

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O. A. NO. 313/2000

New Delhi this the 22nd day of August, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

N. S. Yadav, LDC,
Department of Central Excise,
IGI Airport,
New Delhi. Applicant

(By Shri A. K. Bhardwaj, Advocate)

-versus-

1. Union of India through
the Central Excise Commissioner,
C.E. Commissionerate,
CR Building, IP Estate,
New Delhi.
2. The Additional Commissioner (P&V)
Central Excise Commissionerate,
C.R. Building, IP Estate,
New Delhi.
3. The Deputy Commissioner (P&V),
Office of the Commissioner of Central Excise,
Delhi-I, CR Building, IP Estate,
New Delhi-1100 02. Respondents

(By Shri R. R. Bharti, Advocate)

O R D E R (ORAL)

V. K. Majotra, Member (A):-

The applicant is aggrieved by the act of the respondents in not according him promotion as UDC and promoting several of his juniors. To his representation, the respondents informed him vide Memo dated 27.8.1997 at Annexure A2 that he was erroneously allowed to appear in the departmental examination for promotion from LDC to UDC in the year 1985-86 during the period he was an ad hoc LDC. Under the rules one can appear for any promotional examination after completing two years of regular service in the grade. Thus the applicant was denied the benefit of departmental examination from LDC to UDC and his

6

representation was rejected. The applicant has pointed out that one similarly situated person Harbhajan Singh who had also passed the examination when he was an ad hoc LDC has been promoted with effect from the date of promotion of his juniors as UDC. Thus the applicant has sought a direction to the respondents to promote him as UDC with effect from the date of promotion of his immediate junior with consequential benefits.

2. In their counter, the respondents have pointed out that the applicant while working as ad hoc LDC was erroneously allowed to appear in the departmental examination for promotion from LDC to UDC in the year 1985-86 and was declared passed. The applicant should have been allowed to appear in the promotional examination after becoming regular LDC in the year 1988. The respondents have further stated that the applicant has not mentioned the names of any juniors who were promoted in similar circumstances and that Harbhajan Singh happens to be senior to the applicant. The respondents have also raised the question of limitation stating that whereas the applicant's representation dated 4.4.1997 at Annexure A-1 was rejected vide letter dated 27.8.1997, he has filed the present OA in February, 2000. We have heard the learned counsel of both sides and carefully considered the material available on record.

3. On the question of limitation, the learned counsel of the applicant has stated that although he learnt about the promotion of a number of juniors in 1997 when he made a representation on 4.4.1997, he

came to know at a later stage about the promotion of Harbhajan Singh who had been allowed to appear in the promotional examination while he was working as ad hoc LDC and was promoted as UDC. In this view of the matter that various juniors to the applicant have been promoted and he learnt the promotion of Harbhajan Singh. ^{about 6} ~~after a long period~~ In our view, the present OA cannot be said to be hit by limitation.

4. The averment of the applicant that the respondents have promoted a number of his juniors as UDC has not been controverted. The respondents have also not been able to explain satisfactorily why Harbhajan Singh had been given different treatment when he had also been erroneously allowed to appear in the departmental examination while he was working as ad hoc LDC and promoted on the basis of his having passed the said examination. The only explanation that the respondents have provided is that Harbhajan Singh happened to be senior to the applicant. This according to us is not a satisfactory explanation.

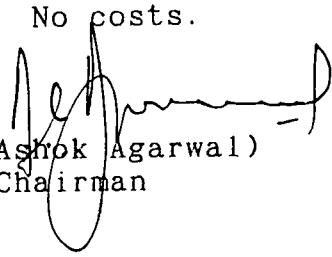
5. In view of the fact that the respondents have promoted another similarly placed person Harbhajan Singh who had passed the promotional examination while working as ad hoc LDC and now that several juniors to the applicant have also been promoted, the fact that the applicant had been allowed to appear in the promotional examination before becoming a regular LDC in the year 1988 cannot be allowed to be held against him. In our view the applicant should have also been accorded promotion like Harbhajan Singh to meet the ends of justice.

(S)

6. Having regard to the above reasons and discussions, the OA is allowed and the respondents are directed to promote the applicant as UDC on the basis of his having cleared the promotional examination with effect from the date of promotion of his immediate junior. However, though he may be accorded notional benefit of fixation of pay and seniority, he should not be entitled to any backwages. No costs.

V.K. Majotra

(V.K. Majotra)
Member (A)


(Ashok Agarwal)
Chairman

sns