

(2019) 12 CAT CK 0025

In the Central Administrative Tribunal

Case No : Original Application No. 672 Of 2014

Dr. Venkateswaran V.

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 18-12-2019

Acts Referred:

Food Safety And Standards Act, 2006 — Section 90
Central Civil Services (Redeployment Of Surplus Staff) Rules, 1990 — Rule 6(4)(a)

Citation : (2019) 12 CAT CK 0025

Hon'ble Judges : Vijay Lakshmi, J; Pradeep Kumar, Member (A)

Bench : Division Bench

Advocate : L.R. Khatana, S.M. Arif, Amit Kumar Vatsya, Devendra Singh

Final Decision : Dismissed

Judgement

Justice Vijay Lakshmi, J

1. The instant OA has been filed by the applicant with prayer to quash the impugned order dated 13.12.2013 passed by respondent no.1 whereby the applicant has been placed junior to respondent No.2 in the grade of Technical Officer (Industrial Advice) (hereinafter referred to as "TO (IA)").

2. We have heard Shri L.R. Khatana, learned counsel for the applicant, Shri S.M. Arif, learned counsel for respondent No.1, Shri Amit Kumar Vatsya with Shri Devendra Singh, learned counsel for respondent No.2 and have carefully gone through the records.

3. Some background facts necessary to understand the controversy involved in the present case are that the applicant - Dr. Venkateswaran V. and respondent No.2 - Shri V. Thirukumaran, both belonged to erstwhile Directorate of Food & Vegetable Preservation (hereinafter referred to as "F&VP") cadre of Ministry of Food Processing Industries (hereinafter referred to as "MFPI"). Respondent No.2 - Shri V. Thirukumaran was initially appointed as Inspector (F&VP) on 3.3.1999 and the applicant - Dr. Venkateswaran V. was initially appointed as Inspector

(F&VP) on 1.11.2004. Both were appointed through Staff Selection Commission (hereinafter referred to as "SSC"). Respondent No.2 was promoted on regular basis to the next higher grade, i.e., Junior Inspecting Officer (F&VP) (hereinafter referred to as "JIO (F&VP)") w.e.f. 3.5.2001 whereas the applicant was given ad hoc promotion to the next higher grade, i.e., JIO (F&VP) initially for a period of six months w.e.f. 6.2.2008 and the same was extended for another six months, i.e., upto 5.2.2009. Subsequently, Food Safety & Standards Authority of India (hereinafter referred to as "FSSAI") was established in pursuance of Food Safety and Standards Act, 2006. As per the provisions contained in Section 90 of the said Act, all the officers belonging to F&VP cadre were transferred from MFPI to FSSAI w.e.f. 1.12.2008. These officers were treated to be on "deemed deputation" with FSSAI till they were absorbed there.

4. The applicant at that time was on study leave, granted to him on 8.2.2008 for pursuing Ph.D (Food Microbiology) course in Central Food Technological Research Institute (CFTRI), Mysore, which he eventually completed. However, he too, along with other officers of MFPI was transferred to the newly formed FSSAI during his study leave. The applicant, being aggrieved, filed an Original Application, being OA No.437/2009, before the Bangalore Bench of this Tribunal and in pursuance of the Order dated 17.8.2010 passed by the Bangalore Bench in the said OA, the FSSAI issued Office Order dated 30.11.2010 whereby repatriating the applicant to his parent Ministry, i.e., Respondent no.1 - MFPI.

5. Subsequent to applicant's repatriation to his parent Ministry w.e.f. 1.12.2010, the FSSAI under the instructions of Government of India invited options from all the officers transferred from MFPI as to whether they want to continue as employees of the Authority or not. Some employees including respondent No.2 exercised their options to opt out of FSSAI. Thus the respondent No.2 also got repatriated from FSSAI to his parent Ministry (respondent no.1-MFPI) w.e.f. 1.8.2011.

6. Later on, the respondent No.1 - MFPI, keeping in view of the acute shortage of staff, ordered revival of two posts of TO (IA) and adjusted the applicant and respondent No.2 against the aforesaid two revived posts of TO (IA) under direct recruitment quota w.e.f. 30.1.2012 with a stipulation that respondent No.2 will be placed senior to the applicant. The grounds for placing the respondent No.2 on senior position were also mentioned in the order showing that the former having an experience of more than 12 years service in the same Ministry was drawing Pay Band-2 Rs.9300-34800 + Grade Pay of Rs.4600/- in his previous post of JIO (F&VP) and he was entitled to draw the Grade Pay of Rs.4600/- in the grade of TO (IA) as well.

