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Central Administrative Tribunal
Principal Bench

O.A. No. 622 of 1996
M.A. NO. 238 of 2002

New Delhi, dated this the 7th February, 2002

HON'BLE MR. JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

1. Mrs. Asha Rani Kalra,
W/o Shri Raj Pal Kalra,
R/o 1033, Rani Bagh, New Delhi-110034.
 2. Mrs. Shanti Bhalla,
W/o Shri S.K. Mehta,
R/o 4713, Shora Kothi, New Delhi-110055.
 3. Shri Dharamvir Singh,
S/o Shri Banwari Lal,
R/o 61-K, DIZ Area,
New Delhi. .. Applicants
- (By Advocate: Shri S.C. Luthra)

Versus

1. Union of India through
the Secretary,
Ministry of Human Resources Development,
Dept. of Education,
Shastri Bhawan,
New Delhi.
 2. Director,
Central Hindi Directorate,
West Block No. VII, R.K. Puram,
New Delhi-110066.
 3. Smt. Sita Chopra
 4. Smt. Sangeeta James
 5. Smt. Rita Dev
 6. Smt. Pankaj Rana
 7. Smt. Reema Sharda
 8. Shri Balbir Singh .. Respondents
- (By Advocate: Shri A.K. Bhardwaj for R-1 & 2
Shri S.C. Mehrotra for R-3 to 8)

ORDER (Oral)

ASHOK AGARWAL. J

12.1

This case was earlier disposed of by the
Tribunal by order dated 21.1.2000 in which one of us
Justice Ashok Agarwal, Chairman was a party.

2. By the aforesaid order dated 21.1.2000 the impugned order of promotion in favour of private Respondents No. 3 to 8 was quashed and set aside and the Respondents were directed to hold a review DPC for conducting fresh Limited Departmental Competitive Examination in the light of the observations contained therein for considering the claims of the applicants. The aforesaid order was carried by the aforesaid private Respondents to the High Court. By order passed on 6.11.2002 the aforesaid order of the Tribunal ^{been} ~~was~~ quashed and set aside and the matter has been remanded back to the Tribunal for re-examination and reconsideration on merits. The present O.A. ~~was~~ ^{is} accordingly heard in terms of the order of the High Court. ~~of applicants and the aforesaid private Respondents~~

3. The issue which arises for consideration in the O.A. relates to promotions from the post of Lower Division Clerks to Upper Division Clerks in respect of 25% quota for being filled in on the basis of Limited Departmental Competitive Examination (L.D.C.E.). For promotion from the post of LDCs to the post of UDCs 75% of the vacancies are to be filled on the basis of seniority-cum-fitness and 25% on the basis of LDCE. In the case of 75% quota a candidate is required to have put in 8 years service whereas in the case of 25% quota a candidate is

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 required to ^{have} put in five years as L.D.C. As far as 75% quota is concerned we are not concerned with the same ~~persons coming under this category.~~

✓ 4. The selections in respect of 25% quota were conducted by the DPC on 6th and 7th of January, 1996. The aforesaid selections pertain^{ed}ing to vacancies ^{which} had arisen during the period 1982 to 1996. Applicants No. 1 and 2 were eligible. As far as Applicants 1 and 2 are concerned they have failed to make the mark. As far as applicant No.3 is concerned he did not even appear for the same. The private Respondents appeared in the said LDCE and duly passed and have been promoted to the post of UDCs.

1. 5. The short grievance which had been ^{raised}arisen in the present O.A. at the time of earlier hearing and which have been reiterated before us at the present stage is that the selection process has been conducted in violation of the instructions issued by the Dept. of Personnel & Administrative Reforms. At the time of earlier hearing reliance was placed on the O.M. No. 22011/3/76-Estt-(D) dated 24.12.1980. Based on the instructions contained in the aforesaid O.M. it was found that Respondents ought to have held separate LDCEs for each year when the vacancies ^{had}were arisen. ~~In other words~~ The earlier LDCE which had been ^{earlier}held was in the year 1980 when one Jeet Singh was promoted on 30.5.1980. No DPC was held in respect of vacancies which had arisen from 1982 onwards till 1996. In the selections which were held in 1996 vacancies arising for all the aforesaid years

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have been clubbed together and selections in respect of ^{all} these aforesaid vacancies have been considered at one go. As far as the instructions which were contained in the aforesaid O.M. dated 24.12.1980 are concerned Respondents were required to hold separate LDCE for each year when the vacancies had arisen. According to applicants the procedure had adversely affected their rights for being considered for promotion at each of the stages when the vacancies arose during the aforesaid period of 1982 onwards as and when the vacancies had arisen. Clubbing of all vacancies which had arisen during the aforesaid period and considering all the candidates at one single examination and selecting the most meritorious from amongst them has deprived the rights of the applicants for being considered at each stage when the vacancies arose. Applicants' counsel has contended that applicants are senior to private Respondents. They were, therefore, required to be considered at a stage which was earlier to the stage when the aforesaid respondents became eligible for being considered. If selections were made in terms of the O.M. dated 24.12.80 applicants would have been considered earlier when the zone of consideration was narrow. Even if the applicants 1 and 2 had failed, they were yet entitled for reconsideration for the next examination ~~to be held~~ when the next vacancies arose. Similarly, the applicant No.3 who did not even appear would have been entitled to appear at the next examination to be held at a stage when the next vacancies had arisen. Since The right of the applicants for being

