

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH
JABALPUR

O.A.No.15/2000

Hon'ble Sh. Sarveshwar Jha, Member (A)
Hon'ble Sh. Bharat Bhushan, Member (J)

Jabalpur, this the 14th day of November, 2003

Shri K.G.Sudarsanan
s/o Shri (Late) CN Govinda
Kurup, Asstt., Central
Institute of Agricultural
Engineering, Nabibagh
Berasia Road
Bhopal - 462 038 (MP). ... Applicant

(By Advocate: Sh. S.Paul)

Versus

1. The Senior Administrative Officer
Central Institute of Agricultural
Engineering
Nabibagh
Berasia Road
BHOPAL.
2. The Director
Central Institute of Agricultural
Engineering
Nabibagh, Berasia Road
Bhopal.
3. The Secretary
Indian Council of Agricultural
Research, Krishi Bhawan
Dr. Rajendra Prasad Road
New Delhi.
4. Shri K. Rameshan
Assistant, Central Institute
of Agricultural Engineering
Nabibagh, Berasia Road
Bhopal.8 .. Respondents

(By Advocate: Sh. B. Dasilva)

O R D E R

By Sh. Sarveshwar Jha, Member (A):

Applicant has impugned the orders of
the respondents dated 10.8.1999 (Annexure A3) and
has prayed that the said orders be set-aside and
the respondents be directed to assign him seniority
as Senior Clerk w.e.f. 24.11.1982. He has also
prayed for consequential benefits.

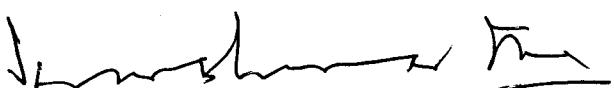


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2. The facts of the matter, briefly, are that the applicant joined the Central Institute of Agricultural Engineering as Senior Clerk on 19.6.1982 with a clear condition that his services will be governed by the relevant rules and instructions issued by the Government of India/ICAR as amended from time to time, ^{and} ~~as~~ per Office Order given to him vide No.1-8/81-Rectt/Vol.II dated 3.5.1982 (Annexure A/8) issued by Respondent No.2. While serving under the control of Respondent No.2, he was promoted as Senior Clerk on regular basis at his parent Institute on 24.11.1982 after qualifying the Departmental competitive Examination vide Office Note dated 26.11.1982 (Annexure A9) and Office Order dated 2.12.1982 (Annexure A10). Accordingly, the applicant has claimed that he has earned appointment to the post of Senior Clerk w.e.f. 24.11.1982 by virtue of his having qualified in the said Departmental Competitive Examination, and therefore, the benefit of seniority w.e.f that date should have been given to him.

3. It is observed that the applicant, on his regular appointment as Senior Clerk, as well as his parent Institute requested that he may be relieved by the CIAE, Bhopal to join him new place of posting. The matter was taken up with the respondents' organisation (CIAE) with a number of reminders, as detailed in paragraph 4.b.3. It is further observed that despite the said request

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made by the applicant as well as by the parent Institute, the Respondent No.2 did not relieve him to join his new posting and continued to retain his services at CIAE, Bhopal in public interest. The applicant has submitted that the respondents have never denied that his services were retained by them in public interest and the same has been admitted in OA No.70/90. This position is further substantiated by the fact that Respondent No.2 had sought the willingness of the applicant and that of his parent Institute before his services were retained by them. He has referred to the relevant rules (Annexure A-15) to make a point that the maximum time limit for retention of the services of the applicant should have been six months only from the date of the regular promotion to higher post at his parent Institute, i.e., w.e.f. 24.11.1982 while he was on deputation. Accordingly, regularisation formalities were completed/taken by the respondents by 23.5.1983. But for no reasons having been conveyed to the applicant, order of regularisation was issued only on 27.8.1983.

