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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

R.A.NO.58/2004
in
O.A.NO.1548/2003

New Delhi, this the 27th day of April, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI R.K.UPADHYAYA, MEMBER (A)

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 ... Review Applicants

(By Advocate: Shri Ajesh Luthra)

Versus

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

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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

.. Review Respondents

(By Advocate: Sh. Sachin Chauhan)

O R D E R

Justice V.S. Aggarwal:-

Sunil Kumar and Others had filed OA 1548/2003. They had originally been appointed in Delhi Energy Development Agency. It was an autonomous body. The applicants were declared surplus w.e.f. 30.11.1999. They were absorbed in the Government of National Capital Territory of Delhi. They had filed the Original Application seeking grant of the Assured Career Progression Scheme (for short 'ACP Scheme') by calculating their regular service rendered in the previous autonomous organisation. The Original Application was contested. The OA had been allowed primarily because of the following fact:

"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."

2. The original respondents seek review of the said order asserting that one Shri M.L.Bhatt, who was originally appointed in Delhi State Mineral



Development Corporation and had been declared surplus, had filed OA 1319/2003 which has been dismissed. In any case, it is asserted that surplus employees are not entitled to seniority and promotion and are to be treated as fresh entrants. The order clearly stipulated that their past service rendered by the surplus employees prior to their re-deployment shall not count towards seniority. Reliance in this regard is placed on the Office Memoranda dated 15.6.1992 and 2.12.1998, issued by the Government of India, Department of Personnel & Training.

3. Notices had been issued and the Review Application has been contested.

4. On behalf of the review applicants, it was urged that the Supreme Court has clearly held that re-deployed staff is not entitled to count their past service and reliance was being placed on the decision of the Supreme Court in the case of UNION OF INDIA AND ANOTHER v. G.R.K. SHARMA, (1998) 6 SCC 186 and UNION OF INDIA & OTHERS v. K. SAVITRI AND OTHERS, (1998) 4 SCC 358.

5. In the case of Union of India and Another v. G.R.K. Sharma (supra), the question for consideration was whether the past service rendered by an employee under the re-deployment scheme can at all be counted for purpose of his experience for being counted for promotion to the post of Upper Division Clerk. The answer given was in the negative. The

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Supreme Court relied on the earlier decision in the case of **Union of India v. K.Savitri** referred to above.

6. In the case of **K. Savitri (supra)**, the question by and large was identical as to whether the past service could be considered for purposes of seniority or experience in the redeployed organisation? The Supreme Court held that since the past service of re-deployment employees cannot be counted for purposes of seniority in the new organisation, the past service also would not be counted as service rendered in the grade.

7. The decision of the Supreme Court binds and there would have been no difficulty in following the same. However, it is a settled principle that the service is a contract. In the matter before us, we have already reproduced above the order of 25.1.2000 by virtue of which the original applicants were taken on the rolls of the Government of National Capital Territory of Delhi. It clearly provided that past service is not to be counted towards seniority. However, in the other service matters they will be treated as appointed by transfer in public interest. Once the said contract has come into being which were the conditions that were imposed, the ratio decidendi of the above decision of the Supreme Court indeed will not apply.



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8. It is true that one M.L.Bhatt had filed OA 1319/2003. In the said application, a similar relief was claimed. He was not in the same department as are the original applicants before us. He was in Delhi State Mineral Development Corporation. Therein the said order which we have already referred to above had not been passed. Therefore, though in the first blush, we thought that we were inconsistent in our view, but on closure scrutiny, we find that it is not so. The conditions of service therein were different and, therefore, they had been dismissed.

9. In that event, the learned counsel for review applicants had drawn our attention to CCS (Re-deployment of Surplus Staff) Rules, 1990 and particularly to Rule 9 which is as under:

"9. Fixation of pay and seniority, counting of previous service for various other purposes and carrying over of lien/classification.-- The fixation of seniority and pay of the surplus employee and counting of his previous service for various other purposes and carrying over of lien/classification in the new post to which he is appointed on redeployment under these rules shall be regulated in accordance with the instructions issued from time to time by the Government of India in this behalf. (See Para.11 of Revised Scheme for the disposal of personnel rendered surplus in Section IV in this Chapter)."

He also referred to the Government of India, Department of Personnel & Training's OM dated 15.3.1998 on the same lines that for purposes of seniority, the past services of re-deployed employees cannot be considered for seniority. We have already referred to above that for purposes of seniority, the question as referred to above is not alive before us

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and consequently, the said rule, keeping in view the specific fact incorporated in the contract, will not override the same because it is not even a case of the State that the said order so issued is invalid. On similar lines are the instructions that have been issued and reproduced in the Establishment and Administration Manual of Swamy (9th edition-2003), page 560 onwards. But once the ^{order} ~~action~~ keeping in view the specific order that has been issued, we find that in the peculiar facts, there is no error apparent on the face of the record to prompt us to review the order.

10. Resultantly, the Review Application must fail and is dismissed.



(R.K. Upadhyaya)
Member (A)



(V.S. Aggarwal)
Chairman

/NSN/