

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 478/89.  
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199

DATE OF DECISION 1.8.91.

<u>Shri M.K. Bhandari</u> <u>Shri B.S. Mainee</u> <u>Union of India &amp; Another</u> <u>Shri A.K. Sikri</u>	<u>Petitioner(s) Applicant</u> <u>Advocate for the Petitioner(s) Applicant</u> <u>Respondents</u> <u>Advocate for the Respondent(s)</u>
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**CORAM**

The Hon'ble Mr. JUSTICE U.C. SRIVASTAVA, VICE CHAIRMAN

The Hon'ble Mr. I.P. GUPTA, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

**JUDGEMENT**

( DELIVERED BY HON'BLE MR. JUSTICE  
U.C. SRIVASTAVA, VICE CHAIRMAN )

The applicant was appointed as Lower Division Clerk on 4.10.1983 in grade Rs.110-180/Rs. 260-400/Rs.950-1500 in the office of the Mahanagar Telephones Nigam Limited, New Delhi. The applicant was promoted as P.A. Gr.II in grade Rs.425-700 with effect from 12.6.1980. In a list of P.A.Gr.II circulated on 31.3.1984, he was placed at serial number 19, below Shri O.P.Ghai and above Smt. Kamlesh Malhotra. It is seen from the list that the applicant was promoted on 12.6.1980 while his junior Smt. Kamlesh Malhotra on 19.9.1980. The applicant was confirmed as Stenographer Gr.III with effect from 1.3.1978.

The applicant's promotion was regularised w.e.f.12.6.80 vide letter dated 12.3.1984 and in the said regularisation, he was placed at serial number 16 while Smt. Kamlesh Malhotra as at serial number 17. There were 74 vacancies for Stenographers in the grade of Rs.1640-2900 and applications were called for irrespective of stenographers who had put in seven years of service. The applicant was also in the same grade and had put in 7 years service. The applicant accordingly also applied and was declared fit by the D.P.C. The said D.P.C. issued two panels; one in respect of those who were in scale of Rs.1640-2900 and the other in respect of those who were in scale of Rs.1400-2300. But, we find that his name does not find place in the panel while his juniors are placed in the panel. The applicant states that his record is very good and was recommended. In this connection, he was never communicated any adverse entry. According to the applicant, the only instance he can recollect is that he had submitted a leave application due to some casualties but the then officer concerned had decided the said period of 7 days as 'dies non' on the ground that he did not get leave sanctioned before availing of the same. Although he applied for casual leave for 3 days and earned leave on medical grounds for 4 days, the whole period was treated as 'dies non', which, according to the applicant, is absolutely incorrect.

2. Applicant's juniors were retained in the panel and his name did not figure in the said panel, that is why he has approached this Tribunal. A number of opportunities were given to the respondents but they did not file any written statement and right to file the same was forfeited by this Tribunal vide order dated 18.10.1989. On 7.12.90, the learned counsel for the respondents was directed to produce A.C.Rs. of the applicant. No adverse entries were communicated to him. The case was ordered to be listed for final hearing on 8.1.1991. No A.C.Rs.

has been produced. The representation of the applicant that no adverse entry has been communicated to him and as such if some adverse entries are made in the A.C.R., the same cannot be taken into account and he cannot be excluded from the panel as uncommunicated entry cannot be taken into account. In this connection, reference has been made to the decision of Supreme Court in the case of Shri GURDIAL SINGH FIJI Vs. U.O.I. discussed at page 2 of the rejoinder. However, the contention raised by the applicant is correct that uncommunicated entry cannot be taken into account, if the applicant's leave was not sanctioned. This cannot be taken a ground for excluding him from promotional post. The respondents have deliberately not filed the written statement.

3. Learned counsel for the respondents states that no written statement could be filed. He further states that A.C.R. will not be relevant in-as-much as the applicant is concerned who claims for promotion, who has no surviving adverse cause of action. Because of some/entries, he has not been promoted. Now, the applicant has been promoted as per his seniority and he is on the top in the panel.

4. In view of this statement of the learned counsel for the respondents, the application is dismissed having become infructuous with the observation that the applicant will be at liberty to file a fresh application if he feels there is any error.

There will be no order as to costs.



(U.C.SRIVASTAVA)  
VICE CHAIRMAN  
1.8.91.

I.P.Gupta  
(I.P.GUPTA)  
MEMBER (A)  
1.8.91.

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