

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

10

O. A. No 134/2002

Date of Decision 31.12.2002

Sh. Bhanwar Singh ... Applicant

Sh. Gyan Prakash ... Advocate for the Applicant

VERSUS

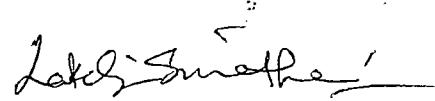
UOI & Ors ... Respondents

.... Advocates for the Respondents

Sh. Arun Bhardwaj, counsel
through proxy counsel Shri
Ravi Kant Jain
Coram:-

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

1. To be referred to the Reporter or not ? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No


(Smt. Lakshmi Swaminathan)

Vice Chairman (J)

11

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 134/2002

New Delhi this the 31st day of December, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Govindan S. Tamai, Member (A)

Shri Bhanwar Singh
Son of late Mam Raj
resident of 27/921, Pram Shakti
Bhawan, West Ram Nagar,
Sonipat (Haryana)

..Applicant

(By Advocate Shri Gyan Prakash)

VERSUS

Union of India, through

1. Secretary to the Govt. of India,
Ministry of Defence,
South Block, New Delhi.
2. Secretary to the Govt. of India,
Ministry of Personnel Public
Grievances and Pensions, North
Block, New Delhi.
3. The Joint Secretary to the Govt.
of India (Estt./PG/CVO), Ministry
of Defence, 108-B, South Block,
New Delhi

..Respondents

(By Shri Ravi Kant Jain, Advocate
proxy counsel for Shri Arun
Bhardwaj)

O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

This application has been filed by the applicant impugning the order issued by the respondents dated 11.1.2001 in reply to the representation filed by the applicant dated 21.6.2000. In the representation, the applicant had, inter-alia, prayed for in-situ promotion in higher grade as per the Scheme issued by the Government of India, Ministry of Finance (Department of Expenditure) O.M. dated 13.9.1991 and 4.9.1992, copy placed on record.

18

2. We have heard Shri Gyan Prakash, learned counsel for the applicant and Shri Ravi Kant Jain, learned proxy counsel for the respondents and perused the pleadings and other relevant documents on record.

3. The brief relevant facts of the case are that the applicant was initially appointed as a Peon with the respondents w.e.f. 14.8.1956 in the pay scale of Rs.30-35. The respondents have submitted that he had taken permission to enlist his name in the Employment Exchange (EE) for class II post. He was selected for appointment as Tally Clerk (TC) in the pay scale of Rs.110-180 from Group 'D' post to Group 'C' post with the respondents, in which post he was appointed on 24.8.1967. He has retired from service on superannuation from the post of TC/LDC on 1.11.1996.

4. Admittedly, the applicant had filed an earlier application in the Tribunal (OA1105/1999) which was disposed of by order dated 3.12.1999, in which one of us (Smt. Lakshmi Swaminathan, VC(J)) was also a member. It is relevant to note that in the reply given by the respondents in Para 6 of the counter affidavit filed on 21.8.2002, references have been made to certain applications said to have been filed by the applicant. However, Shri Ravi Kant Jain, learned proxy counsel denies that any such applications have been filed and submits that these references are erroneous and wrong due to a ^{given in the reply} clerical mistake. It is indeed unfortunate that such facts which have been obviously prepared in a hurry and not checked,

13

have been filed in Court and we hope that such erroneous submissions in writing would not occur in future, which is to be noted by the respondents.

5. In the earlier order of the Tribunal dated 3.12.1999 in OA 1105/1999, a direction was given to the respondents to examine the contents of the applicant's representation dated 31.7.1995 and pass a detailed, speaking and reasoned order, in accordance with the rules and instructions, with intimation to the applicant. In pursuance of this order, the respondents have issued order dated 4.4.2000. Shri Gyan Prakash, learned counsel submits that a further representation was submitted by the applicant, to which the impugned order dated 11.1.2001 has been issued.

6. Learned proxy counsel for the respondents has contended that the applicant had been allowed to register his name in the EE and had been appointed as TC/Group 'C' post without resigning or break in service w.e.f. 24.8.1967 which shows that he was promoted. He has further contended that the applicant had never resigned from the post of Peon which he was holding permanently and, therefore, the appointment as TC in Group 'C' post has to be treated as a promotional post. It cannot, therefore, be contended, as submitted by the applicant, that he has not got any promotion during his service. He has submitted that the applicant is not entitled to any in-situ promotion

from the post of TC/LDC which is a Group 'C' post in the Assured Career Progression (ACP) Scheme. He has, therefore, prayed that the OA may be dismissed.

7. Shri Gyan Prakash, learned counsel for the applicant has submitted the original letter from the respondents dated 21.8.1970 and the Office Order No.113 of 1970 dated 17/18.12.1970, which have also been shown to the learned proxy counsel for the respondents. Copies of these documents have been taken on record and copies also given to learned proxy counsel for the respondents. In the letter issued by the respondents dated 21.8.1970, it has been clearly stated that the applicant may be asked to resign from his permanent post of peon in case he does not want to revert to that office. Following this letter, Office Order No.113 of 1970 dated 17/18.12.1970 has been issued by the respondents which reads as follows:-

"Resignation of Shri Bhanwar Singh, a permanent peon of the Directorate of Sugar and Vanaspati, now employed as Tally Clerk in the Army Purchase Organisation, Department of Food is hereby accepted w.e.f. the afternoon of 3.9.1970. He will have no claim to revert back to the Directorate of Sugar and Vanaspati in future".

