

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 1071/2002

New Delhi, this the 20th day of August, 2009

**HON'BLE MR. JUSTICE V.K.BALI, CHAIRMAN
HON'BLE MR. L.K.JOSHI, VICE CHAIRMAN (A)**

Prabhakar Singh,
Son of Shri Badrinarain Singh,
Deputy Legislative Counsel,
Legislative Department,
Ministry of Law, Justice and Company Affairs,
Shastri Bhavan,
New Delhi

... Applicant

(Through Shri Mahabir Singh, Senior Advocate with Shri C.D. Singh and
Shri Aditya Singh)

Versus

1. Union of India
through Secretary,
Legislative Department,
Ministry of Law, Justice and Company Affairs,
Shastri Bhavan,
New Delhi
2. Union Public Service Commission,
through Secretary,
Shahjahan Road,
New Delhi
3. Shri V.K. Bhasin,
Joint Secretary and Legislative Counsel,
Legislative Department,
Ministry of Law, Justice and Company Affairs,
Shastri Bhavan,
New Delhi
4. Dr. Sanjay Singh,
1195, Sector 12,
Type IV Special,
R.K. Puram, New Delhi
5. Shri N.K. Nampoothiry,
Additional Legislative Counsel,
Legislative Department,
Ministry of Law, Justice and Company Affairs,
Shastri Bhavan,

New Delhi

...Respondents

(Through Shri Rajesh Katyal for official respondents
None for respondent no.4)

ORDER

Mr. L.K. Joshi, Vice Chairman(A):

The Applicant in this OA is seeking that directions be given to the Respondents to consider him for promotion to the post of Deputy Legislative Counsel (DLC) with effect from 29.06.1994 and as a consequential relief also to consider him for the post of Additional Legislative Counsel. The Applicant is before us in the third round of litigation regarding this relief.

2. The relevant details of the case are narrated in the paragraph which follow.

3. The Applicant joined the Indian Legal Service (ILS) in the grade of Assistant Legislative Counsel (ALC), by direct recruitment, on 28.12.1989. A seniority list of the officers in the Legislative Department of the Ministry of Law was issued on 1.03.1994. In the seniority list of the officers of Grade-IV of ILS, i.e., ALC, the Applicant is at serial number 1 and Dr. Sanjay Singh, the fourth Respondent in this OA, is at serial number 4. The list of officers in the grade III of I.L.S., Deputy Legislative Counsel, is reproduced below:

1. K.N. Chaturvedi
(Direct)

2. Z.S. Negi
(Promotee)

3. S.P. Kanwal
(Direct)

4. N.L. Meena
(Direct)

Joshi 5. P.C. Roy
(Promotee)

6. V.K. Bhasin
(Direct)

Shri V.K. Bhasin is the third Respondent.

4. The relevant rules, i.e., Rules 6 and 11 of the Indian Legal Service Rules, 1957 (the Rules) have been extracted below:

"6 Filling up Duty Posts:

- (1) A duty post in Grade-I or Grade-II shall be filled by promotion of a member of the Service in the next lower grade unless the Central Government decides to fill any such post by direct recruitment.
- (2) A duty post in Grade III shall be filled alternatively by direct recruitment and by promotion of a member of Service in Grade IV.
- (3) A duty post in Grade IV shall be filled by promotion of persons holding any post specified in the Third Schedule and by direct recruitment in the ratio of 1:1 (namely 50% by promotion and 50% by direct recruitment).
- (4) Notwithstanding anything contained in sub-rules (2) and (3), a vacancy required to be filled by promotion or direct recruitment may, if a suitable person is not available to fill such vacancy, be filled by direct recruitment, or, as the case may be, by promotion.

