
(2002) 05 DEL CK 0034
In the Delhi High Court
Case No : CWP 2964 of 2000

J.S. Sandhu and Others

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 14-05-2002

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2002) 99 DLT 10

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : B.B. Raval, for the Appellant; U. Hazarika, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, C.J.—The short question involved in this petition is as to whether the seniority of the writ petitioners should be counted on the basis of the length of continuous service irrespective of the date of joining at Armed Forces Headquarters.

2. The petitioners who are seven in number had begun their career as LDC or in the equivalent grades in Lower defense Formations in the defense Ministry on different dates. They having been found surplus, allegedly were transferred to AFHQ in public interest between 16.4.62 and 27.4.64. In the Original Application, they claimed that their seniority should be reckoned from their respective dates of joining as LDC/equivalent in the Lower defense Formation in the defense Ministry. In other words, according to them the services rendered by them earlier between December 1957 and September 1960 should be treated as continuous for the said purpose.

3. It is not in dispute that the services of the petitioners were governed in terms of OM dated 21st December 1963, the relevant portion whereof is as under:

"Persons who joined Armed Forces Headquarters (including Inter Service Organisation) as Lower Division Clerks on 22nd December 1959 or thereafter will

reckon their seniority in that grade from the date on which they joined Armed Forces HQrs (including Inter Service Organisation)."

4. It is also not in dispute that the Rules were framed in terms of the Proviso appended to Article 309 of the Constitution of India known as The Armed Forces Headquarters Clerical Services Rules, 1968 (hereinafter called and referred for the sake of brevity as "the said Rules"). By reason of the said rules, a provision was made that seniority in the services would be determined on the basis of the date of confirmation, the validity whereof came up for consideration before the Apex Court in D.P. Sharma and Others Vs. Union of India and Another, wherein it was held that the said Rules had no retrospective effect and thus, the existing rights of the officials who were appointed long prior to its coming into force, could not be impaired. It was stated:

4. "...The office memorandums to which learned Single Judge has referred in detail and which we have extracted above clearly laid down that length of service should be the guiding principle of arranging the inter se seniority of officials. The appellants being governed by those memorandums had the right to have their seniority determined accordingly before the Rules came into force. That being their right, the Rules cannot take it away to their prejudice."

5. Admittedly, the seniority of the petitioners is being recast on the said basis.

6. The learned Tribunal, however, by reason of the impugned judgment observed that the order in D.P. Sharma (supra) had attained finality and thus no further relief, as has been prayed for by the petitioners, could be granted.

7. Mr. Raval learned counsel appearing for the petitioners would contend that the question which was posed before the learned Tribunal had not been answered. Our attention in this connection has also been drawn to the fact that some of the petitioners who had retired in the meantime had been given the benefit of the past service as a qualifying service for the purpose of grant of pension. Mr. Raval, Therefore contends that the respondents cannot be permitted to approbate and reprobate as the same time.

8. Mr. Hazarika, learned counsel appearing on behalf of the respondents, on the other hand, would contend that having regard to the fact that the benefit of D.P. Sharma's case (supra) having been granted to the petitioners, they are not entitled to any other or further benefit.

9. The question as to whether the petitioners would be getting the benefit of the past service or not is essentially a question of fact which may depend upon several factors, the most important of which would be the terms and conditions of their transfer and or absorption in the AFHQ. The persons similarly situated had been transferred in public interest. In D.P. Sharma (supra), the question which has been raised herein had not been raised. The said decision, Therefore, has no application in the instant case.

10. Unfortunately, although the point was raised before the learned Tribunal

specifically but the same has not been dealt with on a wrong premise. If D.P. Sharma (*supra*) does not come in the way of the petitioners in obtaining relief, their contentions required to be considered. Furthermore, the petitioners have raised a question of discrimination, which is also required to be gone into.

11. We, Therefore, are of the opinion that the matter requires a fresh consideration at the hands of the Tribunal. If for the said purposes, the parties intend to adduce additional evidence, they may be permitted to do so.

12. Keeping in view the facts and circumstances of the case, we are further of the opinion that some of the petitioners have retired and some are on the verge of retirement, the learned Tribunal may consider the desirability of disposing the matter as expeditiously as possible.

13. This writ petition is allowed. The impugned order is set aside. The matter is remitted for consideration afresh to the Central Administrative Tribunal in the light of the observations made hereinbefore. But in the facts and circumstances of the case, there shall be no order as to costs.