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considered and reconsidered at the aforesaid stages has been frustrated by the procedure adopted by the DPC ^{by} ~~for~~ directing the ^{impugned} ~~aforesaid~~ promotions of the private Respondents. The aforesaid promotions by the Tribunal's order dated 21.1.2001 were set aside and as already stated ~~that~~ directions were issued to hold a review DPC by following the procedure contained in the aforesaid O.M. As already indicated our aforesaid order was carried to the High Court in CWP No. 945/2000. In the High Court it was pointed out that the O.M. dated 24.12.80 which had been referred to in our earlier order related to selection posts. Since the present case pertains to ~~the~~ promotions ~~of~~ the post of UDCs ^{which is} ~~the same was~~ a non-selection post, ~~the~~ said O.M. was, ~~therefore~~, not applicable. When this position was brought to the notice of ^{the} High Court applicants ~~had~~ placed reliance on another O.M. dated 10.4.1989 which pertains to the procedure to be following ^{ed} in regard to the promotions to the non-selection and selection posts as well. Since the aforesaid O.M. dated 10.4.89 had not been considered by us and we had no occasion to examine the facts of the present case in the light of the aforesaid O.M. ~~The~~ matter has been remanded back to the Tribunal for re-examination of the matter and ^{for} ~~passing~~ appropriate orders in accordance with law.

6. We have heard learned counsel appearing for contesting parties. We have also perused the aforesaid O.M. of 10.4.1989.

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7. Part II of the aforesaid O.M. deals with the frequency of meetings at which DPC should meet. Para 3.1 of the O.M. which is relevant for the issue in question provides as follows:

"3.1 The DPCs should be convened at regular annual intervals to draw panels which could be utilized on making promotions against the vacancies occurring during the course of a year. For this purpose it is essential for the concerned appointing authorities to initiate action to fill up the existing as well as anticipated vacancies well in advance of the expiry of the previous panel by collecting relevant documents like CRs, Integrity Certificates, Seniority List etc. for placing before the DPC. DPCs could be convened every year if necessary on a fixed date, e.g. 1st April or May. The Ministries/ Departments should lay down a time-schedule for holding DPCs under their control and after laying down such a schedule the same should be monitored by making one of their officers responsible for keeping a watch over the various cadre authorities to ensure that they are held regularly. Holding of DPC meetings need not be delayed or postponed on the ground that Recruitment Rules for a post are being reviewed/amended. A vacancy shall be filled in accordance with the Recruitment Rules in force on the date of vacancy, unless rules made subsequently have been expressly given retrospective effect. Since amendments to Recruitment Rules normally have only prospective application, the existing vacancies should be filled as per the Recruitment Rules in force."

8. Further instructions relevant to the issue have been contained in Para 6.4.1 of the aforesaid guidelines which provide as follows:

Preparation of yearwise panels by DPC where they have not met for a number of years

"6.4.1 where for reasons beyond control, the DPC could not be held in a year(s) even though the vacancies arose during that year (or years), the first DPC that meets thereafter should follow the following procedures:-

- (i) Determine the actual number of regular vacancies that arose in each of the previous year(s) immediately preceding and the actual number of regular vacancies proposed to be filled in the current year separately.
- (ii) Consider in respect of each of the years those officers only who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards.
- (iii) Prepare a 'Select List' by placing the select list of the earlier year above the one for the next year and so on."

9. In our view the instructions contained in the aforesaid O.M. dated 10.4.1989 which relates to promotions of selection as also non-selection posts are practically para materia to the instructions which were contained in the O.M. dated 24.12.80 which was relied upon before us at the earlier stage.

10. Applicants' counsel has relied upon Hon'ble Supreme Court's ruling in Union of India & Others Vs. N.R. Banerjee and others (1997) 9 SCC 287 in which the Supreme Court after considering the O.M. containing identical or similar instructions as contained in the present O.M. dated 10.4.89¹ has held

"If the annual panel cannot be prepared for any justifiable reason, year-wise panel of all the eligible candidates within the zone of consideration for filling up of the vacancies each year should be prepared and appointments made in accordance therewith."

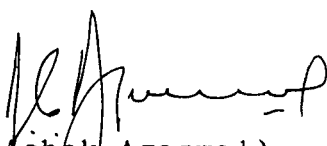
11. In the circumstances we ^{affirm} ~~confirm~~ our ^{view viz.} ~~view~~ expressed in our earlier ~~order~~ passed with the procedure adopted for selection by the DPC which had met on 6th and 7th of January, 1996 was in


controvention of the prescribed procedure and therefore the same is accordingly liable to be quashed.

12. We order accordingly.

13. Respondents are once again directed to hold review DPC for purpose of conducting fresh Limited Departmental Competitive Examination for each year when the vacancy ^{is had} arises separately. In the light of the observations contained herein the present O.A. is accordingly allowed. No order as to costs.

14. On an application made on behalf of private Respondents the interim order passed by the High Court on 17.2.200 will continue for a period of two weeks from today.


(Ashok Agarwal)
Chairman


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

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