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Central Administrative Tribunal, Principal Bench

Original Application No.1548 of 2003

New Delhi. this the 31st day of December, 2003

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. R.K. Upadhyaya, Member (A)

1. Sunil Kumar
S/o Shri Munish Chander,
R/o B-158, Shivaji Park
IInd Floor, New Delhi-27
2. Rajendra Kumar
S/o Shri Hari Ram,
R/o 41, Tagore Marg Kewal F
Azad Pur, Delhi
3. Vijay Kumar,
S/o Shri Bulu Ram,
R/o B-15, Parijat Apts West
Enclave, Pitam Pura,
New Delhi.
4. D.K. Solanki,
S/o Shri Narain Singh,
R/o 6571, Nabi Karim Pahar Ganj,
New Delhi
5. Kamlesh Taneja
W/o Shri Raj Kumar Taneja,
R/o JD-12, G-8, Area Rajouri,
Hari Nagar, New Delhi
6. Tej Singh,
S/o Shri Attar Singh,
R/o 1000 Pana Paposiyan,
Narela, Delhi
7. Malkhan Singh,
S/o Shri Daulta Ram,
R/o WZ-204, Rani Bagh,
Delhi
8. Nisha Sharma,
W/o Shri S.R. Sharma,
R/o D-846, Netaji Nagar,
New Delhi
9. Dharmender Chaudhary,
S/o Shri R.K. Chaudhary,
R/o C-71, Badli Extension,
Badli, Delhi
10. Tirath Ram,
S/o Shri Sube Singh,
R/o Pkt. F-5/53, Sector-16
Rohini, Delhi

11. Darshna
W/o Shri Prem Gera
R/o A.P-42C, Pitam Pura,
New Delhi

.... Applicants

(By Advocate: Shri Sachin Chauhan)

Versus

1. Government of N.C.T.D.
through its Secretary,
Delhi Secretariat, I.P. Estate,
New Delhi
2. Deputy Secretary,
Services, A.C.P. Promotion Cell,
5th Level, A-Wing,
Delhi Secretariat,
New Delhi.
3. Secretary,
Ministry of Personnel, Public Grievance
and Pension,
Department of Personnel and Training,
North Block, New Delhi

.... Respondents

(By Advocate: Shri Vijay Pandita)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

The facts are not in dispute. Therefore, we take liberty in delineating the same as conjoled from the pleadings of the parties.

2. The applicants were originally appointed in Delhi Energy Development Agency (DEDA). It was an autonomous body. The applicants were declared surplus with effect from 30.11.99 in the DEDA. Thereafter they were appointed/absorbed in the Government of National Capital Territory of Delhi vide order dated 25.1.2000. It is not in dispute that the applicants had regularly been appointed in the autonomous body in which they were earlier serving.

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3. By virtue of the present application, the applicants seek grant of the Assured Career Progression Scheme (ACP Scheme) by calculating their regular service rendered in the previous autonomous organisation alongwith the regular service rendered with the respondents.

4. The petition is being contested primarily on the ground that the applicants have not rendered 12 years of regular service with the respondents and the earlier service so rendered in the autonomous body cannot be counted for calculating their regular service as such.

5. During the course of submissions, learned counsel for the applicants urged that the applicants' past service in the autonomous body referred to above has to be counted. Reliance is being placed on paragraph 14 of the conditions for grant of ACP Scheme dated 9.8.99.

6. On the contrary, the respondents' learned counsel relied upon clarification no.43 to contend that it has already been clarified by the Government that in such like situations, the applicants cannot be granted the benefit of ACP Scheme.

7. To appreciate the said controversy, we reproduce paragraph 14 of the conditions for grant of ACP Scheme which reads:

"In case of an employee declared surplus in his/her organisation and in case of transfers including unilateral transfer on request, the regular service rendered by him/her in the previous organisation shall be counted along with his/her regular service in his/her new organisation for the



purpose of giving financial upgradation under the Scheme."

