

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O:A. 930/91

Dt. of Decision : 2/4/11.94.

G. Dasaratharamaiah

.. Applicant.

Vs

1. Deputy Chief Mechanical Engineer,
Wagon Workshop, Guntupalli,
Krishna District.

.. Respondent.

Counsel for the Applicant : Mr. S. Lakshma Reddy

Counsel for the Respondent : Mr. N.V.Ramana, Addl. CGSC.

CORAM:

THE HON'BLE SHRI JUSTICE V.NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

..2

OA 930/91.

JUDGMENT

Dt:2/4.11.1994

(AS PER HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN)

Heard Shri S.Lakshma Reddy, learned counsel for the applicant and Shri N.V.Ramana, learned standing counsel for the respondents.

2. This OA was filed praying for direction to the respondents to revise the seniority of the applicant by counting his seniority from 22.2.1979 ie., the date on which he acquired temporary status and to assign his seniority in ~~xxxxxxxxxx~~ between Serial Nos.77 and 78 of the provisional seniority list ~~published x~~ as on 1.2.1989 of Skilled Welders and for consequential benefits.

3. When Wagon Workshop at Guntupally was formed, volunteers from various categories in various seniority units were called for. It was stated in the said notification calling for applications from such volunteers that they will be taken in the category in which they were there by the date of option and the earlier service in that category also will be reckoned for the purpose of seniority in the Wagon Workshop at Guntupally. The applicant was engaged as Casual Labour ~~x~~ Khalasi in his parent unit and he attained temporary status as casual labourer on 22.2.1977 and he was regularised as
✓

contd....

Khalasi on 31.1.1979. When he opted for the Wagon Workshop in Guntupally, he was transferred to the same on 21.3.1981. In due course, he was promoted to various categories including HSK Grade-II Welder. In the seniority list that was published in 1984 for Grade-III Welders, the seniority in the grade of Khalasi by reckoning ~~xxxxxx~~ it from the date of regularisation was taken as the basis. In the said seniority list, the applicant was shown at Sl.No.170.

4. Shri Mangaraju also opted to Wagon Workshop at Guntupally. He was engaged as casual labourer prior to 1.4.1974 and he attained temporary status on 1.4.74 and in view of the number of sanctioned posts and vacancies, his services as Khalasi ^{were} regularised with effect from 16.5.1980. He was shown at Sl.No.201 in the seniority list published in 1984 in regard to Grade-III Welders in the Wagon Workshop, Guntupally.

5. Shri Mangaraju filed W.P.No.6131/83 praying for direction that his seniority had to be considered in the grade of Khalasi in the Wagon Workshop at Guntupally by reckoning his service from 1.4.1974, the date on which he attained temporary status. The said Writ Petition was transferred to this Bench and registered as TA 565/86. The same was disposed of on 18.6.1987 with direction to the respondents to fix the seniority of Shri Mangaraju by counting his service ^{from} 1.4.1974, the date on which he attained temporary status in his parent unit. In pursuance of the said direction, the

seniority of HSK Grade-III Welders in that Workshop was modified by showing the name of Shri Mangaraju at Sl.No.36 of the said seniority list. Then the applicant preferred this OA praying for the relief as referred to.

6. Their Lordships of Supreme Court held in 1993(1) SLR 550 (Smt.V.Kameshwari Vs. UOI & Ors.) that the provision contained in para 2511(a) as amended on 7-5-1993 which refers to the fixation of seniority of casual labourers on absorption is retrospective. The above amended provision lays down that the seniority of the casual labourers on absorption had to be fixed by reckoning their services from the date of regularisation only. Being faced with the said judgement, learned counsel for the applicant contended that there will be violation of Article 14 of the Constitution if the applicant herein is not given the benefit of reckoning the service from the date on which he attained the temporary status when Shri Mangaraju whose services were regularised as Khalasi later to the date on which the services of the applicant were regularised as Khalasi was given that benefit in pursuance of the judgement in TA 565/86. But we cannot accede to the said contention. Similar point had come up for consideration before the Supreme Court in 1993(4) SLR 549 (K.K.M.Nair & ors. Vs. UOI & ors.). On the basis of circular dated 6-11-1962, Supervisors Gr.A in the Indian Ordnance Factories were promoted to the post of Chargeman-Gr.II on completion of 2 years of service. The said circular was withdrawn by circular dated 20-1-66. When ~~some~~ Supervisors Gr.A, ~~who~~ ^{who} joined prior to the date of 2nd notification were not given promotion on completion of two years of service, they filed writ petition in