4. The unilateral decision of Respondent No.2, as conveyed vide their Officer Order No.1/81-Rectt./10712 dated 27.8.1983 incorporating Para 2 as an ultimatum clause of discharge from service and granting belated seniority to the applicant (without giving the benefit of public interest retention of services of the applicant), is, in the opinion of the applicant, in violation of the

instructions on the subject and also against the representations made by the applicant from time to time, details of which are given in Paragraph 4.b.10. He has enumerated the handicaps and adversities which have resulted from the operation of their Office Order dated 27.8.1983, as given in Paragraph 4.b.11.

At several places, ^{The} applicant has sought to argue that he agreed to continue in the respondents' organisation despite the fact that he had been offered, on his regular promotion as Senior Clerk, a posting of his choice and also seniority as per the date of the said promotion. The applicant has, therefore, argued that Respondent No.2 should have given him seniority with reference to the relevant rules as referred to by him in his communication No.1-8/81-Rectt. Vol.II/PF dated 23.11.1983. In this backdrop, his Office Memorandum dated 19.4.85 (Annexure A4) is, therefore, shocking inasmuch as his seniority has been relegated to Sl. No.17 in place of Sl. No.11 by placing his juniors, who were promoted recently, above him.

5. The applicant has alleged that clubbing his seniority with the other persons promoted along with him vide their Office Order dated 27.8.1983 instead of apprising him of his placement in the seniority after allowing him regularisation in his appointment in public interest. ^{is irregular} This action on the part of Respondent No.2, as alleged by the applicant, ^{i.e.,} granting seniority to his juniors above him was detrimental to his prospects and also against rules.

He has also charged the Respondent No.2 with adopting varying stands in the matter of

seniority. He has ^{made} a specific mention of the fact that the whole matter appears to have been done in a haste as much as the DPC sitting on 25.8.1983 fixed his juniors' seniority as 26.8.1983 and his seniority as 27.8.1983 even after retaining him w.e.f. 24.11.1982 of their own administrative grounds as discussed under paras 4.b.6 and 4.b.18.

6. Surprisingly, vide Annexure A-2, he had been granted seniority w.e.f. 24.11.1982 with reference to that date which was reversed by the respondents vide their Circular at Annexure A3. The position taken by the respondents in this regard that the administrative Incharge of Respondent No.2, being an inexperienced officer from the scientific cadre, gave vent to the filing of petition by some of the staff on regularisation, appears to be quite irrational. The applicant's reference to the Tribunal having ratified his regularisation while disposing the CCP No.180/90 in OA No.70/90 is a significant fact which needs to be kept in view while deciding this case. A copy of the orders of this Tribunal is placed at Annexure A-19.

7. The applicant has cited the decisions of the various Benches of the Tribunal and also of the Hon'ble Supreme Court in identical/similar cases, which are extracted as under, to support his contentions:

"a) The Hon'ble Principal Bench of this Tribunal has in the case of KN Misra vs. UOI(1986(1)ATJ 473) held that seniority in a cadre, grade or service would have to be determined on the basis of continuous officiation.



b) The Hon'ble Supreme Court has in the case of N.K.Chauhan v. State of Gujarat (AIR 1977 SC 25) has held that seniority normally is measured by length of continuous officiating service and is easily accepted as legal.

c) The Hon'ble Supreme Court has in the case of GS.Lamba Vs. UOI (AIR 1985 SC 1019) has further observed that "In the absence of any other valid principle of seniority, it well established that the continuous officiation in the cadre, grade or service will provide a valid principle of seniority. The seniority lists having not been prepared on this principle of seniority. The seniority lists having not been prepared on this principle are liable to be quashed and set aside!"