11. **Seniority**

- (1) A list of members of Service shall be maintained separately for each Department in order of their seniority.
- (2) Seniority of members of the Service in each Department shall be determined in accordance with the following principles, namely:-
 - (i) a member of the Service appointed to a duty post in a substantive capacity in any grade shall be senior to a member of the Service appointed to a duty post in an officiating capacity or on probation in that grade;
 - (ii) seniority of members of the Service appointed to duty posts in any grade in a substantive capacity shall be determined in accordance with the date of appointment to a duty post in that grade in substantive capacity, and where two or more members of the service are appointed in a substantive capacity to duty posts in the same grade on the same date, their seniority shall be determined in accordance with their seniority while holding such duty posts in an officiating capacity or on probation;

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- (iii) subject to the provisions contained in clause (iv) seniority of the members of the Service appointed to duty posts in any grade in any officiating capacity or on probation shall be determined in accordance with the order of selection for appointment to a duty post in that grade or to a post in the Ministry of Law, which in the opinion of the Central Government, corresponds to that duty post; and
- (iv) the relative seniority of direct recruits and of promotees should be determined according to the rotation of vacancies between direct recruits and promotees."

5. As per the Rules, the Applicant became eligible for promotion to the post of DLC on 27.12.1992, after completing three years in the grade of ALC. A vacancy arose in the post of DLC on 29.06.1994 when Shri K.N.Chaturvedi was promoted from the post of DLC to Additional Legal Counsel (Addl. L.C.). However, in spite of the Applicant's oral and written representations, Departmental Promotion Committee (DPC) did not meet in 1994 and 1995. Another vacancy arose on 2.01.1995 when Sh. Z.S. Negi, who was at serial number 2 in the seniority list, below Shri K.N.Chaturvedi, was promoted to the post of Addl. L.C.

6. The fourth Respondent, Dr.Sanjay Singh, was selected for the post of DLC by direct recruitment and was appointed in that grade with effect from 4.07.1996. The Applicant was promoted with effect from 6.09.1996. The Applicant made a representation to the first Respondent to treat the Applicant to have been promoted to the post of DLC with effect from 29.06.1994, when vacancy arose, claiming that to be a vacancy for 'promotion' post.

7. The Applicant approached this Tribunal through OA No.1668 of 1997, when his representation did not bear any fruit. The Applicant sought a direction for notional promotion with effect from 29.6.1994 so that he could be eligible for promotion as Addl.L.C. The Tribunal

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dismissed the OA by observing thus:

“without selection, how could the applicant claim promotion and without actual work, how could he acquire experience by notional promotion are questions without plausible explanation.”

8. We also note that before the filing of the OA No.1668 of 1997, there was a modification in the seniority list of DLC of 1.03.1994 by order dated 11.7.1996. The order is reproduced below:

“Subject: Revised Gradation List of Deputy Legislative Counsel (Grade III of ILS) as on 1.03.1994.

The Gradation List of Indian Legal Service officers in the Legislative Department as on 1.3.1994 was circulated to all concerned on 1.3.1994. It has since come to notice that the inter-se-seniority of S/Shri P.C.Roy and V.K.Bhasin in that List who are holding the post of Deputy Legislative Counsel has not been correctly reflected in that Gradation List. The vacancy against which Shri V.K. Bhasin was recruited as direct recruit arose prior to the vacancy meant for promotion quota in which Shri P.C.Roy was promoted. Accordingly, the name of Shri V.K.Bhasin should find place above Shri P.C.Roy in the said Gradation List. Accordingly, the Gradation List of the Deputy Legislative Counsel (Grade III of ILS) is again recirculated herewith as on 1.3.1994 duly corrected for the information of all concerned. If any officer has any objection to the position indicated in the List, he should submit his representation latest by 31.7.1996 failing which the seniority list will be treated as final.”

9. The Applicant approached the Delhi High Court in C.W.P.No.3152 of 1997 against the order dated 30.7.1997 of the Tribunal in OA No. 1668 of 1997. The ^{Honorable} _{High} Court in its judgment dated 16.03.2002 noted the change in the seniority list of 1.03.1994, advertence to which has been made in the immediately preceding paragraph above. It then went on to observe that the petitioner (the Applicant in the instant OA) has no grievance against the third respondent (Shri V.K. Bhasin, the third Respondent herein) and “[E]ven otherwise no relief can be granted against respondent no.3 at this stage.” It further observed thus:

“However, the dispute if any, subsists between the petitioner and the respondent No.4 herein who is a subsequent direct recruit.

We may notice that respondent No.4, Sanjay Singh was not a party before the learned Tribunal. He has been made a party before this Court for the first time.

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It is not in dispute that the claim of the petitioner vis-à-vis the stand taken by the respondents (as it made amendments in the vacancy position with retrospective effect), the only relief which could be claimed by the petitioner is against respondent No.4.

