

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH**

**OA. No. 060/00168/2014**

Pronounced on: 22.5.2015  
Reserved on: 15.05.2015

**CORAM:** HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)  
HON'BLE DR. BRAHM A. AGRAWAL, MEMBER (J)

Pardeep Kumar son of Shri Hukam Chand, aged 31 years, working as Civilian Motor Driver, office of Director, Army Recruiting Office, Hissar Cantt.

.....Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. The Adjutant General, Adjutant General's Branch, Government of India, Integrated HQ of Ministry of Defence (Army), South Block, New Delhi – 110 001.
3. Deputy Director General Rtg (States), Headquarter Regiment Zone, Ambala Cantt.
4. Director, Army Recruiting Office, Hissar Cantt.

.....Respondents

Present: Sh. Rohit Seth, counsel for the petitioner.  
Sh. Ram Lal Gupta, counsel for the respdts.

**ORDER**

**HON'BLE MRS. RAJWANT SANDHU, MEMBER(A):-**

1. This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking quashing of order dated

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29.11.2011 (Annexure A-1) vide which the respondents have declined the claim of applicant for grant of promotion as Civilian Motor Driver Grade II stating that 9 years service which is requisite for further promotion shall be taken from the date when the applicant had joined the Recruiting Organization on 28.05.2006 on compassionate transfer on bottom seniority and he will be completing said period in May, 2015. It is alleged that the respondents have illegally declined the claim by washing out his entire length of service w.e.f. 28.06.2002 till 27.05.2006 only on the ground that the applicant had joined the respondent department on compassionate grounds on bottom seniority. In view of the law settled by the Hon'ble Supreme Court in India in the case of Scientific Advisor to Raksha Mantri and Anr. Vs. V.M. Joseph, 1998 SCC (L&S) 1362 and in Union of India Vs. C.N. Ponnappan, 1996(1) SCC 524 the respondents be directed to promote the applicant as CMD Grade II from date of completion of total length of nine years of service from date of initial entry into Government service and release him all consequential benefits of pay and allowances, arrears thereof and interest @ 12% per annum from the date the amount was actually payable till the date of actual payment.

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2. Averment has been made in the OA that the applicant joined service as Civilian Motor Driver at 5682 ASC Bn (Civil GT) on 28.06.2002. He made a request for transfer on compassionate grounds and vide order dated 06.03.2006 (Annexure A-2), he was posted to Headquarter, Regimental Zone, Ambala Cantt. Thereafter, he was transferred to Hissar. Vide order dated 29.11.2011 (Annexure A-1), the respondents declined the claim of promotion of the applicant as Civilian Motor Driver Grade II stating that the applicant did not have the requisite nine years' service which would be counted from the date when the applicant had joined the Recruiting Organization on 28.05.2006. Thus, the period of service w.e.f. 28.6.2002 till 27.05.2006 had been washed away on the ground that the applicant had joined the respondent department on bottom seniority.

3. In the counter reply filed on behalf of the respondents, it has been stated that the applicant joined service as a Civil Motor Driver at 5286 Army Services Corps Battalion (Civil GT) on 28.6.2002. After joining at this location, the individual applied for posting on compassionate ground and got posted to Ambala in HQ Rtg Zone on 28.5.2006. As per policy of Adjutant General's Branch, any civilian employee who is posted out of the organization, his/her seniority will be

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marked from the day he/she joins the new organization and as per Integrated Headquarters of MoD (Army), Additional Dte Gen of Manpower MP-4 (Civ)(B) posting/transfer order No. 15984/Mar/MP-4 Civ(b) dated 6.3.2006, Para 4, the individual will reckon his seniority from the date of reporting for duty in the new Unit Estt as per revised instructions contained in Raksha Mantralaya letter No. 28(6)/67/D (Appts) dated 29.6.1973 (reproduced in CPRO 73/73) and as per Army Order No. 22/2001, compassionate postings in promotional post/grade is not permissible under these orders (Annexure R-1). Posting order in respect of those holding promotional posts will be made to the lower post/grade to which direct recruitment is made and the applicant will be eligible for promotion to CMD Grade II only after completion of 9 years of service in the organization i.e. after May, 2015. A copy of Adjutant General's Branch letter No. 63150/CMD Promotion/Rtg 5 (OR) (B) Civ dated 29.11.2011 is annexed as Annexure R-2. The applicant while applying for a compassionate ground posting at his previous station, had given an undertaking/declaration (Annexure R-III) that he will revert to his parent department/office within a period of two years from the date of release from the previous unit. M \_\_\_\_\_

