

(3)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

O.A. No. 399/99
T.A. No.

199

DATE OF DECISION 16.12.1999

P.L.Meena

Petitioner

Mr.P.V.Calla

Advocate for the Petitioner (s)

Versus

Union of India and Ors.

Respondent

Mr.Tirupati Kandoi, Proxy counsel **Advocate for the Respondent (s)**
Mr. M.Rafiq

CORAM :

The Hon'ble Mr. S.K.AGARWAL, JUDICIAL MEMBER

The Hon'ble Mr. N.P.NAWANI, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(N.P.NAWANI)
Adm. Member


(S.K.AGARWAL)
Judl. Member

(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 16.12.1999

OA No.399/99

P.L.Meena S/o Shri Bal Kishan Meena, at present working on the post of Lower Division Clerk in the office of Survey of India, Jaipur.

.. Applicant

Versus

1. The Union of India through the Secretary to the Government, Ministry of Science and Technology, Technology Bhawan, New Mehrauli Road, New Delhi.
2. The Surveyor General, Survey of India, Hathi Barukulla, Dehradun.
3. The Additional Surveyor General, Survey of India, Western Zone, R-7, Yudhisthir Marg, C-Scheme, Jaipur.

.. Respondents

Mr. P.V.Calla, counsel for the applicant

Mr. Tirupati Kandoi, proxy counsel to Mr. M.Rafiq, counsel for the respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

Per Hon'ble Mr. N.P.Nawani, Administrative Member

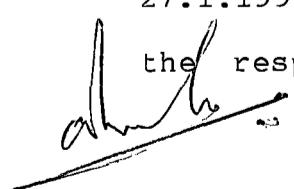
In this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant seeks following reliefs:

"orders at Annexure A-1 and Annexure A-2 dated 24.2.1999 and Annexure A-3 dated 19.5.1999 may kindly be quashed and set aside. Further, the respondents may be directed to include the name of the applicant in the order dated 18.2.1999 (Annexure A-8) at an appropriate place i.e. as

On

per the merit shown in the result dated 27.1.1999 (Annexure A-7). Further, by an appropriate order or direction, allow the applicant to work on the post of Upper Division Clerk from the date on which the other candidates were allowed to enjoy the post of Upper Division Clerk, with all consequential benefits."

2. The controversy in this case revolves around the question whether the service rendered by the applicant as Lower Division Clerk (for short, LDC) in the Ministry of Surface Transport (for short, MOST) between 5.8.1993 to 31.12.1996 should be counted as qualifying service and be added to the service he rendered as LDC in the Survey of India, to which organisation he sought a transfer, got it and joined on 1.1.1997 i.e. the next day of his service in MOST and where he was working till date. If such service as LDC is counted, he has completed about 6 years of service as LDC and satisfies the condition of a minimum of 3 years of service before one is entitled to sit in the Limited Competitive Examination (Recruitment to Upper Division Clerks Grade) Scheme, 1961 (for short Scheme of 1961) conducted by the respondents. The applicant's case is that his candidature was accepted and forwarded after due verification by the authority at Jaipur and on receipt of names of candidates from various Units/Zones, the Survey Training Institute (for short, the Institute) of Survey of India, issued a consolidated list vide letter dated 27.8.1998 (Ann.A6), wherein in the Jaipur unit, the applicant was at Sl.No.1. The applicant along with other candidates appeared in the said examination and was declared successful vide letter dated 27.1.1999 (Ann.A7) with his rank at Sl.No.13. In pursuance, the respondent No.2 issued posting order dated 10.2.1999

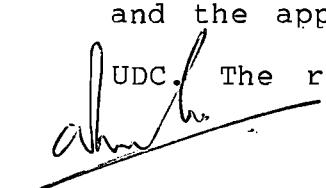


(Ann.A8) for 13 persons but the name of the applicant was omitted. He represented (Ann.A9) that no reasons has been given for his non-promotion and in reply the office of Surveyor General of India informed the respondent No.3 vide impugned letter dated 24.2.1999 (Ann.A1) that the name of the applicant has been deleted as he had not completed 3 years of service in the grade of LDC on the date of notice of the examination. Similar letter of same date (impugned Ann.A2) was separately sent to respondent No.3 adding that para 3 of Schedule C of the circular order No.437 (Admn.) can be perused. Thereafter, the applicant made a detailed representation in reply to which he was informed that as per rules he cannot be promoted.

