

16

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 1565/2001

New Delhi this the 18th day of November, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).
Hon'ble Shri M.P. Singh, Member (A).

1. Shri Kaushal Kumar,
S/o Shri Behari Lal,
MES-438353 (Token No.),
Official Address:
HQ Chief Engineer,
Delhi Zone, Delhi Cantt,
PIN:110010.
 2. Shri Mukesh Kumar,
S/o late Shri Pritam Chand,
MES-314310 (Token No.),
Official Address:
HQ Chief Engineer,
(Air Forces) WAC, Palam,
Delhi Cantt,
PIN: 110010.
 3. Shri Narender Prasad,
S/o Shri Gokul Ram,
MES-G1360,
Official Address:
Garrison Engineer,
(Air Force), Subrato Park,
Delhi Cantt, PIN: 110010.
 4. Shri Balwant Singh,
S/o late Shri Devender Pal Singh,
MES-315353,
Official Address:
Garrison Engineer,
West, Delhi Cantt,
PIN: 110010.
- ... Applicants.

(By Advocate Shri K.K. Patel)

Versus

1. Union of India,
through the Secretary,
Ministry of Defence,
South Block, New Delhi.
PIN: 110001.
 2. Engineer-in-Chief,
Army Headquarters,
Kashmere House,
New Delhi-110 011.
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3. Chief Engineer,
Western Command,
Chandi Mandir,
PIN:134107.

...Respondents.

(By Advocate Shri A.K. Bhardwaj)

O R D E R (ORAL)

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

The applicants, four in number who have filed this application, are aggrieved by the action of the respondents in not issuing them posting orders although their names appear in the select list panel dated 11.1.2001.

2. We have heard Shri K.K. Patel, learned counsel for the applicants and Shri A.K. Bhardwaj, learned counsel for the respondents and perused the documents on record.

3. The applicants who are Group 'D' employees, have stated that they had qualified in the test held by the respondents and were placed at Serial Nos. 1,2,7 and 9 in the select list panel dated 11.1.2001 but others who were placed at Serial Nos. 15, 21 and 22 have been issued promotion orders. Shri K.K. Patel, learned counsel, has submitted that this is an illegal act on the part of the respondents in ignoring the claim of the applicants based on merit. He has relied on the judgements of the Hon'ble Supreme Court in **Sant Ram Vs. State of Rajasthan** (AIR 1967 SC 1918) and **Union of India Vs. Lt. General, Rajendra Singh Kadvan** (2000 (6) SCC 698).

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4. The applicants have stated that applicant no. 1 joined as Peon (Group 'D') in Western Command in July, 1983 on mutual transfer. Applicant No. 2 joined with the respondents on 25.8.1984 in the same post. Applicants 3 and 4 joined as Chowkidars on 3.5.1988 and 8.7.1992, respectively in the offices of the respondents, Western Command. They had admittedly appeared in the 10% quota vacancies for the posts of Lower Division Clerks (LDCs), for which there were 8 vacancies, out of which 2 were reserved for ST candidates. The applicants belong to ^{the 10%} general category.

5. The applicants have relied on the letter issued by the respondents dated 11.1.2001. This is a letter which is written from the office of the Chief Engineer, Western Command, Chandimandir to the concerned officers in various Zones, for example, Delhi Zone, Bathinda Zone, Jalandhar Zone, etc. asking them to send the proforma for service particulars of the various persons whose list was enclosed. According to the respondents, this is not the merit list or the select list which formed the basis for promotion of the concerned Group 'D' employees to the posts of LDC.

6. Shri A.K. Bhardwaj, learned counsel has submitted that Under the relevant recruitment rules for the posts of LDC notified by SRO 122 dated 13.7.1999, i.e. MES (Assistants, Upper Division Clerks and Lower Division Clerks) Recruitment Rules, 1999 (hereinafter referred to as 'the 1999 Rules'), it has been stated that under Column 5 the method of

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selection for the post of LDC is by "selection-cum-seniority" under the heading "whether selection-cum-seniority or selection by merit". In pursuance of our previous order dated 5.6.2002, he has produced the panel of selected candidates for promotion from Group 'D' to LDC (copies placed on record), which has also been shown to Shri K.K. Patel, learned counsel for the applicants. According to him, there are 7 persons who have been selected. ~~and~~ Excepting the candidate at serial no. 7 who belongs to the ST community who has been appointed in Group 'D' post on 11.12.1991 i.e. after the applicants in the present case have been appointed, we note that all the others have been appointed on various dates in the year 1981 i.e. prior to the dates of appointment of the applicants with the respondents. Learned counsel has submitted that even if the applicants might have qualified in the test and ^{have} been placed in the merit list, selection to the posts of LDC under the 1999 Rules can be done only on the basis of selection-cum-seniority and in the circumstances, seniority cannot be ignored.

7. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

8. Col.11 of the 1999 Rules provides that for promotion to the posts of LDC, 10% is by way of promotion of Group 'D' non-industrial employees, failing which by absorption and failing both by direct recruitment. It is against this 10% quota of promotion that the applicants

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claim their right for being promoted to the posts of LDC, as they have qualified in the examination held for this purpose by the respondents. The respondents have also not disputed the fact that four applicants are among the persons who have qualified in the written and oral tests. However, we are unable to agree with the contentions of Shri K.K. Patel, learned counsel that the promotion to the posts of LDC is to be done only in the order of merit ignoring seniority. We say so having regard to the specific provisions under Column 5 of the Schedule to the 1999 Rules. Under the heading of whether it is by selection-cum-seniority or selection by merit, it is provided that it is by the method of selection-cum-seniority. If, as contended by the learned counsel for the applicants, seniority has to be ignored, then there would have been no need for the Rule making authority to mention this criteria as the method of appointment which is by selection-cum-seniority and not merely by merit.

9. From the facts mentioned above, it is clear that out of the seven persons who have been placed in the panel of selected candidates for promotion from Group 'D' posts to LDC, barring the candidate placed at Serial No. 7 who belongs to the ST community who has been appointed later than the applicants, the others have been appointed on various dates from May to December, 1981, whereas the applicants have been appointed in July 1983, August 1984


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May 1988 and July 1992. Therefore, having regard to the provisions of the 1999 Rules, the action of the respondents cannot be faulted as either illegal or arbitrary to justify any interference in the matter.

10. In view of what has been stated above, we find no merit in this application. O.A. accordingly fails and is dismissed. No order as to costs.


(M.P. Singh)
Member (A)


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

'SRD'