7. While deciding their inter-se seniority, reference was also made to instructions contained in Swamy's Manual on Establishment and Administration and MHA's OM No.9/22/68-Estt.(D) dated 6.2.1969 which stipulates that, "when two or more surplus employees of a particular grade in an office are selected on different dates for absorption in a grade in another office, their inter-se seniority

in the latter office will be same as in their previous office."

It is further stipulated in the said OM that, "when two or more surplus employees of a particular grade in an office, are simultaneously selected for redeployment in another office in a grade, their inter-se seniority in the particular grade, on deployment in the latter office, would be the same as it was in their previous office."

8. The applicant, being aggrieved, submitted various representations dated 14.5.2013, 4.6.2013 and 24.9.2013 for granting him seniority above respondent No.2, which all were considered and rejected by respondent No.1 vide impugned order dated 13.12.2013.

9. The applicant has questioned the legality and correctness of the aforesaid impugned order dated 13.12.2013 mainly on the following grounds:-

I. The impugned order passed by respondent No.1 is illegal and arbitrary due to the reason that respondent No.2 did not fulfil the educational qualifications as prescribed under the Recruitment Rules which are statutory in nature and hence, respondent no.2 was not suitable for appointment/adjustment. However, the respondent no.1, without application of mind, has passed the impugned order granting seniority to a less qualified person over the applicant who is more qualified.

II. In this regard, our attention has been drawn to the Notification dated 10.1.2007 providing for Recruitment Rules for Ministry of Food Processing Industries to show that required educational qualifications for the above post was M.Sc. degree in Chemistry or Degree in Agriculture with Diploma in Food Technology from a recognized University/Institute.

III. It has been vehemently contended that the respondent No.1, while placing the respondent No.2 as senior to the applicant, has not considered the fact that the respondent No.2 does not possess the "Diploma in Food Technology" and has placed him on a senior position on the basis of his 12 years experience in past services under Food Products Order 1955 (FPO 1955) of Government of India. The contention of learned counsel for the applicant is that since respondent No.2 did not possess the essential educational qualifications, he was ineligible for the post and his appointment is liable to be quashed.

10. Reliance has been placed on the law laid down by the Hon"ble Apex Court in the following cases:-

- i. Sant Raj and another vs. O.P. Singla and another, (1985) 2 SCC 349;
- ii. K. Balarama Raju vs. V. Subramanya Sarma and others, (2011) 12 SCC 574;
- iii. M.P. State Coop. Bank Ltd., Bhopal vs. Nanuram Yadav and others, (2007) 8 SCC 264; and
- iv. Union of India and others vs. K. Savitra and others, (1998) 4 SCC 358.

V. Our attention has also been drawn to Rule 11.0 of "Revised Scheme for the Disposal of Personnel rendered surplus due to reduction of establishment in Central Government Departments/Offices" of Swamy's Manual which provides that,

"11.1 No change is contemplated in the present policy that the past service rendered prior to redeployment should not count towards seniority, in the new organization/new post which a surplus employee joins after he is redeployed. The same rule will also have to be applied in the case of those readjusted after redeployment."

11. On the basis of above provision, learned counsel has contended that benefit of past services or experience should not have been given to respondent No.2.

12. To the contrary, in the counter affidavit filed by respondent no.1, it has been contended that there is no illegality in the impugned order whereby the respondent no.2 has been placed on a senior position above the applicant because Shri V. Thirukumaran held Group-B Gazetted Post (i.e. Junior Inspecting Officer) on regular basis in the Pre-revised scale of Rs.6500-200-10500 w.e.f. 03.05.2001. The revised pay scale of that post is PB-2: Rs.9300-34800/- plus GP-4600/-. He possesses M.Sc. (Agriculture) in Plant Pathology and has rendered more than 12 years Service under Fruit Products Order 1955 whereas the applicant herein held Group-B, Non-Gazetted Post (i.e. Inspector) on regular basis in the Pre-revised scale of Rs.5500-175-9000 w.e.f. 01.11.2004. The revised scale of that post is PB-2: Rs.9300-34800 Plus Grade Pay Rs.4200/-. He possesses M.Sc. (Agriculture) in Microbiology plus one year Diploma in Food Preservation Technology (Distance Mode) and Ph.D. in Biotechnology and has rendered 6 years and 11 months service under Fruit Products Order, 1955. Thus, Respondent No.2 had an experience of more than 12 years whereas the applicant had an experience of six years and 11 months only. That is why respondent No.2 was placed senior to the applicant as per the seniority held by them previously in the F&VP cadre.