8. So far as the clarification relied upon by the respondents is concerned, the same is to the following effect:

S.No.	Point of doubt	Clarification
43.	Whether service rendered in an autonomous body/statutory body/State Government prior to appointment in Central Government as a direct recruit prior to appointment in the Central Government will be counted while computing regular service for the purpose of grant of financial upgradations under the ACP Scheme?	ACP Scheme is applicable to Central Government Civilian employees and for the purpose of financial upgradations under the ACP Scheme, only the regular service rendered after regular appointment in a Central Government civilian post is to be counted. Therefore, service rendered in an autonomous body/statutory body/State Government is not to be counted for the purpose. Correspondingly, promotions earned in these bodies prior to appointment in the Central Government are also to be ignored. The clarification in reply to point of doubt no.4 to 6 in DoP&T O.M. dated 10.2.2000 providing for counting of past service in another organisation in the same grade is only in relation to past service in a civilian post held in the Central Government."

9. The settled position in law is that clarifications can be supplementary to the main Scheme. The same cannot override the scheme which is the

substantive portion for the financial benefits.

10. Perusal of paragraph 14 of the terms and conditions for grant of ACP Scheme clearly shows that certain conditions have to be satisfied when their previous service in the organisation from where they were rendered surplus, has to be counted. Those conditions are:

(a) the employee should be declared surplus in the organisation: and

(b) it should be a case of transfer including unilateral transfer on request.

If both the conditions are being satisfied, then their past service which is regular service can be counted for the benefit of the ACP Scheme.

11. What is the position in the present case? Admittedly the applicants had been declared surplus in their previous organisation. The order dated 25.1.2000 by virtue of which they have been taken on the rolls of the Govt. of NCT of Delhi reads:

"Consequent upon being declared surplus by the DEDA vide Orders No.F.9(32)/99/DEDA/Admn/3797-3899 dated 30.11.99 and No.F.9(32)/99/DEDA/Admn/3810-4004 dated 30.11.99, the Cadre Controlling Authority, is pleased to order the redeployment of the following L.D.Cs. in the pay scale of Rs.3050-4590 from the date of their being declared surplus i.e. 01.12.99 against the posts of Gr.IV (DASS) in accordance with the provisions of the CCS (Redeployment of Surplus Staff) Rules, 1990, in the Departments as indicated against their names:-

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In terms of the above mentioned rules the past services rendered by the surplus employees prior to their redeployment shall not count towards seniority in the Gr.IV(DASS) under the Govt. of N.C.T. of Delhi. However, in other service matters they will be treated as appointed by transfer in the public interest."

12. We know that the language used speaks the intention. So far as the second condition is concerned, it was the subject matter of controversy. The later part of the order dated 25.1.2000 makes it clear. It clearly shows that the past service rendered by the applicants was not to be counted for purposes of seniority only. Otherwise the order is unambiguous and makes it clear that in all other service matters, it shall be treated as an appointment by transfer in public interest. If the intention was not to count their past service on transfer for purposes of the ACP Scheme, it could have been so stated specifically in the orders. In fact the order makes it clear that the only exception is that for purposes of seniority, the past service shall not be counted. Therefore, we have no option but to hold that their past service rendered in the previous organisation was on transfer and the second condition referred to in paragraph 14 of the terms and conditions for grant of ACP Scheme is duly met.

13. As regards the clarification that has been given, perusal of the "point of doubt" clearly shows that if the appointment is by direct recruitment, only in that event their past service in the previous organisation is not to be calculated. Herein, for all practical purposes except for seniority, their past service has to be counted. Therefore, it would not be as an appointment by direct recruitment. Clarification no.43, therefore, will not

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apply.

14. Otherwise also, as referred to above, if the clarification runs counter to the main scheme, it will have little import because it is the main scheme and the terms and conditions thereto which would govern the matter.

15. Resultantly, we allow the present application and direct that the claim of the applicants should be considered for grant of ACP Scheme in the light of the findings recorded above.



(R.K. Upadhyaya)
Member (A)



(V.S. Aggarwal)
Chairman

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