

**Central Administrative Tribunal
Principal Bench**

OA No.3252/2015

MA No.2875/2015

Order reserved on: 17.11.2016

Order pronounced on: 14.12.2016

Hon'ble Mr. V. N. Gaur, Member (A)

Hon'ble Mr. Brahm Avtar Agrawal, Member (J)

1. Sh. V.S.Tomar, JE (Mechanical)
Aged 52 years,
S/o Sh. Om Prakash Singh,
R/o 57/6, Naveen Park,
Sahibabad, U.P.
2. S.S.Mittal, HE (Mechanical),
Aged 56 years,
S/o Late Sh. Satya Narayan Mittal,
R/o 392, Nehru Enclave,
Alipur, Delhi-110036.
3. Jai Kanwar Dahiya, JE (Mechanical),
Aged 57 years,
S/o Sh. Tek Chand,
R/o H.No.20, Sec-23, Sonapat,
Haryana.

- Applicant

(By Advocate: Mr. M.K.Bhardwaj)

Versus

Govt. of NCT of Delhi & ors. through

1. The Chief Secretary,
Govt. of NCT of Delhi,
New Secretariat, I.P.Estate,
New Delhi.
2. The Secretary,
Irrigation & Flood Control Department,
5/9, Under Hill Road,
Delhi.

3. The Chief Engineer (Zone-I),
Irrigation & Flood Control Department,
4th Floor, ISBT Building, Kashmere Gate,
Delhi-110006.
4. Sh. Surender Kumar Khanna, JE (Mechanical)
Posted in the office of Chief Engineer, (Zone-I),
Irrigation & Flood Control Department,
4th Floor, ISBT Building, Kashmere Gate,
Delhi-110006.

- Respondents

(By Advocate: Mr. Amit Anand)

ORDER

Hon'ble Mr. V.N.Gaur, Member (A)

The applicants are Junior Engineer (JE) (Mechanical) in Irrigation and Flood Control Department (I&FC Department). They are aggrieved by the final seniority list notified vide order dated 10.03.2015 (impugned) in which one Sh. Surender Kumar Khanna (R-4), who was redeployed on being surplus from the organization of Delhi Energy Development Agency (DEDA), has been shown senior to the applicants.

2. The applicants were appointed as Work Assistant (Mechanical) in the year 1989, promoted to the post of JE (Mechanical) on CDC basis in November 2002 and on regular basis on 18.12.2007. R-4 was declared surplus from DEDA vide order dated 28.04.2000 and vide order dated 06.10.2008 he was redeployed in I&FC Department from the date of his exoneration from the disciplinary proceedings. The department notified a

tentative seniority list of JE (Mechanical) as on 01.06.2014 vide letter dated 26.06.2014. In that list, the name of R-4 was shown at Sl. No.60 and the date of entry in I&FC Department as JE (Mechanical) was shown as 02.04.2009. The names of the applicants, on the other hand, were shown at Sl. Nos.61, 62 & 64, and the date of entry in the grade of JE (Mechanical) was shown as 18.12.2007. The applicants made representation to the respondents stating that according to the rules governing re-deployment of surplus personnel the past service of such re-deployed employee shall not count towards seniority when he joins the new department. In this case R-4 joined the department on 02.04.2009 even then he was shown senior to the applicants, who had been promoted on regular basis w.e.f. 18.12.2007. The respondents, however, without taking any cognizance of their submissions issued the final seniority list on 10.03.2015 retaining the earlier seniority positions of R-4 and the applicants.

3. Learned counsel for the applicant submitted that with regard to the fixation of seniority of redeployed employees there was no ambiguity in the extant rules. In a clarification dated 27.04.1993 issued by the respondents, a copy of which has been annexed as Annexure A-8 to the OA, it was stated that surplus employees are not entitled for counting of past service rendered in the previous organization for the purpose of seniority in the new organization.

Such employees are to be treated as fresh entrants in the matter of seniority, promotion etc. Despite this, the respondents have chosen to count the seniority of R-4 retrospectively from the date of his exoneration in the departmental proceedings, which is prior to the joining of the present department. He further argued that R-4 remained with the DEDA during the period 2007 to the date of joining the I&FC Department in 2009 and got salary from DEDA, as stated in the rejoinder filed by the applicants on 24.11.2015 to the counter filed by R-4. The official respondents have not denied this fact. According to the learned counsel even though the order dated 06.10.2008 by which R-4 was re-deployed gives effect to the re-deployment from the date of exoneration, i.e., 22.10.2007, the applicant physically joined the I&FC Department only on 02.04.2009. Therefore he cannot get seniority from a date prior to 02.04.2009.