4. Arguments advanced by the learned counsel for the parties were heard when learned counsel for the applicant stated that although the applicant had joined in Ambala on bottom seniority, for his eligibility to be considered for promotion as CMD Grade II, his previous service for the period 28.6.2002 till 27.5.2006 had to be taken into account. In this regard, learned counsel cited the following judgements:-

(i) Dwijen Chandra Sarkar Vs. UOI, 1999(1) SCT 363 wherein it had been held as follows:-

**“Constitution of India, Articles 14 and 16 – Time-bound promotion – transfer from one department to another – length of service – seniority – grant of higher grade as time bound promotion scheme to remove frustration due to stagnation in service – it does not affect the seniority of seniors if any – the appellants transferred from other departments with a condition that they will not be entitled to count their past service rendered in their parent department towards seniority but for all other purposes the same will be counted – Held, the past service of the appellants is to be counted for the limited purpose of eligibility for computing the number of years of qualifying service, to enable them to claim the higher grade under the time bound promotion scheme.”**

(ii) State of Maharashtra & Ors. Vs. Uttam Vishnu Pawar, 2008(3) SCT 267 wherein it had been held as follows:-

**“Constitution of India, Article 16 – Transfer – Transfer at own request – Incumbent placed at zero seniority level – Incumbent may not get benefit of seniority – But his experience of past service rendered will be counted for purpose of other benefits like promotion or for higher pay scale.”**

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(iii) Scientific Advisor to Raksha Mantri Vs. V.M. Joseph, 1998(2)

SCT 779 wherein it had been held as follows:-

**“Promotion – Seniority – Eligibility for promotion cannot be confused with seniority – If an employee is transferred at his own request from one place to another on the same post the period of service rendered by him at earlier place cannot be excluded from consideration for determining his eligibility for promotion though he may have been placed at the bottom of the seniority list at the transferred place.”**

5. Learned counsel for the respondents drew attention to the order dated 6.3.2006 (Annexure A-2) through which the applicant's request for transfer on compassionate grounds that had been allowed. As per para 4 of this letter, it was clear that the applicant was entitled to count seniority from the date of reporting for duty in the new unit as per Raksha Mantralaya letter dated 29.7.1973. Learned counsel stated that in view of the acceptance by the applicant of the conditions imposed in his transfer order regarding loss of seniority, the applicant could not now claim that his previous service should be counted for promotion.

6. We have given our thoughtful consideration to the matter. It is settled law as per the judgements cited by learned counsel for the applicant in Para 4 of this order that the full service of an individual is to be counted while determining the eligibility for promotion so far as the qualifying service is concerned. The fact that a person has been

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transferred on compassionate grounds on bottom seniority, will not imply that the person is not entitled to count his previous service for fulfilling the qualifying service criteria required as eligibility for promotion. However, with the counting of this service, an individual will not be entitled to break the queue and to get the promotion earlier than those senior to him in the new unit if these persons also fulfil the eligibility criteria regarding qualifying service and are in the zone of consideration for promotion. Hence, the respondents are directed to reconsider the claim of the applicant for promotion as CMD Grade II counting his qualifying service from 2002. The aspect of availability of vacancies and eligibility of persons senior to the applicant in the Seniority List in the new unit shall also be kept in view while effecting such consideration that may be completed within a period of three months and a reasoned and speaking order ~~be~~ passed in the matter.

7. The OA stands disposed of with the above directions. No costs.

**(RAJWANT SANDHU)  
MEMBER(A)**

**(DR. BRAHM A.AGRAWAL)  
MEMBER(J)**

Dated: 22-5-2015.  
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