

**Central Administrative Tribunal  
Madras Bench**

**OA/310/01120/2016**

**Dated Wednesday the 26<sup>th</sup> day of September Two Thousand Eighteen**

**P R E S E N T**

**Hon'ble Mr. R.Ramanujam, Member(A)**

**&**

**Hon'ble Mr.P.Madhavan, Member(J)**

A.David Eliyazar  
S/o D.Alexander,  
D.15, Sakthi Nagar,  
Pallavaram,  
Chennai 600 042. .. Applicant  
By Advocate **M/s.S.Ramaswamyrajarajan**

**Vs.**

1. Union of India  
The Chief Postmaster General,  
Tamilnadu Circle,  
Chennai 600 002.
2. The Senior Manager,  
Mail Motor Service,  
Chennai 600 006. .. Respondents

By Advocate **Mr.C.Kulanthaivel**

**ORAL ORDER**

(Pronounced by Hon'ble Mr.R.Ramanujam, Member(A))

Heard. The applicant has filed this OA seeking the following relief(s):-

“(i) To call for the connected records from the respondents and on perusal

(ii) To quash the impugned order No.STA/37-109/09 Gr.I, dated 30.5.2016 passed by the 1<sup>st</sup> respondent and to direct the respondents to restore the promotion given to the cadre of Grade II driver vide order No.STA/37-110/2009/GR II, dated 13.1.2012 and promotion given to the Grade I driver vide order No.STA/37-109/09/GRI, dated 28.6.2013 and

(iii) To pass such further or other orders as this Tribunal may deem fit and proper in the circumstances of the case with cost.”

2. It is submitted that the applicant was working as a Grade III driver in the National Savings Organization (NSO) due to the closure of which he was declared as a surplus employee and redeployed in the department of posts in the year 2004. Subsequently, he was granted promotion as Grade II driver in the year 2012 and Grade I in the year 2013 after being duly recommended by the DPC. However, after a lapse of nearly 4 years, Annexure A6 impugned order dated 30.5.2016 came to be passed revising the date of his promotion as Grade II driver from 18.1.2012 to 01.4.2014 and also cancelling his promotion to Grade I driver issued by an order dated 28.6.2013.

3. Learned counsel for the applicant would submit that the fact that the applicant had been in employment as a Motor Vehicle Driver in NSO w.e.f. 01.5.1997 was not

disputed. On redeployment, he was absorbed in the respondents' organization with appropriate seniority and granted promotion to the post of Grade II and Grade I driver as per recommendation of the DPC which found him fit for such promotion. However, the respondents first issued Annexure A5 show cause notice dated 26.4.2016 and followed it up with Annexure A6 order dated 30.5.2016 revising the date of promotion to the applicant as Grade II driver as if he had joined the respondents' organization as a new entrant and not as a redeployed surplus staff.

4. It is contended that as the applicant was a regular Motor Vehicle Driver in NSO, he could not be deprived of the benefits of seniority in the aforesaid manner, especially when he had been granted promotion on the basis of the seniority assigned to him following absorption. It is submitted that the respondents' decision not to treat him as senior to the persons appointed in the respondent organization after the date on which he was initially appointed in NSO was violative of his basic rights guaranteed by the constitution of India.

5. Learned counsel for the applicant seeks to rely on the judgment of the Hon'ble Apex Court in Ramesh K Sharma & Another vs. Rajasthan Civil Services & Others CA Nos.6298-99 of 1995 with CA No.9146 of 1995 dated 23.11.2000. Attention is drawn to the following observations contained in the judgment:-

“15. Seniority.-(1) The seniority of a surplus employee appointed substantively to a permanent post in the service or cadre in which he is absorbed shall be determined by the appointing authority concerned by placing him below the junior-most permanent employee of the new service.....

(3) The seniority inter se of employees declared surplus from a service or cadre shall on their appointment to new posts in another

service or cadre shall be the same as it existed in the former service or cadre.

