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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 2259/89

New Delhi this the 9th day of May, 1994

CORAM :

THE HON'BLE MR. JUSTICE V. S. MALIMATH, CHAIRMAN
THE HON'BLE MR. P. T. THIRUVENGADAM, MEMBER (A)

1. Shri Lachman Prasad S/O Late
Shri Dharam Singh,
R/O I-36/I, Brahmipuri,
Shahdara, Delhi-110053.
2. Shri D. C. Jhinga S/O Late Shri
Banarsi Das, R/O P.O. Haily Mandi
(Todapur), Distt. Gurgaon,
Haryana.

Both the Applicants working as
Upper Division Clerks with the
Ministry of Agriculture, Deptt.
of Rural Development,
Krishi Bhawan, New Delhi. ...

Petitioners

By Advocate Shri K. L. Bhandula

VERSUS

1. Union of India through
Secretary to the Govt. of India,
Ministry of Agriculture,
Deptt. of Rural Development,
Krishi Bhawan, New Delhi.
2. The Secretary, Department
of Personnel, North Block,
New Delhi. ...

Respondents

By Advocate Shri M. M. Sudan

O R D E R (ORAL)

Shri Justice V. S. Malimath -

The petitioners, Shri Lachman Prasad and Shri
D. C. Jhinga, were appointed as Lower Division
Clerks (LICs) w.e.f. 15.7.1970 and 21.6.1971
respectively. They were in due course confirmed
on 15.12.1979 and 31.8.1980. Their names were
included in the select list for long term appointment
on 17.12.1981. They were promoted as Upper Division

Clerks (UDCs) and further as Assistants. But by the impugned order passed on 8.6.1987 their names were deleted from the select list resulting in their losing the benefit of long term appointment as UDCs and further promotion. It is in this background that the petitioners have approached this Tribunal with this application praying for quashing the order dated 8.6.1987 and for a direction to treat them as having been promoted on long term basis from 17.12.1981 and 1.1.1982 respectively and included in the select list of 1981. It is on that basis that they claim that their seniority in the grade of UDCs should be protected.

2. The stand taken by the respondents is that they committed a mistake when they treated the petitioners as eligible for being promoted and for inclusion in the select list to the cadre of UDCs. They have stated that the petitioners were required to pass the prescribed typing test. Not having done so, the petitioners earned exemption on completion of eight years of service from typing test. They, therefore, plead that a LDC can be confirmed only after he has passed the prescribed typing test or has earned exemption from passing the said test. It is in this background that they plead that the petitioners' juniors^{who} passed the typing test became seniors to the petitioners who got the exemption from passing the said test only after their juniors had passed the said test. This aspect was not properly taken into account and, therefore, a mistake was committed in preparing the select list and according promotion to the

petitioners. It is when the aggrieved parties brought this mistake to the notice of the authorities that they examined the issue and after realising the mistake, passed the impugned order correcting the mistake they had committed in this behalf.

3. The essential question, therefore, that arises for consideration, is as to whether the petitioners are right in maintaining that their seniority in the cadre of LDCs did not depend upon the date on which they passed the test or secured exemption from passing the test, or with reference to the date of their confirmation. That the petitioners could not be confirmed unless they secured exemption from passing the typing test is not in dispute. A government servant can be confirmed only after he has satisfied all the conditions prescribed for ~~acquiring~~ eligibility and other conditions. Passing of the typing test was one of the essential conditions. That is the reason why a government servant is not confirmed unless he passes the test or is able to earn exemption from passing the test. So far as the petitioners are concerned, they did not pass the typing test any time within eight years. Therefore, they earned exemption on completion of eight years of service. It is only on their getting exemption that they became eligible for confirmation. So far as the several juniors of the petitioners are concerned, they became eligible for confirmation earlier than the petitioners by passing the prescribed typing test. Thus, the juniors became eligible for confirmation earlier than the petitioners. So far as the seniority is

concerned, the schedule to the rules says that normally the seniority should be regulated by the rankings assigned at the time of direct recruitment. Their seniority in the cadre of LDCs would depend upon the dates on which the petitioners were able to get confirmation. Their eligibility for consideration for confirmation would arise only when they fulfil all the conditions including the one of passing the prescribed typing test. The relevant rule in the Schedule to the Central Secretariat Clerical Service Rules, 1962 is Rule 17 (4) so far as LDCs are concerned, which reads :-

"(4) All officers substantively appointed to a grade shall rank senior to those holding temporary or officiating appointments in that grade."

This Rule regulates seniority in the LDCs cadre itself. It says that all officers substantively appointed to a grade shall rank senior to those holding temporary or officiating appointments in that grade. The date of substantive appointment depends upon the date on which a person acquires all the qualifications which include passing of the prescribed typing test. In a case where a government servant does not pass the test he becomes eligible only when he earns exemption from the test on completion of eight years of service, meaning thereby he is deemed to have passed the typing test on completion of eight years. Therefore, persons who are junior to the petitioners having passed the prescribed test earlier than the petitioners were able to steal a march over them by securing

✓ substantive appointments on dates earlier than the

petitioners. Hence, in the cadre of IDCs they became seniors to the petitioners. This aspect was missed when the earlier select list and promotions were effected. That mistake has been rectified by the impugned order. Though one would have expected principles of natural justice to be complied with by issuing a show cause notice to the petitioners in this behalf, we are not inclined to interfere in this case on that ground, the reason being that on hearing the learned counsel on both sides we are satisfied about the correct legal position.

4. Hence, we do not see any good grounds to interfere in this case. This application fails and is dismissed. No costs.

P. T. Thiruvengadam

(P. T. Thiruvengadam)
Member (A)

V. S. Malimath

(V. S. Malimath)
Chairman

/as/