

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

C.A. NO. 1046/89

DATE OF DECISION... 8.4.91...

SHRI B.M. KHANNA

.....APPLICANT

VS.

UNION OF INDIA

.....RESPONDENTS

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SHRI P.C. JAIN, HON'BLE MEMBER (A)

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

.....SHRI R.L. SETHI

FOR THE RESPONDENTS

.....SHRI M.L. VERMA

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*

J U D G E M E N T

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant employed as Store Keeper, Dr. Ram Manohar Lohia Hospital, New Delhi, filed the application under Section 19 of the Administrative Tribunals Act, 1985, being aggrieved by the denial of promotion to the post of Head Clerk.

2. The applicant has claimed the relief that a direction be issued to the respondents to grant him his overdue

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promotion to the post of Head Clerk at least w.e.f. 1.5.1988.

3. The facts of the case are that the applicant was appointed as a permanent Store Keeper in the scale of U.D.C. w.e.f. 25.4.1956. The next channel of promotion is to the post of Head Clerk in the scale of Rs.425-700 (pre-revised). This post is a non-selection post and is to be filled by promotion on hundred per cent basis. 75 per cent promotion is to be made <sup>from</sup> the cadre of U.D.C./Jr. Accountant and 25 per cent promotion is to be made from Store Keepers having three years' service in the grade. According to the applicant, there were ten posts of Head Clerks and Shri Jaswant Singh who was Store Keeper promotee, has retired as Head Clerk on 30.4.1988 and the vacancy vacated by Shri Jaswant Singh being of the quota of Store Keeper, should be given to him. There was no reason to deny promotion to the applicant as he had never been communicated any adverse/critical remarks during his entire service career. The applicant also crossed E.B. vide order dated 5.9.1988. It is further stated that the applicant was also issued a merit certificate for the dedicated service. Thus, according to the applicant, the denial of promotion to him is arbitrary and discriminatory and is

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violative of Articles 14 and 16 of the Constitution of India. The applicant has made representations, but to no effect.

4. The respondents contested the application and filed the reply. It is stated that the applicant had the right to be considered by the D.P.C. as and when the regular appointment in the impugned grade is made. The quota of Store Keepers is only 25 per cent under the Recruitment Rules. The claim of the applicant will be considered and placed before the D.P.C. as and when regular appointment in the grade is made. The application, according to the respondents, is premature.

5. It is further stated by the respondents that there are only five posts of Head Clerk which have been filled up on the basis of modified Recruitment Rules of 1977. Shri Jaswant Singh has since retired, so also Shri Kuldeep Singh and the posts which are lying vacant, have been filled up by ad-hoc arrangements. These two posts shall be required to be filled up by appointment of a Store Keeper and a U.D.C. on the basis of their seniority-cum-fitness.

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The applicant could only be considered where the post falls vacant at the point reserved for Store Keeper by providing 3:1 ratio. The applicant has not been denied promotion, but he shall be considered along with other eligible Store Keepers on the basis of recommendations of the D.P.C. The applicant was given an adverse entry in the year 1987 and it was communicated to the applicant in June, 1989. The applicant has also been chargesheeted by a Memo of charges dated 9.4.1988. Shri Jaswant Singh was appointed as Head Clerk against reserved quota for Store Keeper and has since retired. The claim of next Store Keeper can only be considered against the point reserved for Store Keeper at the appropriate time. Thus according to the respondents, the applicant has no case and the application is liable to be dismissed.

6. We have heard the learned counsel for the parties at length and <sup>have</sup> gone through the record of the case. The Recruitment Rules, 1973 filed by the applicant go to show that the post of Head Clerk is 100 per cent promotional non-selection post and 75 per cent of the posts are filled up by promotion from U.D.C./Jr. Accountants with three years' service in the grade and remaining 25 per cent posts

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are filled up by promotion from Store Keepers having three years' service in the grade. The Departmental Promotion Committee consists of Consultant in Medicine and Surgery-Chairman and two other members of hospital staff-one Deputy Medical Superintendent and the other Administrative Officer. The number of posts of Head Clerk shown in the Recruitment Rules of 1973 is three and the applicant has stated in his application that there are ten posts. But the respondents have categorically stated in para '3.4' that there are only five posts of Head Clerk and two posts of Head Clerk are lying vacant which are being managed by making ad-hoc arrangements. It is also stated by the respondents that out of these two posts, one is required to be filled up by appointment of a Store Keeper on the basis of seniority-cum-fitness. One Jaswant Singh who was promoted from the grade of Store Keeper as Head Clerk had since retired and the applicant has laid claim to that post after his retirement on 30th April, 1988. The contention of the respondent is that the D.P.C. has not yet been constituted and at the appropriate time, the process for filling up the posts will be taken up and the applicant shall be considered in his due turn along with other Store Keepers eligible for consideration on the basis of seniority-cum-fitness. The respondents, therefore, have not in any way

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denied promotion to the applicant and categorically stated that ~~when~~ the process for filling up of the posts is taken up, the applicant shall be considered along with other Store Keepers and in this way, it is argued by the learned counsel for the respondents that the application is premature. Thus there is no bar for consideration of the applicant if he is otherwise eligible for being considered for the promotional post of Head Clerk. A direction in this regard, therefore, as per own showing of the respondents can be issued to them.

7. The other contention in the application is regarding non-communication of certain adverse entry to the applicant. As ~~stated~~ in the counter by the respondents, the applicant <sup>in his A.C.R.</sup> was given adverse entry for 1987 which was duly communicated to him in June, 1989, ~~and the applicant~~ In the rejoinder he ~~has~~ stated that he has already made a representation on 20th July, 1989 against that adverse entry, but the same has not ~~yet been~~ disposed of. ~~However,~~ It is also stated by the applicant in the rejoinder that the late communication of the adverse entry in 1989 is an after-thought. However, the late communication by itself will not expunge the adverse remarks given to the applicant unless and until the

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representation filed against these remarks by the applicant is decided in his favour. Again, the case of the applicant for promotion on ad-hoc basis was not considered and it appears that the post fell vacant on the retirement of Jawant Singh on 1.5.88, while the applicant was already served with a Memo of chargesheet under Rule 14 of the C.C.S.(C.C.A.) Rules, 1965 on 9.4.88 (Annexure-R 1 to the counter). In the representation made by the applicant on 20.3.1989, he has also mentioned about this chargesheet (Annexure-A 2). In the rejoinder filed by the applicant, he has also admitted the fact that the enquiry proceedings are pending with the Enquiry Officer and the department has not furnished certain documents to the Enquiry Officer. It is, therefore, evident that non-promotion on ad-hoc basis in the case of the applicant in view of the enquiry pending against him was not without reasonable justification. The regular D.P.C. has not been held so far and so the case of the applicant in no case has gone by default. The applicant has a right to be considered for promotion but he cannot have a right that he must be promoted to the post of Head Clerk.

8. In view of the above discussion, the application is disposed of with the direction that the respondents shall at the earliest and in any case within six months hold the D.P.C. to fill up the vacant posts of Head Clerk and consider the applicant also as one of the candidates if he is otherwise not disqualified. The other reliefs claimed by the applicant are disallowed. There shall be no order as to costs.

(J.P.SHARMA)  
MEMBER (J)

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5/4/91

Cecm: 574/1991  
(P.C.JAIN)  
MEMBER (A)