

Central Administrative Tribunal  
Principal Bench

O.A. No. 607 of 1999

New Delhi, dated this the 16<sup>th</sup> February, 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)  
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

S/Shri

1. P.K. Chawla,  
S/o Shri Amir Chand Chawla,  
R/o 31A, LIG, DDA Flats,  
Motia Khan, Paharganj, New Delhi.
2. Mahesh Chand,  
S/o Shri Budh Singh,  
R/o D-481, East Gokalpur,  
Delhi-110094. .. Applicants

(By Advocate: Shri Yogesh Sharma)

Versus

1. Union of India through  
the Secretary,  
Ministry of Information & Broadcasting,  
New Delhi.
2. Dy. Director (Admn.),  
Directorate of Film Festivals,  
Ministry of Information & Broadcasting,  
4th Floor,  
Lok Nayak Bhawan,  
New Delhi.
3. Shri Ganesh Chand,  
L.D.C.,  
Directorate of Film Festivals,  
Ministry of I & B, 4th Floor,  
Lok Nayak Bhawan,  
Khan Market,  
New Delhi. .. Respondents

(By Advocates: Shri D.S. Jagotra for  
R-1 & 2  
Shri T.C. Aggarwal for R-3)

ORDER

S.R. ADIGE, VC (A)

Applicants impugn the seniority list dated 29.5.97 (Annexure A/2) and the order dated 30.10.98 (Annexure A/1). They seek a direction that the seniority of Respondent No. 3 as L.D.C. be refixed

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after treating his date of appointment as L.D.C. as 3.3.97. Applicants also seek consequential benefits.

2. Respondent No.3 was initially appointed as a Messenger in Directorate of Film Festivals which was then a part of the National Film Development Corporation. By NFDC's order dated 25.3.88 <sup>~(Annexure-1)</sup> he was appointed to officiate as Hindi-cum- English Typist (Rs.440-740) in DFF. Consequent to the transfer of DFF to Ministry of I & B, the NFDC by their order dated 8.7.88 (Annexure A/9) transferred R-3's services along with the services of others to Ministry of I & B w.e.f. 1.7.88. In that order dated 8.7.88 R-3's designation was shown as peon <sup>R</sup> (355-515), but soon thereafter DFF issued order dated 20.7.88 (Annexure A/8) appointing R-3 as Hindi Typist (Rs.950-1500) on temporary , a d hoc deputation (but without payment of deputation allowance) w.e.f. 1.7.88 till 1.1.89 or till the completion of process of regular selection. In that order dated 20.7.88, R-3 was shown as appointed to the post of Hindi Typist.

3. On 21.3.89, the Ministry of I & B notified the DFF (Group C & Group D Posts) <sup>~(Annexure-11)</sup> Recruitment rules, 1988 <sup>~</sup> under Article 309 of the Constitution. By Rule 4 of these Rules relating to initial constitution, the present incumbents of the DFF in Group C & Group D posts, who were on deputation with the organisation from NFDC consequent to the transfer of DFF to Ministry of I & B as an attached

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office, could opt for service with DFF, upon which they would be adjudged for suitability for appointment to posts presently held by them by a Selection Committee constituted for the purpose. As per these Rules there were five posts of LDC (Rs.950-1500), appointment to which was to be made through promotion by selection from amongst Group D employees of DFF with five years service in the respective grade. As per these Rules there were also one post of Hindi Typist (Rs.950-1500) to be filled by transfer on deputation from those in office of Central Government (i) holding analogous posts on regular basis or (ii) LDCs in scale of Rs.950-1500 or equivalent.

4. Respondent No.3 opted for his continuance in DFF and by order dated 31.5.89 (Annexure R-2), R-3 was found suitable by the duly constituted selection committee for absorption in Government service as Hindi Typist (Rs.950-1500) and was duly appointed as such w.e.f. 1.6.89.

5. On 5.4.90 DFF issued a gradation list of officers and staff DFF as on 1.1.90, in which R-3 was shown as Hindi Typist (Rs.950-1500). His date of continuous appointment in the grade was shown as 25.3.88 and his date of absorption in Government service was shown as 1.6.89.

