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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1052 of 1996

New Delhi, this 23rd day of March, 2000

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

Sanjeev Malhotra
AC-I/156A, Shalimar Bagh, Delhi ...Applicant

(By Shri B.S.Mor, Smt. Kusum Singh, Advocates -
not present, applicant is present)

versus

1. Director
National Malaria Eradication Programme
22, Shamnath Marg, Delhi-54.
2. Director General Health Service
(Ministry of Health and Family Welfare,
Government of India)
Nirman Bhavan, New Delhi
3. Ved Prakash, UDC
National Malaria Eradication Programme
22, Shamnath Marg, Delhi-54.
4. Smt. Madhu Bala, UDC
National Malaria Eradication Programme
22, Shamnath Marg, Delhi-54.
5. Pyare Lal, UDC
National Malaria Eradication Programme
22, Shamnath Marg, Delhi-54. ...Respondents

(By Shri Vijay Mehta, Advocate - not present)

ORDER(oral)

By Smt. Shanta Shastry.M(A)

The applicant is present in person though his counsel is not present. None is present on behalf of the respondents. This matter is of 1996. The pleadings are complete. We, therefore, proceed to dispose of the application on the basis of the pleadings.

2. This application is against the office order dated 19.4.1996 issued by the Joint Director of the National Malaria Eradication Programme vide which five candidates were

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promoted to the post of Upper Division Clerk (UDC) from amongst the eligible Lower Division Clerks. The applicant has been working as LDC and his seniority in the cadre of LDC was fixed with effect from 6.11.1990. The next promotion is to the post of UDC/UDC-cum-Computer in the scale of Rs.1200-2040 (pre revised scale).

According to the recruitment rules this post is filled by way of promotion from amongst the LDCs with 8 years regular service in the grade and by promotion through Limited Departmental Examination from the LDCs with 5 years regular service. The quota for promotion through Limited Departmental Examination is 25%.

3. In 1995, 4 posts of UDC-cum-Computer were vacant and therefore a departmental test was held to fill up the posts. The applicant appeared in the test and according to him he jointly topped the list of successful candidates in the written examination along with respondent no.3. Thereafter the impugned order dated 19.4.1996 was issued containing names of persons who were promoted to the post of UDC on the basis of the Limited Departmental Examination. The applicant was not promoted. It is the grievance of the applicant that though he had topped in the written examination and his ACRs for the relevant period were good, he has been denied promotion.

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4. In the counter reply on behalf of respondent nos. 1 & 2 it has been explained that the Limited Departmental Examination was held on 5.1.1996. According to the circular issued for holding the examination, there were 2 papers of 100 marks each. It was also mentioned in the circular that the ACRs for the last 5 years would also be considered. The respondents have also not denied that the applicant secured highest marks in the written examination. However, the respondents fixed the following criteria for evaluation of ACRs for the 5 years period.

Marks of '20', '15' and '10' were assigned for the gradings in the ACRs as 'excellent', 'very good' and 'good' respectively. Accordingly the performance of the applicant along with the others was considered by a duly constituted DPC. The applicant was given 70/100 marks for the ACRs. It is the stand of the respondents that in view of the job requirements and the nature of the job the evaluation of ACRs was absolutely necessary. The fact that the ACRs would be taken into account for selection was very much within the knowledge of the applicant but he did not protest against it while taking the examination. So he is estopped from challenging the Scheme of examination after appearing in the examination. The applicant did not make any representation before approaching the Tribunal. According to the respondents, they have followed the correct procedure before issuing the impugned order dated 19.4.1996.

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5. We have perused the pleadings. It is well established that a regular post has to be filled in accordance with the recruitment rules for the post. According to the recruitment rules for the post of UDC/UDC-cum-Computer 25% of the promotion quota is to be filled through a limited departmental examination. The post is a non selection post. There is no mention in the recruitment rules about assessing of ACRs for selection through Limited Departmental Examination. Yet in the circular advertising the post the respondents indicated that the ACRs of 5 years would be taken into account. But the respondents have gone one step further and have evaluated the ACRs by assigning 100 marks for the gradings and comparing the candidates on that basis. Considering the anxiety of the respondents in ensuring that the most suitable candidates are selected one need have no quarrel with the condition of taking into account the ACRs. But the respondents have stretched it too far. We have already noted that it is a non-selection post. Thus there being nothing adverse in the ACRs would have been adequate to consider the selection. Even for those promoted against the 75% quota the benchmark of 'good' was enough. Therefore the main thing that the respondents should have looked for while evaluating the ACRs was that the applicant had the necessary benchmark and there was nothing adverse against him and not make comparative

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assessment of all the candidates by assigning marks. It is not the case of the respondents that the applicant did not have the necessary benchmark or there was anything adverse against the applicant. In fact the applicant's securing 70 out of 100 marks is proof enough that he is well above the benchmark. In the facts and circumstances of the case, we are of the view that comparative evaluation of the ACRs for the non-selection post was uncalled for. The respondents are not justified in denying the promotion to the applicant.

6. We, therefore, allow the OA setting aside the impugned order dated 19.4.1996 and direct the respondents to hold a review DPC to consider the selection of the applicant to the post of UDC/UDC-cum-Computer with effect from the date of the promotion orders of those who had secured lesser marks than the applicant in the Departmental Examination with consequential benefits. In the facts and circumstances of the case, we do not order any costs.

Shanta S-
(Mrs. Shanta Shastry)
Member(A)

V. Rajagopala Reddy
(V. Rajagopala Reddy)
Vice Chairman(J)

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