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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. No. 1647/88

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New Delhi this the 17th day of November, 1993.

THE HON'BLE MR. J.P. SHARMA, MEMBER (J)
THE HON'BLE MR. B.K. SINGH, MEMBER (A)

Shrij Vidya Dhar Sharma
Son of Late Shri Harish Chander Shastri
Jr. Accountant (UDC)
Pay and Accounts Office,
No. 5 (Pension)
Tis Hazari Court
Delhi. Petitioner
(By Advocate Shri H.L. Guignani)
Vs.
Chief Secretary, Delhi Administration,
Delhi

Shri Gurtek Singh, UDC
Delhi Administration,
18/16 Rajendra Nagar,
New Delhi
(Shri M.M. Sudah, Advocate) Respondents

ORDER (oral)
Hon'ble Mr. J.P. Sharma, Member (J)

The case of the applicant is that he was appointed as LDC on adhoc basis on 29.11.1965 and thereafter he was regularised in his appointment after passing the limited departmental examination with effect from 6.7.68. He was promoted to the next grade of UDC, a next selection post with effect from 28.11.1979. The grievance of the applicant is that one Shri Gurtek Singh, Respondent no. 2 joined as LDC on adhoc basis later to the applicant on 10.12.1965. He was however promoted to the grade of LDC on 9.5.1976. The grievance of the applicant is that he joined as LDC earlier to Shri Gurtek Singh. He has not been given his due seniority and in the seniority list as on 3.12.1980 of Grade III of Delhi Administration the name of the applicant appears at Serial No. 3659 while that of Respondent No. 2 at Serial No. 3029. In the present application the applicant has prayed that he should be given promotion to the post of UDC from the date Shri Gurtek Singh was promoted i.e. 19.5.1976 and he

also be awarded the consequential benefits. In the seniority list filed by the applicant as Annexure I, the respondents have corrected the date of entering into the government service as 29.11.1965 while that of Shri Gurtek Singh as 10.12.1965 and in view of this his position should come earlier to Respondent No. 2.

A notice was issued to the respondents who contested the application and filed the reply and admitted that in the seniority list the date of entry of the applicant in the Government service has been shown as 29.11.1965 in the Grade of LDC. However, in the seniority list of officials of Grade IV of DASS Cadre issued on 27.6.1986 his date of entry in the Government service has been shown as 6.7.1968. Further it is stated that the applicant was given adhoc appointment subject to the passing of the departmental examination. Respondent No. 2 cleared that examination earlier to the applicant while the applicant could not cleared that examination and cleared the same in the year 1968.

The contention of the learned counsel is that the adhoc service put in the applicant as LDC with effect from 29.11.1965 should be taken as starting point for seniority in the Grade IV of DASS Cadre. The applicant has not challenged the seniority list of Grade IV Dass Cadre issued by the letter dated 27.6.1986. Unless the position of the applicant is adjusted in Grade IV of Dass Cadre he cannot claim that he should be declared senior to Respondent No. 2 Shri Gurtek Singh who is said to have joined in the grade of LDC with effect from 10.12.1965. This date is also disputed by the respondents who have stated in the counter that respondent No. 4 joined on 22.11.1965. However in the seniority list of UDC

issued in January 1987, the date of entry in the service is 10.12.1965. The relief claimed by the applicant in the OA is that he should be given promotion with effect from 19.5.1976 i.e. from the date Shri Gurtek Singh was promoted. The claim of the applicant is totally stale. The applicant very well knew about the promotion of Shri Gurtek Singh in 1976 to the Grade of UDC and while the applicant was still working as LDC. The applicant was given promotion to the grade with effect from 28.11.1979. A person has to come for redressal of his grievance within the period of limitation. The learned counsel for the applicant argued that the case of the applicant should not be defeated on the technicalities of limitation. In fact we cannot raise old issues in the matter of seniority which are already settled years ago. The other fatal defect in the application is that the applicant has not sought the revision of the seniority of LDC grade. What is the position in the LDC grade and what were the rules in force at the time of determination of seniority has not been either mentioned in the application or annexed with the application. Everything being in dark, the applicant cannot claim that he should be given promotion to the Grade of UDC from the date Shri Gurtek Singh was promoted. Unless the seniority already fixed of the applicant in the Grade IV of Dass Cadre issued by letter dated 27.6.1987 the applicant cannot claim that the promotion to the grade of UDC be also from the date Shri Gurtek Singh, Respondent no. 2 was promoted. In any case the application was not given at the proper time and was filed in August 1988. The submission of the learned counsel for the applicant that he was making representation cannot in any way condone the delay in filing the application for a grievance which has arisen in 1976 when Gurtek Singh was promoted or 1979 when the applicant was promoted to the cadre of UDC.