13. Our attention has been invited on the instructions contained in Swamy's Manual on Establishment and Administration and MHA's OM No.9/22/68-Estt.(D) dated 06.02.1969 regarding fixation of inter-se seniority on absorption of surplus employees which have been already been quoted in the earlier part of this judgment.

14. Learned counsel for the respondents have further contended that in so far as the issue of respondent No.2's lacking in "Diploma in Food Technology" is concerned, the same is necessary under the Recruitment Rules for fresh recruitment and not in the case of repatriation/readjustment. The present case was not a case of fresh direct recruitment to be held up on the basis of competitive exam through an open advertisement, calling for the applications from all, rather it was a case of repatriation and readjustment of the applicant and respondent no.2 to their parent organization, i.e., MFPI from FSSAI. Had it

been a case of fresh direct recruitment, the said posts would have been filled up on the basis of an open advertisement and at that time, the requirements of educational qualifications would have to be strictly complied with.

15. The contention of respondents' counsel is that the applicant was very much junior to respondent No.2. At the time he was initially recruited to the post of Inspector (F&VP) in the year 2004, the respondent No.2 had already been serving on the next higher post in the departmental hierarchy, i.e., JIO (F&VP) on the regular basis w.e.f. 3. 5.2001. Thus, the applicant was not even born in the cadre at the time when respondent No.2 was promoted to next higher level of post in the year 2001. Moreover, at the time of induction to the post of TO (IA), the applicant was holding the post of Inspector (F&VP) in Pay Band-2 with Grade Pay of Rs.4200/- whereas the Respondent No.2 was holding the post of JIO (F&VP) on substantive basis in Pay Band-2 with Grade Pay of Rs.4600/-. As a result, at the time of induction in the post of TO (IA), the respondent No.2 was adjusted on the said post with the same Pay Band, whereas the applicant was benefited in both terms, i.e., rank and Grade Pay.

16. On the aforesaid grounds, it has been contended by the learned counsel for the respondents that in view of the above, the arguments put forward by the applicant, being completely devoid of rationality, having no substance, are untenable. Therefore, the OA deserves to be dismissed.

17. In the counter reply filed by respondent No.2, it has been reiterated that educational qualifications prescribed for the post of TO (IA) are not strictly applicable in the case of adjustment of surplus staff and the same is applicable to fresh direct recruitment only. The respondent No.2 has been rightly placed on a position senior to the applicant after considering his (respondent No.2's) suitability by the competent authority.

18. We have given our thoughtful consideration to rival submissions advanced by learned counsel for the parties.

19. In order to understand the controversy, it is necessary to have a glance on the hierarchy of erstwhile F&VP cadre, which was as follows:-

Inspector ? Junior Inspecting Officer (JIO) ? Senior Inspecting Officer (SIO) ? Deputy Director ? Joint Director ? Director

The post of Inspector, JIO and SIO were direct entry level posts and remaining posts were promotional post. The recruitment for the posts of Inspector and JIO was done through SSC whereas recruitment to the post of SIO was done through Union Public Service Commission.

20. From a perusal of records, it is clearly evident that the applicant and respondent No.2 both were initially appointed as Inspector (F&VP). However, respondent No.2 was appointed on 3.3.1999 and he was promoted on regular basis to the next higher grade, i.e., JIO (F&VP) on 3.5.2001. On the other hand, the applicant was initially appointed on 1.11.2004 and was given ad hoc

promotion to the next higher grade, i.e., JIO (F&VP) for a period of six months on 6.2.2008 which was extended for another six months, i.e., upto 5.2.2009. Thus, it is clear that the applicant was not even born in the cadre when respondent No.2 already had served for more than five years in that cadre. Not even that, the respondent No.2 had already been promoted on regular basis to the next higher grade of JIO (F&VP) on 3.5.2001 in the departmental hierarchy prior to inductment of the applicant in the cadre.

21. It is true that a comparative glance on the educational qualifications of both clearly reveals that the respondent no.2 lacks the educational qualification in respect of "Diploma in Food Technology". However, in para 4 of the counter reply filed by respondent No.2, the details of his educational qualifications have been elaborately mentioned, showing that he too is in no way less qualified as he has acquired several degrees, five Gold Medals and prizes. Both the applicant and respondent no.2 were transferred to FSSAI and were treated on "deemed deputation". Both were repatriated to their parent Ministry, i.e., MFPI and were re-adjusted on the post of TO (IA). Thus, their appointments were not against any fresh post under direct recruitment quota on the basis of an open competitive exam but it was only a re-adjustment after repatriation to their parent organisation.