The Private respondents having been absorbed as Commercial Tax Officer Grade II; their seniority in the cadre of Commercial Tax Officer Grade II will have to be determined on the basis of the aforesaid Rule 15(1). It is also not disputed that the post which these Private respondents were holding under the Land and Building Tax Department were equivalent posts of the Posts of Commercial Tax Inspector Grade II. The only question, therefore, requires adjudication is whether these private respondents were in continuous substantive service with effect from 1.3.1974 or they would be held in continuous substantive service only after they were made permanent with effect from 27.2.1981. In the Service Jurisprudence a post could be temporary or it could be permanent or it could be created for a definite period to meet a definite contingency. If an incumbent is appointed after due process of selection either to a temporary post or a permanent post and such appointment not being either stop-gap or fortuitous, could be held to be on substantive basis. But if the post itself is created only for a limited period to meet a particular contingency, and appointment thereto is made not through any process of selection but on a stop-gap basis then such an appointment cannot be held to be on substantive basis. The expression "substantive basis" is used in the Service Jurisprudence in contradistinction with ad hoc or purely stop-gap or fortuitous. In *Baleshwar Dass etc. v. State of U.P.*, (1981) 1 SCR 449: (AIR 1981 SC 41: 1980 Lab IC 1155) this Court held that when a person holds a post for an indefinite period especially for long duration in contradistinction to a person who holds it for a definite or temporary period or holds that on probation then it must be held that he held a post in a substantive capacity."

It is accordingly pleaded that the impugned order is liable to be quashed and set aside.

4. Learned counsel for the respondents would, however, submit that in terms of the policy decision of the Central Government regarding redeployment of surplus staff, the applicant ought to have been treated as fresh entrant in the matter of seniority, promotion etc. and could not be granted the benefit of past service. Reference is made to the letters of DoPT dated 13.1.2004 and 14.6.2004 in this regard. Attention is also drawn to Annexure R2 order of posting of the applicant dated 30.1.2004 wherein it was clearly stated that the applicant was being absorbed

against the Direct Recruitment quota vacancy allotted by Pr. Chief PMG, TNC. The terms of appointment indicated that as surplus staff on redeployment, the applicant was not entitled to the benefit of past service rendered in the previous organization for the purpose of seniority in the organization. Such employee would be treated as a fresh entrant in the matter of seniority, promotion etc.

5. Further, the applicant was appointed on probation for a period of 2 years and, therefore, the question of the applicant being granted seniority w.e.f. the date of appointment in NSO would never arise. The orders granting him promotion as Grade II and Grade I driver were erroneous and issued inadvertently overlooking such express conditions in the appointment letter of the applicant and, therefore, the respondents were not at fault in seeking to correct the error. It is also pointed that before the impugned was issued, the applicant was given an opportunity to show cause against the proposed action by Annexure R5 letter dated 26.4.2016. However, no representation was received from the applicant against the proposed action. As such the applicant had no valid grievance as regards the impugned order, it is contended.

6. We have carefully considered the facts of the case, the pleadings and the submissions made by the rival counsel. It is not in dispute that the applicant was granted appointment in the respondents' organization in 2004 on the express condition that he would not be granted the benefit of past service in the previous organization for the purpose of seniority, promotion etc. He had joined the respondents' organization in acceptance of this condition which were based on the

policy decision of the Central Government regarding redeployment of surplus staff. In this OA, the policy decision of the government has not been challenged.

7. The applicant has placed reliance of the certain observations made by the Hon'le Apex Court in the case cited supra. However, we find that the Hon'ble Apex Court had made the relevant observations in the context of various provisions of the Rajasthan Civil Services Absorption of surplus personnel Rules, 1969 more particularly Rule 15 thereof. It is clearly provided therein that “the seniority of a surplus employee appointed substantively to a permanent post in the service or cadre in which he is absorbed shall be determined by the appointing authority concerned by placing him below the junior-most permanent employee of the new service or department who has a longer period of continuous substantive service on the post compared to the continuous substantive service of the surplus employee on equivalent or higher post. The seniority of a surplus employee who is absorbed on a higher posts on officiating basis shall be determined only in respect of his permanent post.” Learned counsel for the applicant is unable to produce any evidence of an analogous provision in Central Civil Services Rules or even executive instructions based on any policy decision of the Central Government. As such, we are of the view that the reliance placed by him on the aforesaid judgment is misplaced.

8. As the applicant has failed to make out a valid grievance against the impugned order, the OA is devoid of merits and is liable to be dismissed. At this stage, learned counsel for the applicant submits that the applicant may be granted liberty to submit a representation for financial upgradation under MACP as seniority is not a bar for

granting upgradation under the MACP scheme which is based on the number of years of service rendered. Learned counsel for the respondents submits that it is always open to an employee to make a representation regarding his grievance and no liberty need to be specifically granted in this regard by the court. Recording the submission, the OA is dismissed. No costs.

(P.Madhavan)  
Member(J)

26.9.2018

(R.Ramanujam)  
Member(A)

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