

(6)

6

Central Administrative Tribunal, Principal Bench

Original Application No. 113 of 2000

New Delhi, this the 31st day of July, 2000

Hon'ble Mr. Justice Ashok Agarwal Chairman
Hon'ble Mr. V.K. Majotra, Member (Admnv)

Sh. Purnendu Kant (S/o Shri Shrikant Sharma,
Resident of D-2/19/4, DLF Dilshad Plaza,
Bhopura, Ghaziabad (UP)-201005, presently
working as Junior Analyst (WS), Ministry of
Urban Development, last employed as
Assistant, Ministry of Defence.

- Applicant

(By Advocate Shri M.K. Bhardwaj)

Versus

1. Secretary, Ministry of Defence, South Block, New Delhi.
2. Secretary, Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions, North Block, New Delhi.
3. Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi.
4. Secretary, Ministry of Urban Development, Nirman Bhawan, New Delhi.

- Respondents

(By Advocate Shri Rajeev Bansal)

O R D E R (Oral)

By V.K. Majotra, Member (Admnv) -

The applicant is aggrieved by the act of the respondents in not according him promotion from the date of promotion of his juniors who were promoted on the basis of Section Officers/ Stenographers (Grade 'B'/ Grade-I) Limited Departmental Competitive Examination, 1995 (hereinafter referred to as 'the LDCE 1995') in which he was not allowed to appear.

2. The applicant while serving in the Ministry of Defence as Assistant applied for LDCE, 1995 for promotion to the Section Officers' grade. The last date of making application was 4.10.1995 which was extended to 18.10.1995. His application was rejected vide Annexure-A-1 dated 28.11.1995 by the UPSC stating that the application was received late and even the extended

7

last date was over on 18.10.1995. He made another representation dated 13.12.1995 to wave off the time limit and allow him to appear in the examination. He was informed vide OM dated 5.1.1996 (Annexure-5) that his application was not forwarded as he had not completed five years of minimum qualifying service as on 1.7.1995, however, on learning that different Ministries/ Departments were forwarding applications to UPSC of similarly placed candidates, his application was also forwarded to the UPSC and no reply has been received from the UPSC in this context. The applicant appeared in the LDCE, 1996. On being declared successful he ultimately joined as Section Officer on 18.8.1998. According to the applicant as per proviso to Rule 3 of the LDCE, 1995 all direct recruit Assistants were eligible to appear in the LDCE 1995 if they had put in 4 years of approved and continuous service on 1st July, 1995 and whose examination for the recruitment had taken place at least 5 years before 1st July, 1995. The applicant fulfilled these requirements and, therefore, was eligible to appear in the LDCE 1995. The applicant relied on a decision of Cuttack Bench of this Tribunal in the case of Dayanidhi Sahoo Vs. Union of India and others, OA No. 476 of 1991 decided on 1.12.1995 wherein it has been held that when a qualified and eligible senior was unjustly deprived to appear in a competitive examination, he should be promoted from the date of his junior's promotion and granted all benefits, on his qualifying in the next examination. The applicant's case is that as several of his juniors have already been promoted on the basis of the LDCE 1995, he should be given promotion, seniority and other consequential benefits from the date of promotion of his junior Shri

Suresh Kumar i.e. 13.12.1996, who was junior to him in the 1988 batch of the Assistants Grade.

3. The respondents have admitted in their counter that the application of the applicant for the LDCE 1995 was rejected by the UPSC on 28.11.1995 on the ground that it was not received in time. According to the respondents the said examination was a competitive examination in which selection depends upon various aspects such as number of vacancies in a particular year, number of candidates appearing in that year, performance of the candidates, etc. Therefore, it cannot be assumed that a particular candidate who has been selected in one year examination will be or would have ^{been} _L selected in the same examination for the next year or past years as the case may be.

4. The respondents have also admitted that as the clarification dated 21.9.1995 of Department of Personnel & Training (Annexure-11) was not available with the Ministry of Defence it was deemed that the applicant had not completed the requisite approved service on 1.7.1995. If that clarification ~~were~~ available, the applicant's application would have been forwarded in time and the applicant could have got an opportunity to take the examination being eligible in the LDCE 1995.

5. We have heard the learned counsel of both sides and carefully considered the material available on record. The learned counsel of the applicant contended that the respondents had withheld the applicant's application to take the LDCE 1995 on misunderstanding that he was not eligible to take the examination. It was later on discovered that the applicant was eligible having already completed four years approved service on the crucial date i.e. 1.7.1995, as per DOPT's clarification dated 21.9.1995. In this view of the

112

matter the applicant could not take the LDCE 1995 and had to take the 1996 examination, in which he was successful and was promoted as Section Officer on the basis of the said examination. Since the applicant was not at fault in not taking the examination in 1995 and his juniors had been promoted on the basis of the same, the applicant should be promoted with effect from the date his junior was promoted on the basis of the LDCE 1995. The learned counsel of the respondents was of the view that when the applicant had not appeared in the LDCE 1995 at all, it cannot be said that he would certainly have qualified in the same. Therefore, he cannot be given the benefit of promotion on the basis of an examination in which he did not participate at all.


6. The learned counsel of the applicant, with the consent of the applicant who was also present in the court, has suggested that since the applicant was qualified and eligible but was not allowed to take the examination by the respondents, he should be promoted from the date ~~of~~ his junior was promoted and in the matter of seniority he could be put at the bottom of the list of successful candidates of the LDCE 1995, so that he is compensated to an extent vis-a-vis the candidates who appeared in the LDCE 1995.


7. In view of the admission of the respondents that if the clarifications of the DOPT were available with them on time, application of the applicant to appear in the LDCE, 1995 would have been forwarded on time and he would have been able to take the same in 1995 itself, we are of the opinion that a great injustice has been done to the applicant by denying him opportunity to appear in the LDCE 1995 although he was qualified and eligible. The applicant was compelled to apply to appear in the LDCE 1996 in which he was

:: 5 ::

successful and was promoted on the basis of the same. However, keeping in view the refusal of the respondents to permit the applicant to appear in the LDCE 1995, we consider it just and proper that the applicant should be compensated in regard to the time of his promotion and other consequential benefits. We are of the view that it would meet the ends of justice as suggested by the learned counsel of the applicant that the applicant should be promoted as Section Officer from the date his junior Shri Suresh Kumar was promoted, however, the applicant would rank the junior-most in the merit list of the LDCE 1995, though he had not taken the same and had qualified in the LDCE 1996.

8. In the result, the OA is allowed in the above terms. The applicant would be entitled to consequential benefits on the basis of the promotion to be accorded to him, within a period of three months from the date of receipt of a copy of this order. No order as to costs.


(Ashok Agarwal)
Chairman


(V.K. Majotra)
Member (Admnv)