDC in the new unit but not for other purposes we do not see any reason why regular service in the other units cannot be counted for the purpose of determining whether he has ~~xxxx~~ ~~in~~ put in the requisite number of years of regular service or not, to qualify him for promotion to the cadre of UDC in the absence of a specific rule. We do not see any valid ground to ignore the regular service in the other unit only because he has been transferred at his request and that his service is to be ignored for determining the seniority in the grade of Lower Division Clerk in the new unit."

It is manifest from the above that even in a case of transfer from one seniority unit to another seniority unit in the same ^{grade} ~~grade~~ the service in the former unit cannot be taken into consideration for fixation of seniority in the new unit. It is only stated therein that when a particular period of service is prescribed for eligibility for promotion in the new unit to which the employee is transferred, his service in the same grade in the ~~previous~~ unit also has to be taken into consideration for considering whether

contd...9.

sub

(61)

he has put in the requisite period of service for considering for promotion. It follows that in case of absorption in another service in the same grade, the period of employment in the earlier category cannot be taken into consideration for fixation of seniority in the category in which he is absorbed. Thus, it is clear that the judgment of the Full Bench of C.A.T., Madras Bench in 1988(1) ATR (CAT) 120 does not support the contention for the applicants that the period of their service as civilian clerks in lieu of combatant clerks has to be taken into consideration for the purpose of fixation of their seniority in the regular civilian cadre in which they are absorbed.

6. Even the various decisions cited at the time of arguments in this O.A. do not support the contention for the applicants. In AIR 1989 SC 377 (UOI & ors. Vs. Ansusekhar Guin & ors.) it was held that continuous length of service has to be taken as basis for fixation of seniority if no mode is prescribed in the service rules. But as already observed, CPRO 11/75 made a provision in regard to the fixation of seniority. Hence 1989 SC 377 is not helpful to the applicants. 1989(6) SLR 413 (UOI Vs. Hari Prasad) & the order of CAT, Jabalpur Bench refers to the fixation of seniority of a railway employee transferred to another unit on being declared as incapacitated on medical grounds. The rules

contd...10.

2/10/89
X

specify that the service in the earlier unit has to be taken into consideration for fixation of seniority in the new unit. It is not on the basis of the general principles. The Supreme Court ^{held} in 1988(6) SLR 33 (Delhi Water Supply & Sewage Disposal Committee & ors. Vs. R.K.Kashyap & ors.) that the service during the period of adhoc promotion can also be reckoned for fixation of seniority if the said adhoc promotion was given after considering the cases of all the eligible candidates and if he was given regular promotion in continuation of the adhoc promotion. That question does not arise here. 1988(5) SLR 27 (Pb. & Hry.) (Kesar Chand Vs. State of Punjab) is also to the same effect. 1988(5) SLR 27, judgement of the Punjab & Haryana High Court only states that the service of work charged employees has also to be taken into consideration for determining the qualifying service for pension and gratuity if the services of such employee is regularised. That also has no bearing for consideration of the contentions raised by the applicants herein.

7. In 1986(3) SLR 147 (K.N.Mishra & ors. Vs. UOI & ors.), judgment of CAT Delhi Bench, it is held that if seniority is inter-linked with quota and rota rules and if quota rules break down the continuous officiation against long term or substantive vacancies should also be reckoned for fixing seniority. In 1986 SC 638 (Narender Chadha Vs. Union of India) it was held that if a promotee continued ~~in~~ in service for more than 15 years, then the services of that promotee should be counted for fixation of seniority vis-a-vis direct recruits,

even when the ^{said} ~~aid~~ promotion is in violation of the rules. In 1986 SC 1455 (G.K.Dudani and Ors. Vs. S.D.Sharma & ors.) it was held that continuation of officiation in temporary post in the cadre also counts for fixation of seniority if those temporary posts are continued. But the question as to whether the period of employment in one service also counts for fixation of seniority, if that employee is absorbed in another service, has not fallen for consideration in the above case.

8. Even AIR 1977 SC 1868 (S.Krishnamurthy Vs. The Genl.Manager, Southern Railway), AIR 1987 SC 1676 (P.D.Aggarwal & ors. Vs. State of U.P. & ors.) and AIR 1989 SC 1972 (C.S.I.R. & anor^g. Vs. K.G.S. Bhatt & anr.) referred to for the applicants have no bearing for consideration of the point in this O.A. 1989(6) SLR 178 (Jaswant Singh Vs. State of Punjab & anr.) of Punjab and Haryana High Court is in regard to mutual transfer. It also does not help for determining the point in issue.

9. The question of seniority of an employee in a service has to be considered with reference to other employees in the same cadre in the service. If there ~~xx~~ ^{are} more than one seniority units ~~in~~ the same cadre in the same service, ~~then~~ the relative seniority has to be considered as amongst the employees in the same cadre in the seniority unit of that service. The question ~~that has arisen is~~ as to whether the period of regular employment in

contd...12.