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Further, in the seniority of Grade III annexed with the application (Annexue A1) the seniral number of Gurtek Singh is 3029 and the applicant is at serial number 3659. It goes to show that there are many other LDCs promoted to UDC post in the intervening serial numbers. The applicant has not filed the complete list of Grade III and only an extract has been filed which does not go to show the position of the intervening persons from serial number 3030 to 3658. In such a situation the contention of the learned counsel that adhoc service of the applicant V.D. Sharma be also counted for fixing his seniority in the Grade IV of Dass Cadre cannot be accepted. The learned counsel of the applicant has referred to a number of authorities.*

- 1. 1984 (4) SCC 329
- 2. AIR 1990 SC 1607
- 3. 1991 Supp. (2) SCC 553
- 4. 1993 (3) SCC 371
- 5. 1993 (1) SCC 71
- 6. AIR 1964 SC 538
- 7. 1993 (3) SCC 449

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The Constitution Bench judgement in the case of direct recruit Class II Engineering Officers Association Vs. State of Maharashtra (1990) Vol. 2 SCC P 715, it has been held that it is not in the interest of service to unsettle a settled position. The decision dealing with the important questions concerning particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. In the present case the respondent have taken the stand that Gurtek Singh cleared the departmental examination in 1967 while the applicant qualified the competitive test held in 1968 and he was therefore, appointed on regular basis as LDC with effect from 6.7.1968. The learned counsel has placed reliance on Rule 26 which were amended in 1985 by the notification dated 12.7.1985 which lays down that adhoc service without any break in service will count for seniority. The aforesaid rule does not give any benefit to the applicant when the seniority of the applicant in the LDC grade was fixed. In the representation made by the applicant on 4.2.1986 the applicant has stated that the name appears in the seniority list at serial number 3005 while the name of Gurtek Singh appears at serial number 2236. In the application as said above the applicant has not sought any relief for revision of this seniority list and giving a berth to the applicant earlier to Gurtek Singh above serial number 2236 of the seniority list. Thus, the present application is hopelessly barred by limitation.

Coming to the merit of the case it cannot be disputed that after the amendment of Rule 26 of the Draft Rule of the DASS Cadre, the adhoc service rendered by any

government servant has to be counted for seniority and the ratio of the judgement of the Constitution Bench direct recruitment Class II Engineering Officers Association and ors (Supra) also is to the effect that since the incumbent is appointed to a post according to the rules his seniority has to be counted from the date of his appointment and not according to the date of confirmation but the corollary of the above rule is that where the initial appointment is only adhoc and not according to rule and made as stopgap arrangement, the officiation in such posts cannot be taken into account for considering the seniority. Further, in the concluding Para 47(B), it has also held if the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterrupted till the regularisation of his service in accordance with the rules, the period of officiating service will be counted. The letter of appointment dated 29.11.1965 of the applicant in Para 7 clearly lays down that the applicant will have to pass a competitive examination in due course as the appointment was purely on adhoc basis. It is also laid down that the above appointment will not confer upon him any right whatsoever for regular appointment on this post or equivalent post under Delhi Administration. In view of this fact the passing of the limited departmental examination was essential. Gurtek Singh has cleared the examination earlier to the applicant in 1967, and the applicant passed the examination in the year 1968 on that account also the applicant should not have any grievance. The contention of the learned counsel that no time limit was given for passing the competitive examination was given has no basis. For regularisation to the post the applicant has to clear the examination in order to have a lien on the post. In the case

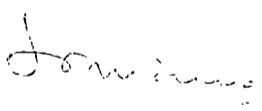
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of K.C. Joshi Vs. Union of India and ors reported in (1993 24 ATC) P. 545, it has been clearly laid down that where the conditions are not fulfilled regarding the appointment and according to the rules then benefit of adhoc service will be not admissible. The Hon'ble Supreme Court held that clause(B) of para 47 referred to above in the case of direct recruits (Supra) is based on the ratio of Narinder Chadha's case. The applicant can become member of the service only after he has cleared the competitive departmental examination as referred to in his offer of appointment. The number of authorities relied by the learned counsel particularly of State of West Bengal Vs. A.N. Dey and ors reported in (1993 24 ATC P 932) does not apply to the case of the applicant. In this case also the Hon'ble Supreme Court held that Para 47 (B) of the direct recruits case (Supra) is applicable in those cases where there was procedural irregularities in the appointment according to rules, which were subsequently rectified.

In view of the above facts and circumstances the application is barred by limitation and also devoid of merit and is dismissed.


(B.K. Singh)

Member(A)


(J.P. Sharma)

Member(J)

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