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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 1864/1996

HON. SMT. LAKSHMI SWAMINATHAN, MEMBER (J)  
HON. SHRI R.K. AHOOJA, MEMBER (A)

NEW DELHI, THIS 21<sup>ST</sup> DAY OF MARCH, 1997.

SHRI JAIDEV  
S/o Sh. Dharam Pal  
R/o S-317 School Block  
Shakarpur Extension  
DELHI-51

...APPLICANT

BY ADVOCATE - SHRI R.K. KAPOOR

VERSUS

1. UNION OF INDIA, through  
its Secretary  
Ministry of Finance  
Department of Revenue  
NEW DELHI

2. THE CHIEF COMMISSIONER  
Income Tax  
I.T.O. Building  
NEW DELHI

...RESPONDENTS

BY ADVOCATE - SHRI R.S. AGGARWAL

ORDER

R.K. AHOOJA, MEMBER (A)

The applicant who was a Driver, states that on coming to know of vacancies in the post of Lower Division Clerk 'LDC', he submitted a representation dated 28.4.1995 requesting that since he possesses the necessary qualifications, he should be promoted as LDC. Vide office order dated 28.4.1995, his request was acceded to and he was appointed/promoted as LDC. He is aggrieved that subsequently vide another office order 'Annexure A-3', his appointment as LDC has been cancelled. He made representations to reconsider his case sympathetically but to no avail and

vide A-7, his representation was also rejected. He is aggrieved that he has been reverted by the impugned order of cancellation of appointment without giving him an opportunity to show cause and without assigning any reason for such reversion.

2. The respondents in their reply state that originally the rules provided for filling up 10% of the posts of LDC through various Group D categories and in that the category of Notice Server, Record Keeper and Staff Car Driver were included. However, vide notification dated 24.11.1994 'Annexure R', the category of Staff Car Driver was deleted. They say that Staff Car Driver rules were also amended. The post of Staff Car Driver is now in the same grade of Rs.950-1500 as that of LDC and avenues of promotion have been provided separately for Staff Car Drivers. In view of the aforesaid amendment dated 24.11.94, the applicant could not have been considered for appointment as LDC and when this matter came to notice, the order of appointment as LDC was cancelled.

3. We have heard the counsel on both sides. Shri R.K. Kapoor, 1st counsel for the applicant, urges that the amendment of 1994 is arbitrary as no reasons have been given for such amendment. Further more, the respondents had appointed the applicant after the amendment had been made and he had continued for nearly two years as LDC and had also taken the opportunity to appear for the departmental test for UDCs. No reason was disclosed in the order of cancellation nor any opportunity was afforded to show cause. The applicant is a Scheduled Caste person and is entitled to promotion on the basis of reservations.

4. The ld. counsel for the respondents submitted that once it was discovered that the applicant's appointment was d'horse the rules, there was no alternative but to cancel it. For this, no notice was necessary.

5. ~~we~~ have considered the matter carefully. It is clear that the ad hoc and temporary appointment of the applicant to the post of LDC was d'horse the rules to the extent that he was not in the line of promotion, being a Staff Car Driver, after the amendment of 1994. Though the applicant has alleged that the amendment was arbitrary, neither in the OA nor in the arguments advanced before ~~us~~, this point has been pressed. The respondents on the other hand have sought to clarify that the pay scales of Staff Car Drivers being same as that of LDC and there being new opportunities of promotion within the Drivers' cadre, there was no question of promotion "from Staff Car Driver to LDC". This seems a satisfactory explanation for the amendment made and ~~we~~ therefore hold that the appointment of the applicant was contrary to rules as he was not amongst the eligible categories for promotion as LDC.

6. However, the applicant is on stronger grounds when he says that his orders of appointment as LDC were cancelled without giving him any opportunity to show cause. If the temporary and ad hoc appointment had been terminated because the vacancies were being filled up by those appointed in accordance with rules, the position would have been different. On the other hand, it is noticed from the impugned order 'Annexure A-1' itself that certain other persons from the category of Peons have been promoted as LDC, apparently in

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place of those who had been reverted <sup>and</sup> ~~in~~ that such promotions were also on ad hoc and temporary basis. In the circumstances ordinarily the orders, insofar as it concerns the applicant, would have been liable to be quashed. However, now that the respondents have explained the reason for cancellation, it would serve no purpose if the order is set aside only to have the formality of a show cause notice being issued. No loss in emoluments has occurred to the applicant since the pay scales of Staff Car Drivers and LDCs are admittedly the same. The appointment of the applicant as LDC being clearly against the provisions of the extant Recruitment Rules, he has no enforceable legal right to continue as LDC.

7. In the light of the above discussion and facts and circumstances of the case, the O.A. is dismissed. No costs.

*R.K. Ahuja*

~~'R.K. AHUJA'~~

MEMBER / A /

*'avi'*

*Lakshmi Swaminathan*

~~'LAKSHMI SWAMINATHAN'~~

MEMBER / J /