

(2010) 11 AHC CK 0407
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 17827 of 2002

Attar Singh

APPELLANT

Vs

Central Administrative Tribunal, Allahabad and others

RESPONDENT

Date of Decision : 22-11-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 3 UPLBEC 2260

Hon'ble Judges : S.P. Mehrotra, J;Pankaj Mithal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.P. Mehrotra and Pankaj Mithal, JJ.—The present Writ Petition under Article 226 of the Constitution of India has been filed by the petitioner, inter-alia, making the following prayers :

(i) issue a writ, order or direction in the nature of certiorari quashing the order dated 4.12.2001 passed by the respondent No. 1 (Annexure No. 9 to the Writ Petition) and the orders dated 7.10.1995 & 30.10.1995 (Annexure No. 1 to the Writ Petition), 10.4.1995 and 5.5.1995 (Annexure No. 2 to the Writ Petition) passed by the respondents.

(ii) issue a writ, order or direction in the nature of mandamus directing the respondents not to give effect to the orders dated 4.12.2001, 7.10.1995, 30.10.1995, 10.4.1995 and 5.5.1995.

(iii) issue any other writ, order or direction which this Hon''ble Court may deem fit and proper in the circumstances of the case.

(iv) award the costs of the petition to the petitioner.

2. It appears that the petitioner was working under the respondent Nos. 2 to 6 on the post of Electrician Skilled Grade. By the order dated 9.10.1992, the petitioner was promoted to the post of Electrician Highly Skilled Grade-II with

effect from 24.6.1987.

Copy of the said order dated 9.10.1992 has been filed as Annexure No. 4 to the Writ Petition.

3. A show-cause notice dated 8.10.1993 was issued to the petitioner, inter-alia, requiring the petitioner to show-cause notice as to why he be not reverted to the post of Electrician Skilled from the post of Electrician Highly Skilled Grade -II.

It was, inter-alia, stated in the said show-cause notice that the order dated 3.10.1992 regarding promotion of the petitioner from the post of Electrician Skilled to the post of Electrician Highly Skilled Grade-II had been issued on the basis of his date of seniority with effect from 23.6.1970; and that it had not pointed out that in fact, the petitioner had been posted in Bareilly Area during the year 1976 from Jamshedpur, and as such, the seniority for the purpose of promotion would be counted from 21.2.1976 in terms of CPRO 73/73 and CPRO 11/73.

Copy of the said show-cause notice dated 8.10.1993 has been filed as Annexure No. 8 to the Writ Petition.

4. The petitioner was, thereafter reverted from the post of Electrician Highly Skilled Grade-II to Electrician Skilled by the order dated 5.5.1995.

Copy of the said order dated 5.5.1995 has been filed as Annexure No. 2 to the Writ Petition.

5. The petitioner, thereafter, filed an Appeal dated 12.6.1995, copy whereof has been filed as Annexure 3 to the Writ Petition.

6. The said Appeal filed by the petitioner was rejected whereupon the petitioner filed an Original Application being Original Application No. 453 of 1976 before the Central Administrative Tribunal, Allahabad Bench at Allahabad.

The Central Administrative Tribunal by its order dated 4.12.02001 dismissed the said Original Application filed by the petitioner. Thereafter, the petitioner filed the present Writ Petition seeking the reliefs, mentioned as above.

Counter Affidavit on behalf of the respondent Nos. 2 to 6 has been filed. The petitioner has filed Rejoinder Affidavit in reply to the aforesaid Counter Affidavit.

7. We have heard Sri M.H. Khan holding brief for Sri S.C. Mandhyan, learned Counsel for the petitioner, and perused the record.

From the narration of facts given above, it is evident that the order of promotion dated 9.10.1992 in respect of the petitioner giving him promotion from the post of Electrician Skilled to the post of Electrician Highly Skilled Grade-II, was passed on the assumption that the seniority of the petitioner in Bareilly Area was to be counted with effect from 23.6.1970 and as Electrician Skilled with effect from 16.10.1981. However, subsequently, it was discovered that the petitioner had been posted to Bareilly Area from Jamshedpur during the year 1976. Therefore,

show-cause notice was issued to the petitioner, inter-alia, requiring the petitioner to show-cause notice as to why he be not reverted to the post of Electrician Skilled as seniority in his case was to be counted with effect from 21.2.1976 (i.e., the date on which he reported for duty in Bareilly Area) in terms of the relevant CPRO. The provision of the relevant CPRO, namely, CPRO 73/73 has been re-produced in Para 3 of the order of the Tribunal as under :

In accordance with the revised principles of seniority, no benefit of past service is given to the surplus staff adjusted in other Corps/Service/Units for purpose of fixation of seniority in the grade in which, they are adjusted. Their seniority on their adjustment in new appointments will be determined in accordance with their date of joining the new unit on their adjustment. It has now been decided that when two or more surplus persons of an office are rendered surplus on different dates for absorption in the same receiving unit, their inter seniority as it existed in the office in which they would become being rendered surplus should be maintained in the grade in which they are already surplus should be maintained in the grade in which they are adjusted in the new organisation provided that no direct recruit has been selected for appointment to that grade in between these dates.

3. There have also been some doubts about the applicability of the revised principles of seniority in respect of individuals adjusted under surplus and deficiencies scheme and transferred on compassionate grounds. Revised principles of seniority are applicable w.e.f. 1.7.1973. In view of the seniority locally controlled staff, rendered surplus and adjusted or transferred on compassionate grounds, prior to 1.7.1973 will be determined in accordance with AI 241/60. Seniority of the individuals adjusted or transferred on compassionate grounds on or after 1.7.1973 will be determined in accordance with the revised principles of seniority. In other words those adjusted/transferred on or after 1.7.1973 will not get the benefit of their previous service on their reporting to the new units.

4. Seniority of the individuals centrally controlled on Corps/Service roster will not be disturbed under the revised seniority rules if they are adjusted/transferred within the Corps/Service.

8. In view of the above-quoted provision, it is evident that when an individual gets posted from one CWE to another on compassionate ground or on the ground of being declared surplus, he is not entitled to get the benefit of his previous service and his seniority is to be counted with effect from the date of his joining at the new place of posting.

9. The Tribunal has held that the case of the petitioner is covered by the above-quoted CPRO 73/73. The petitioner has not brought to the notice of this Court any material to show that the above-quoted CPRO 73/73 is not applicable to the case of the petitioner.

10. In view of the above-quoted CPRO 73/73, seniority in the case of the

petitioner was to be counted with effect from 21.2.1976 when he reported for duty in Bareilly Area. The promotion granted to the petitioner from the post of Electrician Skilled to the post of Electrician Highly Skilled Grade-II, counting his seniority with effect from 23.6.1970, was evidently given under wrong assumption. The reversion of the petitioner from the post of Electrician Skilled Grade-II to the post of Electrician Skilled was, therefore, rightly done. It is noteworthy that before reverting the petitioner, show-cause notice was given to the petitioner.

11. In view of the above discussion, we are of the opinion that the Tribunal did not commit any infirmity or illegality in dismissing the Original Application filed by the petitioner. The Writ Petition lacks merit, and the same is liable to be dismissed.

12. The Writ Petition is accordingly dismissed.

However, in view of the above facts and circumstances of the case, there will be no order as to costs.