Having regard to the decision of the Apex Court in *L.Chandra Kumar Vs. Union of India & Ors.* (AIR 1997 SC 1125), we are of the opinion that the claim of the petitioner is required to be gone into by the learned Tribunal at the first instance.

In this view of the matter, we are of the opinion that the interest of the justice will be sub-served if the petitioner be permitted to agitate the said question at the first instance before the learned Tribunal, who may go into the matter on its merits having regard to the subsequent event, which had taken place, wherefor the petitioner will be at liberty to file an appropriate application under Section 19 of the Administrative Tribunal's Act, 1985."

10. Pursuant to the directions of the High Court, the Applicant came before the Tribunal in OA No.1071 of 2002. This OA was decided on 24.04.2002 and the Tribunal dismissed the OA by observing thus:

"2. The relief sought in the present OA is identical to the relief sought in the earlier OA which as we have already noted has been rejected. In the circumstances, barred by the principle akin to the principle of res-judicata the applicant cannot seek the same relief once again in the present OA. The present OA is accordingly dismissed in limine."

11. The Applicant again approached the Delhi High Court against this order in C.W.P. No.2818 of 2002, which was decided on 23.10.2008. The High Court observed that the Tribunal erroneously held the petition to be barred by the principle akin to res-judicata, whereas it had to decide the dispute about seniority between the petitioner and Dr.Sanjay Singh. The case was remitted back to the Tribunal.

12. The learned senior counsel for the Applicant has, at the outset, stated that he has no claim against the third Respondent, i.e., Shri V.K.Bhasin and the only claim is against the fourth Respondent, Dr.Sanjay Singh.

13. The contention of the learned senior counsel for the Applicant is that the vacancy, which arose on 29.06.1994 had to be filled by

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promotion. As per Rule 6(2) of the Rules, there can only be three direct and three promotees in 6 posts of DLC at any point of time, but in the seniority list of 103.1994, there were four direct recruits and three promotees. We do not agree. It may not be possible that the balance of 50% direct and 50% promotees should always be maintained. Such balance can be disturbed on retirement of a promotee officer or any officer from either stream leaving the service.

14. The second contention is that the vacancy which arose following the promotion of Shri K.N. Chaturvedi on 29.06.1994 in the grade of DLC should have gone to the promotion quota and as per the provisions of Rule 11 (iv), his seniority should have been fixed above the fourth Respondent.

15. The learned counsel for the Respondents would, on the other hand, contend that the Applicant became eligible for promotion only on 27.12.1992. One vacancy in the grade of DLC arose on 31.01.1991 and the other on 1.01.1992. The first vacancy as per the roster fell on direct recruitment point and Shri V.K.Bhasin was appointed against that vacancy. The second vacancy on promotion point fell on the promotion point and Sh. P.C.Roy was promoted against that. The next vacancy on 29.06.1994 fell on direct recruitment quota and Dr.Sanjay Singh was appointed against that post on 4.07.1996. The next post, which fell vacant on 2.01.1995 went to the Applicant in the promotion quota.

16. We are in agreement with the contention of the Respondents. The Applicant is basing his claim on the seniority list as it existed on 1.03.1994 without amendment. In the un-amended seniority list, Sh. V.K. Bhasin, direct recruit was at serial number 6 and, therefore, on the promotion of Shri K.N.Chaturvedi, the next vacancy would have gone to the Applicant in promotion quota. The seniority underwent a change in

1996 and the *inter se* seniority of Shri V.K.Bhasin and Shri P.K.Roy was changed, with Sh.P.K.Roy from promotion quota coming at serial No.6. Therefore, according to Rule 6(2) of the Rules, the next vacancy would go to direct recruit. Shri Sanjay Singh was available to fill up the post. The *inter se* seniority of the Applicant in the grade of ALC is immaterial because Sh.Sanjay Singh has come as a directly recruited DLC and a vacancy was available in direct recruits quota.

17. We, therefore, find no merit in the arguments of the Applicant. The OA is dismissed. There will be no order as to costs.

L.K. Joshi
(L.K. Joshi)
Vice Chairman (A)

V.K. Bali
(V.K. Bali)
Chairman

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