



CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.88/2003

New Delhi this the 4th day of September, 2003.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)
HON'BLE MR. R.K. UPADHYAYA, MEMBER (ADMN)

K.A. Issac (LDC)
Office of DD(G)
Military Form Records,
Delhi Cantt-10.

...Applicant

(By Advocate : Shri M.K. Bhardwaj)

-Versus-

1. Union of India through
The Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. The Qtr. Master General's Branch,
Army HQ, West Block-III,
R.K. Puram,
New Delhi-66.
3. The Deputy Director,
Military Farms, Army HQ,
West Block-III, R.K. Puram,
New Delhi-110066.

-Respondents

(By Advocate Shri B.K. Aggarwal, through proxy counsel
Sh. Rajeev Bansal)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

Applicant impugns respondents' order dated 10.12.2002, denying him seniority for the period from 29.5.1985 to 26.11.1987 ~~20.5.1985 to 26.7.1987~~ on the post of Lower Division Clerk (LDC) having worked on daily rates. Quashment of the aforesaid order has been sought with direction to fix his seniority with all consequential benefits.

2. Applicant, who was appointed as LDC in Military Farm after the due process was undertaken on 29.11.1984. As a ban has been imposed on recruitment by

the Government no regular appointment letter was issued. By letter dated 14.5.1985 pending lifting of the ban and regular appointment applicant was employed as Clerk on daily rates.

3. By an order dated 4.11.1987 applicant was appointed as temporary LDC in Military Farm on a definite pay scale.

4. As per Government of India, Ministry of Defence letter dated 24.11.1967 in so far as terms and conditions of casual non-industrial employees which includes the post of applicant it has been decided that the past service rendered from the date of appointment by such of casual non-industrial personnel who are concerted as regular employees will be treated as having rendered in regular capacity and would be entitled to all benefits as available to regular employees. However, the financial benefits would be allowed from the date of Part-II orders notifying their change of status as regular employees.

5. Case of applicant was forwarded for counting of service on daily rate basis for seniority by the officiating Deputy Director, Military Farms. A certificate was also given to applicant by the Deputy Director General on 24.1.2001. As there was no break in service and keeping in view the decision of the High Court in CWP-2469/1997 in **Ramji Lal & Ors. v. N.I.H.F.W. & Ors.**, decided on 26.4.2002 the petitioners therein have been granted benefit of regularisation from the date of their initial appointment(s), though was on daily wages, the



(3)

representation made was forwarded for counting of service with recommendations dated 17.9.2002. The claim of applicant was ultimately rejected on 10.12.2002, giving rise to the present OA.

6. Learned counsel for applicant Sh. Yogesh Sharma contends that in view of the decision and the terms of conditions as existed at the time when applicant was absorbed in regular establishment as per letter dated 24.11.1967 his entire service rendered on daily wages should have been counted towards seniority. Respondents by an executive order dated 6.12.1991 laying down terms and conditions of non-industrial employee deprived seniority on the equivalent post when applicant had worked on casual basis and the seniority is to be reckoned from the date of regular appointment. According to him, a cause of action and the right to count seniority had arisen to applicant in the year 1967 when these instructions were not in existence. As the Ministry's letter dated 24.11.1967 has been superseded and the aforesaid letter dated 31.1.1991 has come into effect from the even date being an executive instruction cannot be operated retrospectively and as the right of applicant to reckon seniority had arisen in 1967 and is fully covered by 1967 instructions the decision of respondents is contrary to law.

7. It is further stated that applicant had legitimate expectation on the basis of circular issued by respondents and as there is nothing in the terms and conditions not to count the seniority the instructions have statutory force of law issued in 1967 and the action of the

respondents is contrary to the principle of equity and fair play.

8. Lastly, it is contended that the case of applicant is on all fours covered by the decision of the High Court in **Ramji Lal's** case (supra).

✓ 9. On the other hand, respondents' counsel took a preliminary objection of limitation. On merits it is contended that counting of service for pay fixation provided in the Ministry of Defence letter dated 24.1.1967 is superseded by letter dated 31.1.1991 and as the seniority of applicant is to be reckoned on appointment to regular establishment the stipulation in the letter dated 14.5.1965 that regular would be given subsequently is a clear notice that seniority would be reckoned from the date of regular appointment and the application is hit by estoppel as applicant accepted the appointment and on lifting of ban he cannot seek contrary.

▼ 10. We have carefully considered the rival contentions of the parties and perused the material on record. Though it is stated that a similar matter has been dismissed by the Chandigarh Bench, without any particulars it would not be possible to adhere to the doctrine of precedent and as the decision of the High Court in all fours covers the case of applicant where service rendered on casual basis has been counted for seniority the
W aforesaid objection is over-ruled.

11. In so far as limitation is concerned, grant of seniority and pay fixation being a continuous cause of action and the respondents themselves entertained the grievance of applicant and rejected it, application which has been filed within the stipulated period under Section 21 of the Administrative Tribunals Act, 1985.

12. It is a settled principle of law that an executive instruction cannot operate retrospectively unless specifically provided. As per respondents' letter dated 24.11.1967 which has been superseded only on 31.1.1991 and the aforesaid memorandum is made effective from the date it was issued the same would not, in any manner, affect or alter the condition of service as prevalent in 1987 when applicant was regularly appointed to the post. As per 1967 letter of casual industrial and non-industrial employees who had worked on casual basis their past service has been decided to be counted towards regular service with all consequential benefits except the financial benefits to follow from the date of notification of their status as regular employees. As these instructions were in vogue on 4.11.1987 when applicant was accorded regular appointment, his seniority cannot be denied for the period he has rendered on casual basis. Moreover, the appointment of applicant was sponsored through Employment Exchange and as per the procedure laid down under the Rules. It is only due to ban that he could not be offered appointment. Applicant performed though on daily wages similar duties and functions which he is performing after accord of regular status.




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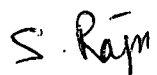
13. The doctrine of 'legitimate expectation' is clarified by the Apex Court in **Punjab Communications Ltd. v. Union of India**, (1989) 4 SCC 727, that it is open for the Court in a judicial review to find that change in policy which has defeated the legitimate expectation is irrational or not. The principle is that when a representation has been made and benefit of substantive nature is to be granted through it the same cannot be varied to his detriment.

✓ 14. The Apex Court in **Tondon Brothers v. State of West Bengal**, (2001) 5 SCC 664 held that on the principle of equity⁴ if the Government's action runs counter to good faith and is not supported by reasons and good conscience it is to be set aside. Respondents are estopped from reckoning seniority of applicant from the date of his regular appointment in view of their earlier instructions issued in 1967 which were to be applied in the case of applicant while he was regularly appointed on 4.11.1987.

✗ 15. In this view of the matter impugned order cannot be sustained in law. Accordingly the OA is allowed and the impugned order is quashed and set aside. The respondents are directed to reckon the service rendered by applicant as LDC on daily rate w.e.f. 29.5.1985 to ~~16.7.1987~~ 26.11.87 for the purposes of fixation of seniority. In that event applicant shall also be entitled to all consequential benefits. No costs.


(R.K. Upadhyaya)
Member (A)

'San.'


(Shanker Raju)
Member (J)

Note :- Corrected vide orders dated 13.1.2004 in
M.A. No. 2155/2003 in OA No. 88/2003.