3. A reply has been filed by the respondents which is on record.

4. We have heard the learned counsel for the parties and gone through the records carefully.

5. The contention of the applicant is that the respondents' decision that the applicant is ineligible is absolutely unwarranted and based on incorrect interpretation of the Scheme and Rules. The respondents had gone through the entire process of examination and declared him successful and after all this, deleting his name and promoting a candidate lower in rank was also against the principles of natural justice. The applicant was a Scheduled Tribe person and there were 4 vacancies for them but only 2 ST candidates were promoted. The impugned orders were, therefore, required to be quashed and the applicant should be allowed to work on the post of UDC. The respondents, on the other hand, have stated that



a

before the applicant joined Survey of India, he was categorically informed that as per rules and letter dated 29.11.1996 (Ann.R1), he will not get seniority on his transfer from MOST and his seniority in Survey of India will be counted from the date he assumed charge in Survey of India and thus, it cannot be construed that the applicant had completed 6 years of service as LDC in Survey of India as he joined only on 1.1.1997 and having not completed 3 years, he was not entitled but was only considered erroneously. The result were finally checked in the HQ and when the applicant was found ineligible, his name was excluded.

6. The question before us is whether the service of the applicant as LDC in MOST can also be counted as qualifying service in the Survey of India for the purpose of the Scheme of 1961. We make it very clear at the very beginning that neither has the applicant made any prayer for counting his service in MOST for the purpose of seniority nor can we allow him that seniority. However, as far as the counting of service in MOST for eligibility is concerned, the matter is entirely different. The applicant was transferred from MOST to Survey of India and without any gap continued to serve as LDC in another Department within the Government of India.

7. In Shri Deo Narain and Ors. Vs. Union of India Ors. reported in 1993(3) ATC 571, the Principal Bench of this Tribunal were examining a case where the applicants were transferred from other departments to the Meerut Commissionerate of the Central Excise Department. They were placed at the bottom of combined seniority list. However, it was held that the service rendered by them as LDC in the previous department can be taken into consideration for the

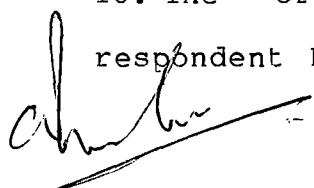
[Handwritten signature]

purpose of eligibility for promotion. The Bench had relied on the judgment dated 5.12.1965 of Hon'ble the Supreme Court of India in Union of India Vs. C.N.Ponappan in CA No.1221/1987 wherein the Apex Court had held that a person who had been transferred on compassionate grounds only loses his seniority but he does not lose the past services.

8. In the case of Renu Mullick Vs. Union of India, reported in (1994) 26 ATC 602, the Apex Court has again held that the "service rendered prior to unilateral transfer at own request also counts for determining the eligibility condition though such transfer downgrades seniority".

9. The applicant in this case sought transfer from MOST to Survey of India and his request was allowed. He worked from 5.8.1993 to 31.12.1996 in the former Ministry and from next date in the Jaipur office of Survey of India. The Survey of India is also an organisation completely under the Government of India and the applicant continued to serve under the Government of India. In the light of the law laid down by the Apex Court in this regard as reflected from the judgments cited above, we have come to this considered opinion that the service rendered by the applicant in the MOST should be counted towards eligibility and hold that the applicant was eligible on the date of notice for the said examination having completed much more than 3 years of service as LDC after adding the service rendered by him in MOST. He will, however, get no benefit of such service in MOST for the purpose of fixing his seniority in Survey of India.

10. The Original Application, therefore, succeeds and respondent No.2 is directed to treat the applicant as having

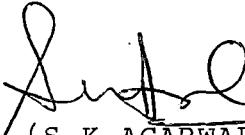


11

completed the qualifying service of 3 years as LDC and, therefore, being eligible for the examination under the Scheme of 1961 and further that having succeeded in the examination, he may be given notional promotion to the post of UDC w.e.f. the date his junior in the promotion order dated 12.2.1999 assumed the charge of the post of UDC. The applicant will, however, be given actual salary and allowances of the post of UDC w.e.f. the date of first available vacancy of UDC in the office of respondent No.3. These directions may be complied with within first available vacancy of UDC occurring in the office of respondent No.3. No order as to costs.


(N.P. NAWANI)

Adm. Member


(S.K. AGARWAL)

Judl. Member