4. Learned counsel for official respondents submitted that there was no dispute with regard to the rule position as clarified in the Govt. of NCT of Delhi letter dated 27.04.1993. In the Government order 06.10.2008 by which R-4 was redeployed, it was stated that the applicant will be considered as re-deployed from the date of exoneration, i.e. 22.10.2007. In this case the "past service" would mean the service rendered by the applicant prior to 22.10.2007. He will not get benefit of services rendered as

JE (mechanical) prior to that date but he is eligible for counting his seniority from that date. The date of physically reporting to the department would be irrelevant in view of the order dated 06.10.2008.

5. We have heard the learned counsel for the parties and perused the record. There is no dispute with regard to the rule position that the seniority of a surplus employee on re-deployment will be counted from the date of such re-deployment. In this case the order of re-deployment of R-4 was issued on 06.10.2008 giving effect to the re-deployment from 22.10.2007 and he actually joined the department on 13.05.2009. The question, therefore, is which of these dates will be relevant for determining his seniority in the new department.

6. According to the respondents since there is an order re-deploying R-4 w.e.f. 21.10.2007 he would be entitled to count his seniority from that date. To a specific query from the Bench as to what was the status of R-4 from 22.10.2007 to 13.05.2009-whether he was drawing salary from DEDA or I&FC Department, there was no response from the counsel for the respondents. The applicant in the rejoinder to the reply filed by R-4 has categorically stated that the applicant was receiving his salary from DEDA during this period which has not been denied by the respondents. In that situation R-4 cannot be said to have been re-

deployed when he continued to draw salary from his previous department. Be that as it may, the question is whether a re-deployment order can be given retrospective effect for the purpose of counting seniority. In our view the answer is in the negative. The paras 2 (c) and 2 (d) of the clarification dated 27.04.1993 (supra) read as under:

“c) Seniority on redeployment:-

The surplus employees are not entitled for benefit of the past service rendered in the previous organisation for the purpose of their seniority in the new organization. Such employees are to be treated as fresh entrants in the matter of their seniority, promotions, etc. (MHA's OM No.3/27/65-CS.II dated 25-2-66 and MHA's OM NO.- 9/22/68-Estt(D) dated 6-2-69.)

d) Counting of Past Service for Pension, LTC etc.:-

The service already rendered shall be treated as qualifying service for pension, grant of LTC, DCR gratuity etc. subject to the rules applicable to the counting of such service of the employees transferred from one deptt. to the other department. Rule 39 (1) (b) of the CCS (Pension) Rules 1972.”

7. A perusal of the above provisions indicate that the respondents do have prerogative to order re-deployment with retrospective effect for the purposes of qualifying service, LTC, DCR gratuity, continuity of service, regularizing expenditure on salary etc, as the circumstances of the case may demand. In such a situation it is a simple administrative matter between two departments of the Government and no third party is affected. However, in the face of explicit instructions on the subject the respondents cannot give benefit of seniority to a person with retrospective effect as the seniority position of those already in

position in the new department cannot be unilaterally and randomly altered. The date of re-deployment for the purpose of counting seniority will have to be the date on which the employee actually joins the new department. The stipulation in the order dated 06.10.2008 that the past service rendered by the surplus employee prior to his re-deployment shall not count towards seniority, has to be interpreted as the past service prior to the date of joining in the new department in person. Any other interpretation to the existing instruction contained in the letter dated 27.04.2013 would mean that the Damocles sword will be always hanging over the head of employees in any department as the authorities can any time re-deploy a surplus employee from anywhere by giving a random date of re-deployment in the past and give him the benefit of retrospective seniority. Such constant uncertainty with regard to the seniority in the minds of the employee is against the law and administrative jurisprudence as the seniority of an employee in his cadre cannot be changed except in accordance with the relevant service rules.

8. In view of the foregoing discussion, the impugned order dated 10.03.2015 is quashed to the extent it places R-4 at Sl. No.60 in the seniority list and the respondents are directed to place the name of R-4 in that seniority list by ignoring the services rendered by him prior to 02.04.2009 for the purpose of

fixing his seniority in the I&FC Department. This may be done within a period of six weeks from the date of receipt of a copy of this order. OA is allowed. No costs.

(Brahm Avtar Agrawal)
Member (J)

(V.N. Gaur)
Member (A)

14th December, 2016

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