11/10/84

64

-12-

one seniority unit counts for fixation of seniority in the new unit, in the same service, to which he is transferred, depends upon the relevant rules. Generally the rules specify that in case of transfer ^{seniority} at request from one unit to another seniority unit in the same service, he has to take the bottom seniority in the new unit. At best it can be stated that the appointment of civilian clerks in lieu of combatant clerks is on adhoc basis for it is not in accordance with the recruitment rules for appointment to the post of civilian clerks of regular cadre. It is well settled that only regular service in the cadre counts for seniority. The applicants had become members of the regular civilian cadre only from ~~the~~ ^{the} days on which they were absorbed in the regular civilian cadre. As such their service in the regular civilian cadre alone counts for seniority and also for eligibility period prescribed for promotion. Further the posts of combatant clerks do not form part of the regular civilian cadre. The applicants worked only in the temporary vacancies in the posts of the combatant clerks. ^{AS} ~~as~~ it is a case of appointment of the civilians on temporary basis in the post of combatant clerks, ~~and~~ they are referred to as civilians in lieu of combatant clerks. But merely because they are referred to as civilians, it cannot be held that they form part of regular civilian cadre. On that ground also the applicants cannot claim that their

contd...13.

12/10/74

services in the category of civilian clerks in lieu of combatant clerks should also be taken into consideration for fixation of seniority in the regular civilian cadre.

10. It has to be further noted that even in the case of transfer on deputation and if absorption is permitted on administrative grounds, the rules specify that the service of the deputationist counts from the date of deputation only if he had come from the same or higher cadre. Thus, even in such a case the deputationist is not getting the benefit of his service in the other category for fixation of seniority in the ^{Service} ~~cadre~~ in which he is absorbed. Then it cannot be stated that the employees belonging to one service should have the benefit of the period of their service in the ~~same~~ ^{Service for reckoning seniority} ~~should be counted~~ in the service in which they are absorbed. The underlined ^{thing} principle is ^[transfer at request or] that on ^{transfer} absorption in a new unit or service, the employees who were ^{transferred} absorbed should not be placed above the employees who were regular employees in that service or unit. The seniority is having a bearing for promotion. If another employee is brought from outside and placed above the employees in the service or the unit, ~~then~~ the chances of promotion of the latter are affected. The transfer of the former is either at his request or for his benefit. When the transfer is for the interest of that employee, the regular employees in the service or unit to which he is ^{or in which he is absorbed} transferred should not suffer.

13/11/89

Copy to:- : 15 ;

1. Electrical Mechanical Engineer Records, Secunderabad-21.
2. Director General of E.M.E. (EME CIV), Army Hqrs, DHD, New Delhi-11.
3. Secretary, Ministry of Defence, Govt. of India, New Delhi.
4. One copy to Sri. D. Linga Rao, advocate, CAT, Hyd.
5. One copy to Sri. N.R. Devaraj, Sr. CGSC, CAT, Hyd.
6. One copy to Deputy Registrar (Judl.), CAT, Hyd.
7. One copy to Library, CAT, Hyd.
8. Copy to All Benches & Reporters as per standard list of CAT, Hyderabad.
9. One spare copy.

Rsm/-

15/10/74
Page 74

11. It is clear that even when the applicants were appointed they were informed that their service was purely temporary and they have to face retrenchment when the combatant clerks return. But of course it was also envisaged as per the scheme of 1961 that the civilians in lieu of combatant clerks will be considered for regularisation in the regular civilian cadre if the vacancies exist. It is not a case where the junior-most in the regular civilian cadre has to be retrenched for absorbing the civilians in lieu of combatant clerk. Hence the civilian clerk in lieu of combatant clerk cannot claim any right over the junior-most clerk in the regular civilian cadre by the time he faces retrenchment. Thus the applicants are not entitled to the benefit of their service as civilian clerks in lieu of combatant clerks for the fixation of their seniority in the regular civilian cadre on their absorption therein.

12. In the above view it is not necessary to consider the bar of limitation.

13. For the reasons stated, this O.A. is dismissed. No costs.

P. J. Thiruvengadam
(P.T.Thiruvengadam)
Member/Admn.

V. Neeladri Rao
(V. Neeladri Rao)
Vice-Chairman

Dated: the 20th day of August, 1993.

mhb/

A 828/83
Dr. Registrar (G.O.)

Catd/-... 157-

10/10/93

0A-562/90
(R) 27/8/93.

TYPED BY _____ COMPARED BY _____
CHECKED BY _____ APPROVED BY _____

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. A. B. GORTHY : MEMBER (A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER (JUDL)

AND

THE HON'BLE MR. P. T. EIRUVENGADAM : M(A)

Dated: 20/8/1993

ORDER/JUDGMENT:

M.A/R.A/C.A.N.

in

O.A.No.

T.A.No.

562/90.

(W.P.)

Admitted and Interim directions
issued.

Allowed

Disposed of with direction

Dismissed

Dismissed as withdrawn

Dismissed for default

Rejected/Ordered

No order as to costs.