Allahabad High Court in 1972 claiming benefit of circular dated 6-11-62. The learned single judge dismissed the Writ Petition on the ground of delay. It was held by the Division Bench of Allahabad High Court that Grade-A Supervisors on completion of two years of service have to be considered in accordance with Rule 8 of the Rules ~~and~~ for promotion as Chargeman Grade-II and they are not entitled to automatic promotion on completion of two years of service. The Supervisors Grade-A filed Civil Appeal No.441/81 in the Supreme Court against the said judgement of Allahabad High Court. It was held then in that "there was no justification for any differential treatment being given to the appellants therein. If a large number of other persons similarly situated have been promoted as Chargemen Gr.II after completing two years of service, there is no reason why the appellants also should not be similarly promoted after completing the same period of service." It was added that "those who were not found fit for promotion cannot claim for promotion on completion of two years of service." 125 Gr.A Supervisors filed six Writ Petitions in Madhya Pradesh High Court during the period 1981-82 claiming the same relief which was granted to the appellants in ~~the~~ Civil Appeal No.441/81 on the file of the Supreme Court. The same were ~~not~~ allowed. SLPs against the same were dismissed on 20-7-86. Then the Director General of Ordnance Factories issued order dated 20/25-2-1987 giving ante-dated seniority to the writ petitioners therein. Then

Y

contd...6.

RJW

Sri S.K.Chattpadhyay and others who were seniors to the Writ Petitioners therein filed O.A. before Jabalpur Bench of C.A.T. challenging the DG's order dated 20/25-2-87. The same was allowed.

7. In 1989(2) SLR 202(SC) (Paluru Ramkrishnaiah Vs. UOI) the Supreme Court held that the Department had not properly emphasised the rules and had not properly projected the case in Civil Appeal No.441/81 and by so observing their Lordships disapproved the order in Civil Appeal No.441/81.

8. The respondents in the O.A. before the Jabalpur Bench of C.A.T. ie. the petitioners in the six Writ Petitions filed before the Madhya Pradesh High Court preferred the appeal against the above order of Jabalpur Bench before the Supreme Court. The judgement in the said appeal was reported in 1993(4) SLR 549(SC) (K.K.M.Nair Vs. UOI). Therein it was held that as the base of the claim of the Writ Petitioners in the M.P.High Court was knocked out by the judgement of the Supreme Court in Paluru Ramkrishnaiah's case, the petitioners in the Writ Petitions before the M.P. High Court have no ground to sustain the order passed by the D.G. in pursuance of the judgement of M.P. High Court which was confirmed by the Supreme Court in SLPs. It was further held therein that the judgement of the M.P. High Court cannot be held as final as against the affected parties who were not impleaded therein.

18 9

contd...7.

9. It was also held therein that as the judgement in Civil Appeal No.441/81 had become final, the appellants therein might have got the benefit of the said judgement. But as the principle laid down in the said judgement was not approved by the later larger Bench of the Supreme Court, it was held that similarly situated employees cannot claim the benefit similar to the benefit given to the applicant in an earlier proceeding when the principle laid down therein is held as erroneous.

10. In this case the applicant is seeking relief on the basis of the judgement of this Bench in T.A. No.565/86. But the principle laid down in the said T.A. was not accepted by the Supreme Court in Smt. Kameshwari's case. Hence the applicant cannot claim relief similar to the relief given to the applicant in T.A. 565/86. Thus in view of the judgement of the Supreme Court in 1993(4) SLR 547 (SC) the contention for the applicant that he has to be given the benefit which was given to the applicant in TA 565/86, ^{it may} when the principle laid down in the said T.A. was not approved by the Supreme Court in Smt.Kameshwari's case, is not tenable.