6. Nothing has been shown to us to establish R-3 filed any representation against that gradation list dated 5/4/90 but official respondents state in Para 4 of their reply that R-3 had been representing

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since August 1993 for his inclusion in the seniority list of LDCs for the purpose of promotion as UDC, but unfortunately his case could not be reviewed by DFF. It is stated that after his absorption in Government service he did not have lien in NFDC and furthermore he could not be treated as on deputation from NFDC as it was not a Government office. It is further stated that just for an administrative lapse he should not be made to suffer and the Ministry, therefore, asked DFF to put up his case before a review selection committee to review his case and adjudg~~es~~ his suitability for absorption in Government service as LDC from 1.6.89. It is further stated that the Review Selection Committee accordingly met and vide its recommendations dated 29.5.97 (Annexure R-3) he was found fit for appointment as LDC w.e.f. 1.6.89, and he was, therefore, deemed to have been absorbed in Government service as L.D.C. w.e.f. 1.6.89.

7. On that basis official respondents issued impugned seniority list of LDCs in DFF as on 29.5.97 showing R-3 as absorbed in Government service on 1.6.89. He is at S1. No.3 of the aforesaid seniority list, while applicants are shown junior to him at S1. No. 5 and 10. Their representations have been rejected by impugned order dated 30.10.98 giving rise to this present O.A.

8. We have heard Shri Yogesh Sharma for applicants, Shri Jagotra for official respondents and Shri T.C. Aggarwal for private Respondent No.3, who

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has also filed his reply to the O.A. as have official respondents. Applicants have also filed rejoinder to those replies.

9. We have considered the matter carefully.

10. The DFF (Group C & Group D Posts) Recruitment Rules, 1988 came into effect on 21.3.89. They were promulgated under Article 309 of the Constitution and they have to be rigidly adhered to. As per Rule 4 of those Rules relating to initial constitution, those who opted for absorption in DFF were to be adjudged for appointment to posts presently (emphasis supplied) held by them by the selection committee. When the selection committee met on/about 31.5.89 and made its recommendations R-3 was holding the post of Hindi Typist and not LDC. It is, therefore, against the post of Hindi Typist that R-3 was absorbed vide order dated 31.5.89 w.e.f. 16.89. That apart, in the aforementioned Rule, the single post of Hindi Typist and the 5 posts of LDC are clearly distinct and separate, notwithstanding that the pay scales are the same. Recruitment to the single post of Hindi Typist is through transfer on deputation while recruitment to the five posts of LDC is through promotion from amongst Group D employees. R-3 was not a Group D employee on 1.6.89 by which time the RRs had come into force who alone were eligible for consideration for promotion as LDC. In any case Rule 4 of those rules would be squarely

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applicable according to which R-3 was to be adjudged for absorption to the post presently held by him, and as emphasised earlier, when the selection committee met on/about 31.5.89, he was holding post of Hindi Typist and not L.D.C. in DFF.

11. Respondents both official and private have contended that the posts of Hindi Typist and LDC are interchangeable, the duties and responsibilities are the same, and they are in the same pay scale. Certain rulings have also been cited in support of these contentions. None of those rulings specifically deal with the DFF (Group C & Group D Posts) RRs, 1988 which have been described above, and accepting respondents' arguments on the basis of those rulings which have no application to the specific facts and circumstances of the present case would be doing violence to the provisions of the aforementioned DFF (Group C & Group D Posts) Recruitment Rules which have been notified under Article 309 of the Constitution.

12. Prima facie it appears that official respondents have acted in the manner they did to provide opportunity to R-3 to be considered for promotion as UDC. If so, it is open to them to amend the RRs to place the solitary post of Hindi Typist in the feeder grade for promotion as UDC. The manner in which they have sought to achieve their objective of granting opportunity to R-3 for consideration for

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promotion as UDC, cannot be sustained in law.

13. In the result the O.A. succeeds and is allowed to the extent that the impugned seniority list dated 19.5.97 qua Respondent No. 3 as well as order dated 30.10.98 is quashed and set aside. Official respondents shall assign R-3 correct seniority after putting him to notice, within two months from the date of receipt of a copy of this order and pass a detailed, speaking and reasoned order in accordance with law upon any representation he may choose to file on the show cause notice, as expeditiously as possible thereafter and preferably within three months of its receipt. No costs.

A. Vedavalli

(Dr. A. Vedavalli)  
Member (J)

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(S.R. Adige)  
Vice Chairman (A)