22. Learned counsel for the applicant has drawn our attention to Swamy's Complete Manual on Establishment and Administration and referred to Rule 6(4) (a) of CCS (Redeployment of Surplus Staff) Rules, 1990, which provides that,

"(4) The readjustment shall be subject to the following further conditions:-

(a) The surplus employee shall have no claim to count his past service, including that rendered in the post of his provisional redeployment, towards fixation of seniority in the post in which he is adjusted."

It has been contended that past services of respondent No.2 were irrelevant in the present case, in view of above cited rule and that has been wrongly considered by respondent No.1.

23. In our view, the aforesaid rule is inapplicable in the present case. The applicant and respondent no.2 both have been repatriated/ readjusted to their parent Ministry/organization and they have not been readjusted in any other Ministry or Government department. Had they been readjusted in any other Government department from FSSAI like Ministry of Defence, Ministry of Finance, Ministry of Information and Broadcasting, Textile Ministry, etc., their past experience would have been irrelevant in view of Rule 6(4) (a) of the Rules *ibid* but in the present case, the facts clearly show that both of them have been transferred on "deemed deputation" to FSSAI subsequent to enactment of Food Safety and Standards Act, 2006 after repeal of F&VP cadre, which was later on revived and as a result, both were repatriated to their parent Ministry of Food Processing Industries. Thus, the Government Departments (Food Ministry) remained the same. Section 90 of the Food Safety and Standards Act, 2006 is

also relevant here which is reproduced as under:-

"On and from the date of establishment of the Food Authority, every employee holding office under the Central Government Agencies administering food laws immediately before that date shall hold his office in the Food Authority by the same tenure and upon the same terms and conditions of service including remuneration, leave, provident fund, retirement and other terminal benefits as he would have held such office if the Food Authority had not been established and shall continue to do so as an employee of the Food Authority or until the expiry of the period of six months from that date if such employee opts not to be the employee of the Food Authority."

24. In view of the above discussion, we are of the firm view that past experience of respondent No.2 in his parent Department has been rightly counted by the respondent no.1 on the basis of which respondent No.2 has been placed on a senior position above the applicant.

25. The judgments cited by the applicant are not applicable in the present case as the facts of the judgments cited by the applicant are entirely different from the facts of the instant case. In the case of Union of India and others vs. K. Savitri and others (supra), the Hon"ble Apex Court held that benefit of service rendered in previous organization is not permissible under CCS (Redeployment of Surplus Staff) Rules, 1990 for fixation of seniority in the organisation. However, the facts of the aforesaid case show that the case before the Hon"ble Supreme Court was of the employees who were working in the office of the "Rehabilitation and Reclamation Organisation". They became surplus in "their parent organisation" and thereafter under the provisions of the Rules *ibid*, they were appointed in "All India Radio". In drawing up the seniority list of the employees of All India Radio, their past services were not taken into count and their experience in their parent organisation was also not taken as a requisite experience required for promotion in All India Radio. They approached the Central Administrative Tribunal, Cuttack Bench, by filing different OAs (being OA Nos.160, 161 and 163 of 1993). The Central Administrative Tribunal allowed those OAs, vide Order dated 27.5.1994, by holding that past services rendered in the parent organisation would count for the purpose of seniority as well as experience. The Union of India filed an appeal before the Hon"ble Supreme Court and the Hon"ble Supreme Court relying on the relevant rules and also Recruitment Rules for various posts in All India Radio, i.e., All India Radio (Class III Posts) Recruitment Rules, 1964, held that past services of re-deployed surplus employees cannot be counted for seniority in new organisation. Equally the past experience also would not count.

26. Thus, it is clearly evident that the department from where the surplus staff in the aforesaid case before the Hon"ble Supreme Court were re-deployed, was entirely different as they all were employees of the office of the "Rehabilitation and Reclamation Organisation", who were appointed in "All India Radio" being surplus staff.

27. To the contrary, in the present case both the employees were serving in the Ministry of Food Processing Industries. For a short period, they were transferred on "deemed deputation" to FSSAI from where both were reverted to their parent organisation, i.e., Ministry of Food Processing Industries. Therefore, their past experience was rightly counted in this case by respondent No.1. In so far as the requisite qualification of "Diploma in Food Technology" is concerned, in our view, it was to be fulfilled at the time of fresh direct recruitment and not at the time of readjustment within the same parent organisation where both the employees were already serving.

28. In view of the above, there does not appear any illegality or irregularity in the impugned order. As such OA is devoid of merit and is liable to be dismissed.

29. Accordingly the OA is dismissed. No order as to costs.