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Central Administrative Tribunal  
Principal Bench

O.A. No. 2146 of 1996

New Delhi, dated this the 10<sup>th</sup> November,

2000

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

1. Shri Vinod Sharma,  
L.D.C., L&DO Office,  
Ministry of Urban Development,  
Nirman Bhawan,  
New Delhi.
2. Smt. Madhu Saxena,  
L.D.C., L&DO Office,  
Ministry of Urban Development,  
Nirman Bhawan,  
New Delhi. .... Respondents

(By Advocate: Shri C. Harishankar)

Versus

1. Union of India through  
the Secretary,  
Ministry of Urban Development,  
Nirman Bhawan,  
New Delhi.
2. Land & Development Officer,  
L&DO Office,  
Ministry of Urban Development,  
Nirman Bhawan, New Delhi.
3. Shri Yogesh Kumar,  
U.D.C.,  
L&DO Office,  
Ministry of Urban Development,  
Nirman Bhawan, New Delhi.
4. Smt. Mala Chhabra,  
U.D.C.
5. Smt. Raj Bala Bhardwaj .... Respondents

(By Advocate: Shri K.C.D. Gangwani)

ORDER

MR. S.R. ADIGE, VC (A)

In this amended O.A. applicants impugn respondents' Office Order dated 17.7.96 (Annexure A-1) and dated 31.7.96 (Annexure B-1). They pray that the promotion of Respondents No. 3, 4 & 5 be

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quashed and set aside, and applicants themselves be promoted as U.D.Cs in their place with consequential benefits.

2. Admittedly as per relevant Recruitment Rules (Annexure R-1) posts of U.D.Cs in respondent organisation ~~are~~ non-selection posts to be filled up (i) 75% by promotion of L.D.Cs Grade C with 8 years regular service in the grade and (ii) 25% through departmental competitive test from L.D.Cs with five years regular service in the grade.

3. Respondents notified the departmental competitive test vide Notification dated 10.10.95 (Annexure R-11) clearly stating therein that the test would be open to L.D.Cs with five years regular service in the grade and would consist of

- a) General English 50 Marks
- b) Office Procedure 100 Marks  
(with noting/drafting)  
and General Knowledge
- c) Assessment of CRs 100 Marks

4. It was also mentioned in the said notice that the qualifying marks would be 40% and CRs would be assessed in respect of only those candidates who secured the qualifying marks. The syllabus of the written papers were also notified along with the said notice.

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5. Over two months later, on 20.12.95 respondents held the departmental competitive test, 12 candidates appeared in the said test, out of whom only 10 candidates secured qualifying marks i.e. 40% or more in written Papers I & II. Thereupon the DPC met on 15.7.96 and assessed the CRs of the 10 qualified candidates and awarded marks on the basis of ACRs of each candidate vide impugned order dated 31.7.96 (Annexure B-1) and recommended the promotion of Respondent No. 3 Yogesh Kumar; Respondent No. 4 Smt. Mala Chhabra; and Respondent No. 5 Smt. Raj Bala Bhardwaj as U.D.Cs giving rise to the present O.A.

6. Applicants contend (and written submissions have also been filed by applicants' counsel to this effect) that the Recruitment Rules specify two methods of recruitment (i) promotion (75%) and (ii) departmental competitive test (25%). It is contended that these are entirely separate methods of recruitment and candidates recruited under method (ii) cannot be assessed on any basis except a departmental competitive test. It is further submitted that as the promotion is to be made on non-selection basis, merit cannot be a criteria for making promotion. It is argued that where promotion is made on selection basis and merit is the main criteria, the same is assessed on the basis of ACRs, but in the present case as promotion is to be made on

non-selection basis ACRs cannot be utilised to assess merit and can at best be used only to judge fitness.

It is further contended that the promotions of Respondents 3, 4 & 5 were made to accommodate the official respondents' favourites who would not have made the grade had the recruitments been made as per RRs on the basis of the departmental competitive test alone.