d) The Hon'ble Supreme Court has in the case of O.P.Singh vs. UOI (AIR 1984 SC 1595) stated "It is, however, difficult to appreciate how in the matter of seniority any distinction can be made between direct recruits who are appointed to substantive vacancies in the service." It is ~~simply~~ amply clear that in the absence of any other valid service rule, the continuous officiation in the cadre, grade or service will provide valid principle of seniority continuous officiation has to be counted from the date of appointment in the case of direct appointees and from the date of promotion in the case of promotees. The petitioners are direct appointees and the question of inter-se seniority should therefore, be fixed on the basis of date of their appointment. It is therefore directed that the petitioners shall be assigned inter-se seniority on the basis of date of their appointments. They shall be entitled to consideration for promotion to higher posts from the date of their juniors were promoted in accordance with rules on the basis of the revised seniority list. Their cases shall be reviewed by review DPC. However, the juniors who have been officiating in higher posts for long periods shall not be reverted to lower posts. They may be absorbed against further vacancies or supernumerary posts created to accommodate them. But, they shall be considered for future promotions on the basis of revised seniority".

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8. The applicant has thus argued that his case being identical with cases as decided in the above cited cases, his seniority, as decided by the respondents on 27.11.1998(Annexure A2), and subsequent promotion to his next higher grade as Assistant w.e.f. 29.6.1988 by maintaining statusquo of the revised seniority list dated 27.11.1998 may be allowed. He has cited few other cases on the same lines in support of his contentions in Paragraphs 5.3 to 5.12.

9. The learned counsel for the applicant has drawn attention to the Circular of Department of Personnel & Training dated 29.5.1986 in which provisions have been laid down for deciding the seniority of persons absorbed after being on deputation, in which, among other things, it is provided as under:

"In the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for "Transfer on deputation/Transfer") his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from—

the date he has been holding the post on deputation, or

the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department,

—whichever is later."

10. It has been further submitted that the words 'whichever is later' appearing in the above OM of the DoPT have been deleted and substituted by words 'whichever is earlier'.



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11. The respondents have, however, maintained that the applicant is not entitled to seniority as claimed by him w.e.f. 24.11.1982 and promotion over and above Respondent No.4. They have referred to the fact that the applicant, who was Junior Clerk in the Central Sheep Wool Research Institute and who fulfilled the conditions for recruitment to the post of Senior Clerk and who was taken on deputation initially for a period of two years, w.e.f. 16.6.1982, was promoted to the post of Senior Clerk in his parent Institute on 24.11.1982. While the applicant was called upon to report for duty at his parent Institute thereafter, he, on personal ground, found it difficult to maintain two establishments, as submitted vide Annexure R-2 and, accordingly, he was appointed as Senior Clerk along with another Sh. C.J. Stephen vide their orders dated 27.8.1983. They have submitted that absorption of the deputationists in the CIAE was not as per the existing recruitment rules. In fact, a special case was made out for absorption of the applicant which was granted vide order dated 28.5.1990. Vide the said order, the absorption was allowed along with others, and he was placed at Sl. No.6 in the seniority list and his date of absorption was taken as August 27, 1983 (Annexure R-4) along with the applicant, some regular employees of the respondents' Institute were also promoted

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to the post of Senior Clerk and their seniority was determined along with the applicant. They have made a reference to the OA No.70/90 which had been filed by Respondent No.4 and a few others, which was dismissed upholding the absorption of the applicant and his similarly placed colleagues (Annexure R-5). They have contended that the applicant has made out a case for assigning him seniority on the basis of transfer and absorption in public interest, as may be observed from his representation dated 26.4.1985 (Annexure R-6), the same was, however, rejected conveying him that his seniority will be determined as per letter of his appointment dated 27.8.1983 (Annexure R7). They have, in this regard, referred to the provisions of the Ministry of Home Affairs' Office Memorandum dated 22.12.1959, a copy of which is annexed at Annexure R8. When the applicant was told in the year 1989 to desist from raising the same point of seniority time and again (Annexure R10), he did not take up the matter till March, 1998, when he again submitted an application to reconsider his case for absorption with retrospective effect. While doing so, he did not reveal and that he had sought absorption earlier on request. According to the respondents, the orders of the Administrative Officer assigning him seniority vide Annexure A2 had been withdrawn by them by way of impugned order and the action of the respondents is in accordance with law.



