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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.948/2000

New Delhi, this the 19th day of December, 2000

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri S.A.T. Rizvi, Member (A)

Vijay Kumar, Chowkidar, S/O Sh. Gulab
Chand Saini, Office of the Commanding
Officer, Military Hospital, Mathura (UP).

Residential Address:-

H.No.15/19, Jamuna Bagh Road, Sadar
Bazar, Mathura (UP).

..Applicant.

(By Advocate: Sh. D.N.Sharma)

VERSUS

1. Union of India, through the Secretary to the Govt. of India, Ministry of Defence, South Block, New Delhi.
2. The Director General of Medical Services, (DG MS-3 (B) A.G. Branch), L Block, DHQ Post Office, New Delhi.
3. The Dy. Director of Medical Services, Headquarters UP Area, AMC, Bareilly, UP.
4. The Commandant, Military Hospital, Mathura, UP.

...Respondents.

(By Advocate: Mrs. P.K.Gupta)

O R D E R (ORAL)

Hon'ble Shri S.A.T. Rizvi, M (A):-

The applicant in this OA who is a permanent Chowkidar in Group 'D' at the Military Hospital at Mathura, seeks the following reliefs:-

- "a) That the applicant be absorbed in the post of Lower Division Clerk, likely to fall vacant in the office of respondent No.4, prospectively w.e.f. 10.10.2000.
 - b) That applicant be alternatively considered for appointment as Lower Division Clerk in any of the Army Hospital/Establishments under the management of respondent No.2, preferably in the Northern
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India, against the available vacancies, for his early appointment as Lower Division Clerk directly without subjecting him to any further tests in this regard."

2. From the aforesaid set of reliefs, it would appear that the applicant, being a permanent group 'D' employee, seeks absorption in the post of LDC which was, at the time of filing of the OA, likely to fall vacant w.e.f. 1.10.2000. He also seeks the alternative relief of being appointed as LDC in any of the Army Hospital/Establishments under the management of respondent No.2 against available vacancies without subjecting him to any further tests in this regard. (emphasis supplied). This would imply that he is interested neither in direct recruitment (which would in any case entail some kind of test/interview) nor in promotion through the limited departmental test. He is obviously aiming at promotion through DPC on seniority-cum-fitness *basis*.

3. The contentions raised by the applicant in his favour are that he has for some time worked as LDC in the respondents' establishment and that should be ground enough for him to be considered eligible for promotion to the rank of LDC. The other ground taken by him is that he appeared in the departmental tests on two occasions but the results of the same have not been communicated to him. He claims to be sufficiently educated for the purpose of appointment as LDC having cleared his inter-mediate examination from U.P. Board in 1979.

4. The respondents on the other hand do not admit that the applicant ever worked as LDC in their

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establishment. They have, however, admitted that for a while the applicant looked after the work of the Despatch Clerk under the supervision of the Head Clerk of the establishment. There is no document on record to show that the applicant was ever formally appointed even if temporarily or on ad hoc basis as LDC in the respondents' set up. There is also nothing on record to show that he was ever sanctioned any extra amount for having shouldered the higher responsibility of LDC. Thus in the face of the respondents' categorical denial, we are not inclined to agree with the contention that the applicant worked as a LDC for long enough time so as to entitle him to be considered for promotion as LDC. In regard to the departmental tests which he admittedly took in the past, the respondents have clearly mentioned that the applicant did not succeed in those tests and accordingly could not be promoted to the rank of LDC. We find that while the applicant has mentioned that the result of the aforesaid tests was not communicated to him, he has not, in so many words, denied knowledge of the result of the aforesaid tests. On this basis, we are of the view that no claim is made out for his promotion as LDC.

4. The learned counsel appearing for the respondents has submitted that in accordance with the recruitment rules for the post of LDC, 85% is reserved for direct recruitment and the remaining 15% for promotion from among the ranks of group 'D' employees. Of the said 15%, 10% would be filled by departmental examination and the remaining 5% on the basis of seniority-cum-fitness. From the counter reply filed by the respondents, it would

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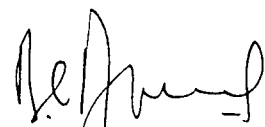
appear that they have not prepared any seniority list of group 'D' employees on the basis of which the claim of the applicant for promotion under the aforesaid 5% quota could be considered.

5. From the nature of reliefs sought by the applicant, it is clear that he is not looking forward to being considered for direct recruitment under the 85% quota nor to promotion through limited departmental test and is interested only in his being absorbed some how either against the vacancy which fell vacant on 1.10.2000 or against any other vacancy falling vacant in future in any other place under the control of the respondents. This doing so, he has to be considered only against 5% quota under which his claim can be considered by the respondents on the basis of his seniority. We, therefore, feel that the ends of justice would be met in this case by directing the respondents to prepare the seniority list, if not already prepared, and to consider the applicant against the 5% quota in accordance with the rules. The respondents may take action as above as expeditiously as possible and in any event within a period of six months from the date of receipt of a copy of this order.

6. The OA is disposed of in the aforestated terms.
No costs.



(S.A.T. RIZVI)
MEMBER (A)



(ASHOK AGARWAL)
CHAIRMAN

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