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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

R.A.NO. 95/2004 in
O.A.NO. 1319/2003

New Delhi. this the 26th day of April, 2004

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

Shri M.L. Bhatt,
S/o Shri Chandrama Kumar.
B-26, Rajpur Khurd,
New Delhi-68

....Applicant

Versus

1. Govt. of N.C.T.
Through Deputy Secretary(Services-II)
Delhi Secretariat, A-Wing
4th Floor, I.P. Estate,
New Delhi

2. Development Commissioner
5. Rajpur Road, NCT,
Delhi

....Respondents

O R D E R (By Circulation)

Justice V.S. Aggarwal:-

Applicant (M.L.Bhatt) had filed Original Application No.1319/2003. It was dismissed on 16.1.2004. Reliance was placed on the decisions of the Supreme Court in the case of YOGENDRA PRASAD MANDAL v. STATE OF BIHAR AND OTHERS, (1998) 3 SCC 137 and UNION OF INDIA AND ANOTHER v. G.R.K.SHARMA, (1998) 6 SCC 186.

2. The applicant had joined Delhi State Mineral Development Corporation as Junior Assistant. As a policy decision, it was wound up and all its employees were declared surplus. The applicant was absorbed with the respondent. The surplus employees like the applicant, as per the decision taken, were transferred in public interest. His services were taken to be continuous and he has drawn the next increment as admissible under the rules.

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3. It was held that the applicant had not been transferred from another post, and therefore, he was not entitled to count his past service for the benefit of ACP Scheme.

4. On behalf of the applicant, reliance is being placed on the order of this Tribunal in the case of Sh. Sunil Kumar & Others v. Govt. of N.C.T. of Delhi & Others, O.A.No.1548/2003, decided on 31.12.2003. It is being pleaded that the matter is similar. We find that it is not so. In the case of Sh. Sunil Kumar (supra), there was an order passed by virtue of which, the applicants therein were taken on the rolls of Govt. of NCT of Delhi. In the said order, it was recited:

"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."

5. It is this paragraph which prompted this Tribunal to conclude that their past service rendered, could be taken into consideration for grant of Assured Career Progression Scheme (for short 'ACP'). It was held:

"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

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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."

6. That is not the position in the present case. Therefore, the decision in the case of Shri Sunil Kumar (supra) was confined to its peculiar facts. We find that there is no error on the face of the record.

7. Review Petition must fail and is dismissed in circulation.

S. K. Naik
(S. K. Naik)
Member (A)

V. S. Aggarwal
(V. S. Aggarwal)
Chairman

/NSN/