11. Then the next question that had to be considered is as to whether to avoid distortion, the applicant had to be given some benefit which was being given to Sri Mangaraju, the applicant in T.A. 565/86. While Sri Mangaraju was engaged on casual basis even prior to 1-4-1974, the applicant herein was engaged as a casual employee on 18-10-1976. Of course, the

Y

contd...8.

services of the applicant were regularised even before the date of regularisation of Sri Mangaraju after absorption in the regular service. But they worked in different seniority units before they had come into the Guntupally Wagon Workshop. The question of regularisation of the services of the casual employee in the regular service depends upon the availability of vacancy and the number of casual employees who are due for absorption. As such the possibility of 'A' who joined as a casual employee in a particular seniority unit earlier to the date on which 'B' was engaged as a casual labourer in another seniority unit, being absorbed in the regular service later to the date of absorption of 'B' may arise.

12. Notifications were being issued by the Guntupally Wagon Workshop calling for volunteers from various seniority units for absorption in the Guntupally Wagon Workshop. Those volunteers were informed that they would be absorbed in the cadre in which they were by the date of option/relief. When in some notifications it was stated that they would be absorbed in the cadre in which they were at the time of option, in some other notifications it was stated that they would be absorbed in the cadre in which they were by the time of their relief in the parent unit. Ultimately this Bench held that whatever might have been stated in the notifications, they have to be absorbed in the cadre in which they were by the time they were relieved. It is further stated in the said notifications that their earlier service in the parent units in the cadre in which they were absorbed in Guntupally Wagon Workshop will be reckoned for fixing the seniority in Guntupally Wagon Workshop.

Y

contd...9.

mgw

13. It was held in Smt.Kameshwari's case by the Supreme Court that the seniority of those who were originally engaged as casual labourers would count from the date of their regular absorption in the service. The question then arises is as to whether the said principle is applicable only in a case where seniority has to be fixed amongst the casual labourers absorbed in the same parent unit or whether the same principle has to be made applicable even in a case where the volunteers from various seniority units joined another seniority unit. If it has to be held that the principle laid down in Smt.Kameshwari's case applies even in this case where they had come from various seniority units then the applicant herein may be senior to ~~the~~ Sri Mangaraju. But if attainment of temporary status as casual labourer has to be taken into consideration then Sri Mangaraju will be senior to the applicant.

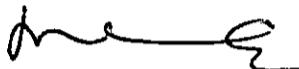
14. We feel that this is a case where the O.A. has to be rejected on the ground of laches for the applicant herein is seeking alteration of the seniority list in Grade III long after he was promoted to Grade II. Hence we do not propose to decide as for the disposal of this O.A. to whether the service from the date of attainment of temporary status or the service from the date of regularisation on absorption has to be taken into consideration for fixing inter-se seniority of the volunteers who were absorbed in the

8

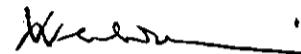
contd....10.

Guntupally Wagon Workshop. It may be noted that Sri Mangaraju filed the Writ Petition even before the seniority list in Grade-II was finalised and hence the question of laches had not arisen in regard to his case.

15. In the result the O.A. is dismissed on the ground of laches. No costs. /



(R. Rangarajan)
Member (Admn.)

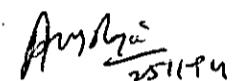


(V. Neeladri Rao)
Vice-Chairman.

Dated: 4th day of November, 1994.

(Dictated in open court)

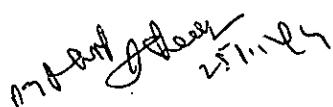
Sk/mhb


Deputy Registrar (J) CC

To

1. The Deputy Chief Mechanical Engineer, Wagon Workshop, Guntupally, Krishna Dist.
2. One copy to Mr. S. Lakshma Reddy, Advocate. CAT. Hyd.
3. One copy to Mr. N. V. Ramana, Addl. CGSC. CAT. Hyd.
4. One copy to Library, CAT. Hyd.
5. One spare copy.

pvm


M. H. B. 25/11/94

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.R.RANGARAJAN : M(ADMIN)

DATED: 4-11-1994

~~ORDER~~ JUDGEMTN:

M.A./R.A/C.A.No.

in

O.A.No.

930/91

T.A.No.

(w.p.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Ordered/Rejected

No order as to costs

Dvm