7. Respondents in their reply challenge the O.A. It is stated that the departmental competitive test was notified on 10.10.95, wherein it was specifically mentioned that it would consist of General English (50 marks); office procedure and General Knowledge (100 marks) and assessment of CRs (100 marks). This notification issued more than two months prior to the actual date of the test and applicants were well aware of its scheme, including marks allotted for ACRs and also that the CRs would be assessed in respect of only those candidates who secured the qualifying marks. It is also averred that this practice has been followed since 1969.

8. We have heard both sides and have considered the matter carefully.

9. The L&D Office (Group C Ministerial posts) Recruitment Rules, 1991 have been notified

under Article 309 of the Constitution on 17.5.91.

Col. 6 of the Schedule to those Rules provides that posts of UDCs are non-selection posts. Col.11 of Schedule to those Rules on the method of recruitment, whether by direct recruitment, or by promotion or transfer and percentage of the vacancies to be filled up by the various methods reads:

- i) By promotion 75%
- ii) By Departmental Competitive Exam. 25%

In Col.12 of the Schedule which provides for the grades from which promotion/transfer, it is stated

#### Non selection

- a) By promoting 75% from LDCs Grade 'C' with 8 years regular service in the grade.
- b) Promotion by departmental test
  - i) 25% for LDCs with five years regular service in the grade.
  - ii) The crucial date for determining would be 1st January of the year in which promotion is to be made.

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10. Non-selection posts are those posts which are not filled up on the basis of selection, and where seniority has a primary role to play. Seniority-cum-merit; seniority-cum-fitness; or seniority subject to rejection of the unfit usually form the basis for filling up non-selection posts. It is clear that in each of these, it is seniority which has the major role to play. In the present case before us, however, although the posts of UDCs are described as non-selection posts in Col. 6 of Schedule. We find from Columns 11 and 12 of the Schedule that 25% of vacancies are specifically earmarked for being filled up through promotion from amongst LDCs with five years regular service in the grade on the basis of a departmental competitive examination, while 75% vacancies are to be filled up through promotion from LDCs Grade C with 8 years regular service in the grade. From this it would follow that the rule making authority intended that 3/4th of the vacancies be filled up from amongst the more senior LDCs, who had at least 8 years regular service in the grade, and as regards the remaining 1/4th vacancies, an element of competition be introduced and specifically prescribed a Departmental Competitive Test in which LDCs with five years regular service would be allowed to participate. Columns 11 and 12 of the Schedule to the rules in respect of the aforementioned 25% vacancies, talk of

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a departmental competitive examination and departmental test respectively. The format and/or ingredients of such a Departmental Competitive Examination/Departmental Test have not been specified in the aforesaid Recruitment Rules dated 17.5.91, and if the respondents as a part of this Departmental Competitive Examination assigned 150 marks for the written papers (50 marks for English; and 100 marks for office procedure and General Knowledge) and 100 marks for assessment of CRs making it clear that only those who secured 40% qualifying marks in the written paper, would be subject to assessment of CRs, it cannot be said that respondents have acted illegally or arbitrarily. The Recruitment Rules cannot be construed ~~contingent~~ in a manner to suggest that assessment of ACRs is wholly outside the purview of a departmental competitive examination.

11. It must also be remembered that respondents in their reply have stated that this practice has been followed since 1969, which has not been denied by applicants in rejoinder.

12. Furthermore over two months expired between issue of the departmental examination notice on 10.10.95 and the date on which it was held on 20.12.95. Applicants did not challenge the notice dated 10.10.95 immediately it was issued, and indeed participated in the examination on 20.12.95. It is

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only after they found that they were not successful in the examination, that they began representing and then approached the Tribunal. In Dr. R. Murali Vs. Dr. R. Kamalakannan 2000 (1) SLR Page 601 the Madras High Court has held:

"We hold that writ petitioners having participated in the written test after fully knowing the terms and conditions of the prospectus are estopped from questioning the selection process. Respondents have not deviated from the same."

13. In our view the aforesaid ruling is squarely applicable to the facts and circumstances of the present case. The O.A. warrants no interference and is dismissed. No costs.

  
(Kuldip Singh)

Member (J)

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

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