

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 1579/88
MP No.2799/93

Date of decision: 15.09.1993.

Shri Mohinder Singh

...Petitioner

Versus

Union of India through the
Director, Directorate of Field
Publicity, Ministry of I & B, New Delhi

...Respondents

Coram:- The Hon'ble Mr. I.K. Rasgotra, Member (A)
The Hon'ble Mr. J.P. Sharma, Member (J)

For the petitioner

Shri T.C. Aggarwal, Counsel.

For the respondents

Shri P.H. Ramchandani,
Senior Counsel.

Judgement (Oral)
(Hon'ble Mr. I.K. Rasgotra)

We have heard Shri T.C. Aggarwal, the learned counsel for the petitioner and Shri P.H. Ramchandani, Sr. Counsel for the respondents. The petitioner was appointed as Packer - Class IV (Group 1971). He was first promoted as Lower Division Clerk against the leave vacancy in 1977 and reverted. He was again promoted as Lower Division Clerk in 1978 and reverted. Ultimately, he was promoted as LDC w.e.f. 31.5.1985 "purely on adhoc basis with immediate effect for a period of three months". The petitioner has continued to work as LDC since that date. His reversion was however contemplated. Apprehending his reversion, the petitioner filed this OA, which was amended with the permission of the Tribunal. On 16.9.1988 another OA came up before the Tribunal when interim relief to the effect that "status quo as on today be maintained" was granted. This Order has continued to operate till date. The case of the petitioner is that when he was initially promoted in 1977 as Lower Division Clerk, the



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Recruitment Rules of 1971 were in operation. According to the said recruitment rules 25% of the vacancies were to be filled by transfer of LDC from Regional Offices failing by direct recruitment. 65% by Direct Recruitment, the remaining 10% were to be filled by educated qualified Group D staff having 5 years service. The Recruitment Rules were amended in 1985. According to the amended rules, 90% of the vacancies were required to be filled by Direct Recruitment and 10% by the promotion of Group 'D' employees borne on the regular establishment. The selection was to be made through the Departmental examination amongst Group "D" employees who had passed matriculation or equivalent. The Recruitment Rules were further amended in 1987 when 10% quota for Group "D" employees was split up; and 5% earmarked by filling up by promotion by departmental examination through the SSC and the balance 5% by promotion subject to fitness. The petitioner submits that 1987 recruitment rules are not applicable to him and therefore he does not have to qualify the SSC examination. The learned counsel for the petitioner referred us to the Order of the Supreme Court in Civil Appeal No. 3799/89 in M. Janaiah Vs. Regional Officer, A.P. & Ors decided on 6.9.1989 in support of his case. He, therefore, contended that the petitioner cannot be reverted and that he is entitled to regularisation in the post of LDC without qualifying the SSC examination.

The respondents in their counter affidavit have brought out that the petitioner had appeared in the departmental examination held in 1987 but he failed. It is not in dispute that the petitioner has continued to work as LDC since 1985 on purely ad hoc basis. He could have been reverted in 1988. The respondents have also pointed out that

the petitioner had filed a plaint seeking regularisation in the court of Civil Sub Judge, Delhi against his order of reversion passed in 1982 for regularisation of his service. The said petition was dismissed by the Sr. Sub Judge in 1982. The petitioner therefore cannot claim regularisation from a date earlier than 1985 even if he was working as LDC on ad hoc basis. At this point, the learned counsel for the petitioner Shri T.C. Aggarwal submitted that the relief claimed was only from 1985 onwards.

We have considered the submissions of the learned counsel of both the parties and carefully gone through the order of the Supreme Court. We are of the opinion that matter was decided by the Supreme Court on its satisfaction that the petitioners therein fell within the quota reserved for the departmental candidates for promotion on seniority-cum-fitness basis. The ratio of the case of M. Janaiah (Supra) is not available in the matter. The point raised by the petitioner is that he is not covered by the amended rules of 1985 or 1987. The respondents have come on record that the petitioner had appeared in the departmental examination, 1987 (paragraph 6 (vii) of the counter-affidavit), but had failed to qualify. This averment has not been denied by the petitioner in the rejoinder. Having subjected himself to the amended rules the petitioner cannot, at this stage, take the plea that he is not governed by the amended recruitment rules. There cannot be a situation when the unamended rules and the amended rules both are in operation.

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In view of the above facts and circumstances, we do not find any justification for our interference in the matter. The O.A. is accordingly dismissed, as devoid of merit. No costs.

We, however, make it clear that the petitioner will not be replaced by an ad hoc promotee. There shall however be no objection/bar of his being replaced by a duly selected candidate. The above order, dismissing the above petition will also not affect his right for being considered for promotion against the 5 per cent promotion quota by virtue of his seniority and by virtue of his being a member of the SC, subject to his fulfilment of the other conditions.

MP stands disposed of accordingly.

J.P. Sharma

(J.P. SHARMA)
MEMBER(J)

Mittal

I.K. Rasgotra

(I.K. RASGOTRA)
MEMBER(A)