

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

OA.963/88 Date of Decision:21.10.1993

Shri Inderjit Applicant

Versus

Union of India & Ors. Respondents

CORAM:

Mr. C.J. Roy, Hon. Member(J)

Mr. P.T. THIRUVENGADAM, Hon. Member(A)

Shri J.P. Verghese Counsel for the applicant

Shri P.P. Khurana Counsel for the respondents

JUDGEMENT(Oral)

(delivered by Hon.Member(J) Shri C.J. ROY)

The brief facts of the case are that the applicant was appointed as LDC in the department of respondent No.1 on 6.10.59 after qualifying the First All India Clerical Grade Examination held by the UPSC in 1958 and confirmed in the post w.e.f. 7.10.1959. He was subsequently promoted as UDC and Assistant. The applicant is aggrieved by the orders dated 4.2.87 and 20.2.87 by which the seniority of the applicant, which was fixed in the year 1974 was changed unilaterally and without any reason after about a lapse of 13 years without giving any opportunity to the applicant.

2. The learned counsel for the applicant referred us to the Annexure-I Select List for U.D. Grade on the cadre of the Ministry of Shipping and Transport for the year 1973, in which against the name of the applicant at Sl.No.1, date of birth as 4.4.37 and Rank

in List as 5697 have been shown. In the subsequent seniority list issued on 1.9.86, the name of the applicant is shown at Sl.No.12 indicating the date of continuous appointment and date of confirmation in the grade. In this list employees who figure at Serial numbers 1 to 11 had all figured in lower seniority positions in the 1973 Select List vis-a-vis the applicant who was then in the number 1 position. The applicant alleges that this list was prepared as per provisions in a subsequent notification which has not been made retrospective. He has filed this application with a prayer to declare the impugned order dated 4.2.87 and 20.2.87 (circulating the revised seniority) as illegal, void and contrary to rules and direct the respondents to restore his seniority in accordance with the Select List of 1973 issued on 28.11.74.

3. The respondents have referred to the channels and eligibility conditions for appointment as UDCs, LDCs with minimum 8 years service and LDCs who pass the Limited Departmental Examination make for the 2 feeder categories. They allege that these two categories are included in the Select List of UDC by taking them in the proportion of 1:1 [now the proportion of 3:1 vide notification No.7/31/73-CS.II dated 4.2.76 (Annexure-I) of the counter]. If persons within the range of seniority are not available in a cadre for making addition to the Select List from any one category, such additions shall be made from a panel furnished by the Department of Personnel and Training. In case, the persons of any of the above categories are not available for placement in the Select List in

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the above proportion, the Select List of that particular year may be prepared by showing the names of other category alone. There is another clarification issued by the Department of Personnel and Training vide OM No.3/1/84-CS.II dated 17.4.84 that the LDCs selected on the results of UDC Limited departmental Competitive Examination, shall be placed in the Select List of the year, in which the examination was held(Annexure-V to the counter). While admitting the issue of select list of UDC for 1973, the respondents deny the contention of the applicant that no select list for 1972 was issued by cadre authorities and that the select list is prepared on the basis of long term vacancies only. In Para 6.6 they have stated that the action was initiated for revising the Select List/Seniority List of UDCs only after receiving representations (Annexure VI), made by other UDCs who were appointed on the basis of Limited Departmental Competitive Examination 1972. They further allege that S/Shri S.S. Negi, K.C. Kumar, K.K. Nanda and V.K. Bhardwaj were appointed as UDC on the basis of Limited Competitive Departmental Examination 1972 and were originally placed in the Select List of 1973. As per standing instructions of the Departmental of Personnel and Training(DP&T), the place of candidates recommended through examination in the Seniority List will be in the year in which the examination was held (Annexure-V). The provisional revised Select list of UDCs was accordingly notified on 4.2.87 and 20.2.87(Annexure VII & VIII), only after consultation with the DP&T. The representation submitted by the applicant was examined and the DP&T advised that the individual appointed on the basis of

UDC Limited Departmental Competitive Examination, 1972 should be placed in the Select List of 1972. A meeting was also held on 26.8.87 in this regard and accordingly a final Select/Seniority List was prepared and issued on 16.12.87(Annexure IX & X). The other points raised in the counter are not germane to the main issue of the case.

4. We have heard the learned counsel for both parties and perused the documents on record. The short point for consideration is whether the notifications dated 16.12.87 can take away the rights that are conferred or accrued to the applicant and if so, the applicant's name could be included in the Select List as per the said notification. We have seen the Select List of 1973 in which the name of the applicant appears at Sl.No.1. But the subsequent Seniority List as on 1.1.1986 shows the name of the applicant at Sl.No.12, below those candidates who were shown junior to him in the 1973 list. The law laid down in this regard states that the notification issued and followed with retrospective effect, cannot bind the people already selected and graded in the List. Their vested right cannot be disturbed by a subsequent notification.

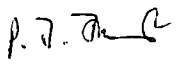
5. The learned counsel for the respondents argue that if a direction is given in favour of the applicant, it would result in disturbing the placement of 11 candidates, who are not parties in this OA. We are neither satisfied with the contention of the learned counsel of the respondents nor the departmental representative, who sought to intervene

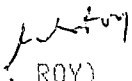
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and apprise the matter across the bar. Since sufficient material is available on record, we do not consider it necessary to implead all those 11 candidates as parties and since their interests have been taken care of by the department, we proceed to dispose of this case on the basis of pleadings and documents available on record.

6. Holding that the said notification cannot be made applicable with retrospective effect, we hereby dispose of this application with the direction to the respondents to restore the seniority of the applicant as per the Select List of 1973 issued on 28.11.74, in which his name was placed at Sl.No.1. If any affected party is aggrieved, they are given liberty to approach this Tribunal.

7. The case is disposed of with the above directions.

  
(P.T. THIRUVENGADAM)  
MEMBER(A)  
21.10.93

  
(C.J. ROY)  
MEMBER(J)  
21.10.93.