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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. NO.2118/2000

New Delhi this the 30/5 day of September, 2003.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN  
HON'BLE SHRI S.K. NAIK, MEMBER (A)

R.P. Pal,  
UDC/C,  
S/o Late Sh. Khem Chand Singh  
R/o 1271, Multi Storey  
Timarpur, Delhi.  
Working with  
National Anti Malaria Programme  
22 Sham Nath Marg,  
Delhi

..... Applicant

( By Shri N.L. Bareja, Advocate)

--versus--

(1) Union of India,  
Through the Secretary,  
Ministry of Health & Family Welfare,  
Nirman Bhawan, New Delhi-1.

(2) The Director General Health Services,  
Ministry of Health & Family Welfare,  
Nirman Bhawan, New Delhi-1.

3. The Director,  
National Anti Malaria Programme  
22 Sham Nath Marg,  
Delhi-54

.... Respondents

( By Shri Madhav Panikar, Advocate)

O R D E R

Justice V.S. Aggarwal:-

The applicant was working as a Upper Division Clerk with respondent No.3. He was promoted from the post of Lower Division Clerk in 1986 and was made regular from 12.7.1989. His initial promotion as Upper Division Clerk was against a leave vacancy. Later in January 1989, there arose a

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regular vacancy in the post of Upper Division Clerk. The next higher post to the Upper Division Clerk is Superintendent for which a departmental examination is conducted. The eligibility condition for the same is that a person should have 8 years of regular service as Upper Division Clerk-cum-Computer.

2. The said examination was scheduled to be held in February 1997. The applicant and another filed OA No.2018/1996 praying for advancing the date of regular promotion from April 1986. He had filed Misc.Application No.304/1997 praying for a direction to permit him to sit in the departmental examination. The said Misc.Application had been allowed and a direction was given to permit him to sit in the examination. The examination was held later in the year 1997. The result of the applicant was kept in a sealed cover. The said Original Application filed by the applicant did not succeed. By virtue of the present application, the applicant prays that since he had continuously officiated as Upper Division Clerk and subsequently regularised, The regularisation should be from the date of the availability of the permanent vacancy. The applicant had been made permanent from 12.7.1989, but he should have been made so from 27.1.1989 when the regular vacancy was available and that such a benefit had been given to one Shri

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Ram Shankar who was a Upper Division Clerk along with the applicant.

3. The application has been contested.

4. To keep the record straight, we deem it necessary to mention that on earlier occasion this application had been dismissed by this Tribunal on 21.5.2001. The applicant challenged the said order by filing Civil Writ Petition No.6286/2001 and the Delhi High Court had set aside the order of this Tribunal on 30.9.2002 holding that if a subsequent cause of action has arisen on discovery of facts, the application would be maintainable. It was further held that the result of the applicant which was directed to be kept in a sealed cover should remain in the same stage and this Tribunal would be at liberty to pass appropriate orders. The findings read:-

"It appears from the judgment passed by the learned Tribunal dated 9/3/2000 in O.A. 2108/96 that the learned Tribunal itself proceeded on the basis that there did not exist a clear vacancy. Thus, in the event, a subsequent cause of action has arisen by reason of discovery of the fact that the stand taken by the respondent herein was not correct, the O.A. could not have been dismissed on the ground that the same was barred under the principles of constructive res-judicata.

We, therefore, are of the opinion that the impugned judgment cannot be sustained and set-aside the same accordingly and the matter

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is remitted back to the learned Tribunal for consideration of the matter afresh on merit.

We, however, before parting with the case, may observe that all the contentions raised by the parties herein may be raised before the learned Tribunal. We may further observe that the result of the petition which has been directed to be kept under "Sealed Cover" shall remain in the same stage and the learned Tribunal shall be at liberty to pass an appropriate order thereupon."

5. During the course of submissions, the learned counsel for the applicant contended that he is not in a position to press the first prayer that he has continuously officiated from April 1986 and, therefore, regularisation should be effected from the date of availability of a permanent vacancy because of dismissal of his earlier application, but he contended that once the applicant has been discriminated, he is entitled to regular appointment as Upper Division Clerk from 27.1.1989.

The plea raised was that a similarly situated person Shri Ram Shankar who was a Upper Division Clerk had been given the said benefit.

6. On a careful consideration of the matter, we are of the considered opinion that the plea so raised has merit and cannot be ignored.

7. Though a person does not have an indefeasible right to be promoted from a particular date, but if the State discriminates between the

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individuals who are similarly placed, in that event Articles 14 and 16 of the Constitution would come to the rescue of such a person who is being treated differently. With effect from 12.7.1989, on the recommendations of the Departmental Promotion Committee, the applicant and one Shri Ram Shankar were regularised as Upper Division Clerks. Subsequently, the record reveals that so far as Ram Shankar is concerned, his matter was treated differently and he was made regular from 27.1.1989, the date when permanent vacancy was available. The letters on the subject are being reproduced for the sake of facility:-

" Dated, the 2 Nov 1995

To

The Director  
National Malaria Eradication Programme  
22-Sham Nath Marg  
Delhi-54.

Subject: Fixing of seniority in respect of  
Sh.Ram Shankar, UDC, NMEP-regarding.

Sir,

With reference to your letter No.11-5/71-NMEP (Admn.) dated the 14.9.95, on the above noted subject and to state that Sh.Ram Shankar, UDC may be promoted in the first vacancy that could be made available for the purpose and his seniority in the next higher grade be fixed as if he had been promoted in accordance with his position in the select list.

It is further directed that the period during which the officer (s) junior to Sh.Ram Shankar promoted to the higher grade, may be reckoned towards the minimum period of service

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prescribed for purpose of eligibility for promotion to the higher grade.

A compliance report to this effect may please be furnished to this Dte. at the earliest.

Yours faithfully,

sd/

(Kiran Puri)  
Dy. Director Admn. (PH-I)"

"OFFICE ORDER

DATED 30 JUL 1998

Reference representation of Shri Ram Shankar, Upper Division Clerk for fixation of seniority, attention is invited towards draft seniority list circulated as on 31.5.1996 wherein Shri Ram Shankar has already been placed as per his position in the select list so as to treat the period during which the officer (s) junior to Shri Ram Shankar were promoted to the higher grade may be counted towards the period of service prescribed for the purpose of eligibility for promotion to the higher grade. His period for eligibility for promotion to the next higher grade will be counted from 4.3.1986."

This clearly shows that different treatment had been given to Shri Ram Shankar and one to the applicant. Shri Ram Shankar was given the benefit from much earlier than what is being claimed by the applicant. It is not being disputed that the vacancy was available from 27.1.1989. It was regular vacancy. There is no ground as to why when such treatment had been given to Shri Ram Shankar and why it has been denied to the applicant. Resultantly when it is being brought to our notice that different persons similarly situated are being treated differently, it is a clear case of discrimination.

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8. Resultantly, we allow the present application on this short ground and direct that:-

- (a) the applicant is entitled to regular appointment from 27.1.1989;
- (b) he was eligible to take the examination for the post of Superintendent because he had the necessary qualifications; and
- (c) the respondents are directed to open the sealed cover and publish the result of the applicant. Necessary consequential benefits should only flow in accordance with the rules.

No costs.

Naik  
(S.K.Naik)  
Member (A)

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(V.S.Agarwal)  
Chairman

/sns/