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12. We have examined the various details submitted by the applicant as well as the respondents and further submissions made by the respective learned counsel. It is observed that the applicant, while being on deputation with the CIAE, had also been promoted as Senior Clerk, on regular basis, in his parent organisation w.e.f. 24.11.1982. Whether the applicant or his parent Institute on such regular appointment as Senior Clerk w.e.f. 24.11.1982 made a request to the respondents' organisation to relieve him so as to continue against the said post or whether the applicant made a special request to be allowed to be continued on deputation so that he did not have to maintain two establishments is not really relevant while deciding the date from which he should be assigned seniority as Senior Clerk. What is important is whether the respondents have followed the instructions on the subject relating to fixing of seniority. It is also not quite relevant to see whether the respondents as a measure of special consideration had granted him the benefit of absorption and accordingly assigned him seniority w.e.f. the date he was absorbed in their organisation as Senior Clerk. What is important is whether, while so doing, they kept in view the relevant provisions, as mentioned above, relating to seniority of persons absorbed after being on deputation, as regulated by the Department of Personnel & Training vide their Circular

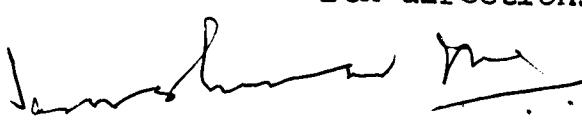
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dated 29.5.1986 and which has been amended later, deleting the words 'whichever is later' and further substituted by the words 'whichever is earlier'. It is also observed that the words 'whichever is later' appearing in the aforesaid Circular of DoPT had also been struck down in the orders of the Hon'ble Supreme Court in SI Roop-lal & Anr. vs. Lt. Governor through Chief Secretary, Delhi & Others reported in JT 1999(1) SC 597.

While it is appreciated that they considered the case of the applicant for absorption as a special case, they would have done the matter rightly if they had also taken into account the fact which the applicant has submitted in regard to the fact that he had, on his appointment as Senior Clerk on regular basis in his parent organisation, been offered choice posting, etc. While this aspect is corroborated by the facts of the matter or not, essentially the case deserves to be considered on the basis of the instructions of the Department of Personnel and Training and a few decisions in the matter so that the applicant has the satisfaction that he has been given consideration in the matter of seniority strictly with reference to the rules and instructions on the subject.

13. Be that as it may, keeping in view the facts and circumstances as also the oral submissions of both the sides and after perusing the material on record, we are of the considered opinion that this OA may be allowed with directions to the respondents that seniority

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of the applicant may be fixed with reference to the date of his appointment as Senior Clerk in his parent organisation as on 24.11.1982, which had been correctly done *viae* their orders at Annexure A2 to the OA, even though the reasons for having done it that way had not been indicated in the said order. The respondents shall ensure that these orders are ~~to be~~ complied with by revising the seniority of the applicant vis-a-vis Respondent No.4 and others by issuing a fresh and reasoned order within a period of two months from the date of receipt of a copy of this order.

14. With this, the OA stands disposed of in terms of the above directions with no order as to costs.

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(BHARAT BHUSHAN)
MEMBER (J)

Janet L. H. Hirsch

(SARWESHWAR JHA)
MEMBER (A)

/rao/

पृष्ठांकन रंग और/वा..... जललपुर, दि.....
परिवर्तिति अन्ते शिवः—

प्रतिक्रिया अनुदितः—

(1) रामेश्वर मार्ग नामक घास एवं गोमात्रा वाला जबलपुर
 (2) अमरावती नामक घास एवं गोमात्रा वाला काउंसल S. Paul, Achr.
 (3) अमरावती नामक घास एवं गोमात्रा वाला काउंसल B. dashtwa, Achr.
 (4) देवराम नामक घास जबलपुर घासालाईठ
 सच्चाई एवं आवश्यक कार्यवाही देते ।

मुख्यमंत्री
राजपत्र संसदी
17.11.03

~~Exhibit
on
17-1103~~