CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH

CIRCUIT COURT SITTING AT BILASPUR

Original Application No. 402 of 2005

Bilaspur, this the 7th day of March, 2006

Hon'ble Shri Justice B. Panigrahi, Chairman
Hon'ble Shri Shankar Prasad, Administrative Member

Smt. Pramila (Nath) Sharma, D/o. late Shri Paresh Chandra Nath, W/o. Shri K.P. Sharma, Date of birth : 1.7.1949, R/o. MIG-21, MP Housing Board Colony, Kosabadi, Korba - 495 677. ... Applicant

(By Advocate - Shri S. Paul)

V e r s u s

1. The Union of India, through its Secretary, Ministry of Home Affairs, Deptt. of Personnel & Administrative Reform, Surplus Cell, Rehabilitation Cell, New Delhi.

2. The Secretary, Ministry of Communication, Deptt. of Post, New Delhi.

3. The Chief Post Master General, Chhattisgarh Circle, Raipur.

4. The Superintendent of Post Offices, Bilaspur Division, Bilaspur (CG). ... Respondents

(By Advocate - Shri S.A. Dharmadhikari)

O R D E R (Oral)

By Justice B. Panigrahi, Chairman -

By this OA the applicant has sought for a direction to the respondents to count the past service of the applicant rendered in Mana Camp for the purpose of benefit of OTBP and BCR schemes. She has also asked for interest in payment of and for such other orders as this Tribunal deems appropriate.

2. The case of the applicant in brief is that she was initially appointed as Primary Teacher (Untrained) in Mana Camp on 11.12.1970 and worked there upto the year 1976. The applicant was thereafter declared surplus and was absorbed in the Department of Post vide order dated 28.12.1976. The Department of post has framed a time bound

promotion scheme and also a BCR scheme. The grievance of the applicant is that the respondents have not taken the past services rendered in Mana Camp into account for granting benefit of promotion/upgradation under the TBOP/BCR scheme. It is further stated that this matter is no longer resintegra and is settled by a decision of the Apex Court in the case of Dwijen Chandra Sarkar and another vs. Union of India and others. The Tribunal has also followed the same decision.

2.1 The respondents in their reply submitted that the decision of Apex Court in Dwijen Chandra Sarkar is not a judgment in rem and is a judgment in personnem. They have defended the action taken by the Department.

3. We have heard learned counsel.

4. The appellants in Dwijen Chandra Sarkar and another vs. Union of India & Ors., (1999) 2 SCC 119, were employees of Department of Rehabilitation, Government of India and their services had been transferred to P&T Department in public interest. They had preferred an Original Application for counting the past services under Department of Rehabilitation for the purpose of the time bound promotion scheme. The Tribunal had rejected the said application. The Apex Court held as under :

> "5. The respondents have also relied upon a copy of letter No. 20/34/76-SPB dated 31.3.1977 from the DG P&T, Calcutta in relation to the subject of appointment of surplus staff of Mana Camp. The material portion of the said letter reads as follows :
>
> > "Suplus personnel on their redeployment in your circular are treated as transferred in the public interest and their past service is counted for all purposes (i.e., fixation of pay, pension and gratuity) except seniority."
>
> 17. On the facts of the present case and especially in view of the aforesaid decisions, we are of the view that when the transfer is in public interest and not on request, the two employees transferred cannot be in a worse position than those in the above rulings who have been transferred on request and who in those cases accepted that their names could appear at the bottom of the seniority list. Even in cases relating to

request transfers, this Court has held, as seen above, that the past service will count for eligibility for certain purposes though it may not count for seniority.

20. In our view, the Tribunal was in error and its order is set aside. The appellants will be entitled to the higher grade from the date they completed 16 years of service - computing the same by taking into account their past service in the Rehabilitation Department also along with the service in the P&T Department. They will be so entitled as long as they remain in the post of Assistant and till their normal promotion to a higher post according to the Rules. The difference between the emoluments in the grade as due to them and the amount which was actually paid to them, shall be computed and be paid within a month from the date of this order. There will be no order as to costs."

5. The applicant has also produced a copy of the common order passed in OAs Nos. 898/2000, 278/2001, 329/2001 and 520/2001. The applicants therein where also the employees of Mana Camp and have been redeployed in the Telegraphic wing of the P&T Department. The Tribunal held as under :

"6. In view of the facts andcircumstances discussed above, we are of the considered view that the benefit of BCR promotion to the applicant is to be given from the due date.

7. For the reasons recorded, the OA 329/2001 is allowed. As the other OAs 898/2000, 278/2001 and 520/2001 are similar they are also allowed. The respondents are directed to grant the BCR promotion to the applicants from the due dates with all consequential benefits. Recoveries, if any, made from the applicants be refunded back to them. The respondents are directed to comply with the aforesaid directions within a period of four months from the date of communication of this order."

6. The above decision of the Apex Court and the decision of the Division Bench applies with full force to the present case. The applicant is accordingly entitled to the benefits granted by this Tribunal in the common order dated 17.3.2004 passed in OAs Nos. 898/2000 etc.

7. The OA is allowed accordingly. The respondents are directed to pass appropriate orders regarding antdating the date of placement in TBOP and BCR within three months of the receipt of the order and to pay the arrears within one month thereafter. In case the arrears are not paid within the

aforesaid period of four months the arrears shall carry interest at 8% for the period beyond four months till the date of payment. No costs.

(Shankar Prasad)
Administrative Member

(B. Panigrahi)
Chairman

"SA"

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....

प्रतिलिपि

(1) सचिव, ..., जबलपुर
(2) आवेदक श्री/श्रीमती/कु. .....के काउंसल
(3) प्रत्यर्थी श्री/श्रीमती/कु. .....के काउंसल
(4) ग्रंथपाल, ...

सूचना एवं आवश्यक कार्यवाही हेतु।

उप रजिस्ट्रार

I. Ahmad, Adv-Jbp
I. A. Dharmadhikari, Adv-Jbp

14.3.06