In the light of these letters it would be relevant to note the relevant portion of the impugned order dated 11.1.2001 which reads as follows:-

"Para 1 (d),(i),(ii) and (iii):- Your contention is not agreed to. You were initially appointed as peon in Gp. 'D' and then you were promoted as LDC. You had not been directly recruited to Gp. 'C' post on regular basis. Even after reaching the maximum scale of such post are only eligible for career advancement of Gp. 'C' or 'D' posts.

Para 1(e):- The contention of yours is not agreed to. The pay scale of Tally Clk and

LDC was one and the same i.e. 110-180 which was revised in RPR 86 to Rs. 950-1500 and you had reached the maximum of pay scale. With regard to your promotion to the post of Asstt. Supervisor Gde., there exists no rules to promote you as UDC before superannuation".

The main contention of the learned proxy counsel for the respondents is that they have acted legally and fairly as the applicant had not resigned from the post of permanent Peon and had already got a promotion in Group 'C' post as TC, even if he had been directly recruited in the latter post.

8. No doubt, as pointed out by the learned proxy counsel for the respondents, the applicant has not categorically mentioned the existence of the above referred to relevant letters in the rejoinder. However, in our opinion, that is not sufficient to deny him the rights available to him under the provisions of the relevant law, rules and instructions. In any case, the respondents ought to have known from their Office records whether he had been asked to resign and if he had done so or not. They should have in fact produced these documents as annexures to their counter reply which they have not done. Therefore, the mere contention of the learned proxy counsel for the respondents that since the applicant had not resigned from the post of Peon, his appointment to the higher post of TC directly in 1967 can only be treated as by way of promotion is not based on records, as seen from the aforesaid documents. In the facts and circumstances of the case, the contention of the respondents that the applicant cannot be considered as/direct recruit TC/ Group 'C' but has to be considered as if he has already got a promotion in his career in 1967 is rejected.

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In other words, the applicant is a direct recruit in a Group 'C' post in 1967.

9. The issue under consideration is whether the applicant is eligible for in-situ promotion in terms of the aforesaid Scheme/ O.M. dated 13.9.1991 and 4.9.1992. The relevant portion of this Scheme reads as follows:-

" This matter has accordingly been under consideration of the Government for some time past and it has been decided to introduce a scheme to ensure at least one promotion in service career to each Groups 'C' and 'D' employee. This scheme shall be applicable to-

(i) employees who are directly recruited to a Group 'C' or Group 'D' post;

(ii) employees whose pay on appointment to such a post, is fixed at the minimum of the scale; and

(iii) employees who have not been promoted on regular basis even after one year on reaching the maximum of the scale of such post.

It is clarified that the scheme is applicable to the incumbents of both (a) posts having no avenue of promotion at all ; and (b) posts having inadequate avenue of promotion, provided that the incumbents of these posts fulfil all the conditions laid down.

The scheme will have the following basic features:-

(a) Groups 'C' and 'D' employees who fulfil the conditions mentioned at (i), (ii) and (iii) above will be considered for promotion in situ to the next higher scale.

(b) Promotion in situ will be allowed after following due process of promotion with reference to seniority-cum-fitness.

(c) ".

As mentioned above, the applicant was appointed as direct recruit TC, which is a Group 'C' post in the minimum pay

scale of Rs.950-1500. He had reached the maximum of that grade on 1.9.1994. He has retired from service on 1.11.1996. Admittedly, he had not been promoted on regular basis to the next higher grade of Assistant Supervisor after completion of one year on reaching the maximum of the pay scale of Rs.950-1500. In the impugned order dated 11.1.2001 with regard to the claim for promotion to the post of Assistant Supervisor grade, the respondents have stated that "there exists no rules to promote you as UDC before superannuation". Therefore, having regard to the relevant facts and circumstances of the case and the provisions of the OM dated 13.9.1991, we are satisfied that the applicant fulfils the eligibility conditions laid down in the Scheme. He was, accordingly entitled to be considered for the benefits of in-situ promotion in terms of the Scheme issued by the Govt. of India by OMs dated 13.9.1991 and 4.9.1992.

10. In the result, for the reasons given above, OA succeeds and is allowed with the following directions:-

The respondents to consider grant of in-situ promotion to the applicant in the grade of UDC in the pay scale Rs.1200-2040 (pre-revised) w.e.f. 1.9.1995, with all consequential benefits, including arrears of difference in pay and allowances and consequential revision of pensionary benefits;

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(ii) The due benefits to the applicant in terms of the aforesaid OMs shall be granted within a period of two months from the date of receipt of a copy of this order;

(iii) In the facts and circumstances of the case, the claim of the applicant for penal/ market interest @ 18% is rejected. However, the respondents are directed to grant 6% simple interest per annum on the amounts due to the applicant from the date due till the date of actual payment. This shall also be done within the same period as mentioned above.

No order as to costs.

(Govindan S. Tampl)
Member (A)

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Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)