

Reserved On 25.09.2020

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD**

(This the **20th Day** of **October**, 2020)

Hon'ble Mrs. Justice Vijay Lakshmi, Member (Judicial)
Hon'ble Mr. Navin Tandon, Member (Administrative)

Original Application No.330/470/2012

Maharani DeenYadav, son of Sri Ram AutarYadav, Resident of 234/1
Tilyarganj, Allahabad.

..... Applicant

By Advocate: Shri K.P. Singh

Versus

1. Union of India through the Secretary, Ministry of Defense (D.H.Q.)
Post Office South Block, New Delhi.
2. The Director General of Ordnance Services, (O.S. – 8C) (II) MGO's
Branch Integrated HQ of MOD, (Army), DHQ, P.O., New Delhi –
110011.
3. Officer In Charge, A.O.C. Records, Secundrabad – 15.
4. Commandant, COD Chheoki, Allahabad.
5. Col, J.J.S. Bhinder, previously Officiating Commandant, COD Chheoki,
Allahabad., presently posted at OSCC/CICP, Room No.12, B Block
M.G.O. Branch/OS Directorate, Integrated Headquarters of the
Ministry of Defence, New Delhi – 110011.
6. Col. Ajeet Deshpande, the Present officiating Commandant of Central
Ordnance Depot, Chheoki, Allahabad., likely to be posted out to.....

..... Respondents

By Advocate: Shri L.P. Tiwari

ORDER

Delivered by Hon'ble Mrs. Justice Vijay Lakshmi, Member (Judicial)

1. The applicant by means of the instant Original Application (OA)
has, inter alia, prayed for a direction to the respondents to consider and
grant him promotion with effect from December, 2007 i.e. the time

when the persons junior to him were promoted. Prayer has also been made to grant the applicant, arrears of pay, allowances and all other consequential benefits from the year 2007.

2. We have heard Shri K.P. Singh, learned counsel for the applicant and Shri L.P. Tiwari, Advocate, who is representing all the respondents and have carefully perused the pleadings of both the parties.

3. Shorn of unnecessary details, the facts in brief, giving rise to the controversy involved in the instant OA, are that the applicant was appointed as a Messenger in the Central Ordnance Depot (COD for short) on 12.05.1984 at Chheoki, Allahabad. The first financial up-gradation was granted to him in the year 1999. The recruitment rules for promotion were framed by the Department on 13.04.2004 for promotion of Group 'D' employees to the post of Lower Division Clerk (in short LDC) Group 'C' under the 10% departmental quota.

4. On 03.04.2006, the applicant applied for being considered for promotion to the post of LDC. Then on 05.04.2007, he again applied for the said post. However, since his applications were not recommended for promotion to the post of LDC, the same were not sent to AOC record for consideration by the DPC.

5. The applicant, being aggrieved, filed OA No.1206 of 2007 before Central Administrative Tribunal, Allahabad Bench, which was disposed

off at the admission stage vide judgment/order dated 11.12.2007, with a direction to the respondents to consider the representation dated 01.10.2007 of the applicant and to pass a speaking order on it within four weeks.

6. In compliance of the aforesaid order, the representation of the applicant was decided by the respondents. However, the applicant being dissatisfied with the speaking order, filed another OA No.277 of 2008 (Maharani DeenYadav vs. Union of India &Ors.) before this Bench. After hearing both the parties this Tribunal allowed the OA vide judgment and order dated 20.10.2011 with the following direction:-

“7. Accordingly, the O.A. is allowed, the impugned order are quashed and set aside. The respondents No.4/Commandant, COD, Chheoki, Allahabad is directed to forward the name of the applicant for relevant year for placing before AOC (Records), Secundarabad for its consideration for promotion to the post of L.D.C. No costs.”

7. In compliance of the aforesaid order passed by this Tribunal, all the applications submitted by the applicant i.e. on 25.05.2007, 28.04.2008 and 12.05.2010, were forwarded to AOC record vide letter dated 19.01.2012, for their consideration.

8. After examining the case, AOC records, vide impugned order dated 30.01.2012, communicated to the applicant vide letter dated 5.3.2012,(as per the averments in OA) rejected the claim of the applicant on the ground that as his applications for the relevant years were not recommended by the commandant, during that year of

promotion to Group 'C' post of LDC against 10% departmental quota, it is not possible to include his name in the seniority list, in terms of Para-5(a) and 5(c) of Record Office Instruction No. C/02/2004 dated 13.04.2004. However, the applicant was advised that in case he submits a fresh application in future and COD Chheoki duly recommends it, the prospects of his promotion may be considered against the vacancy falling in the next year i.e. 2013, by the DPC to be held in October/November, 2012.

9. The applicant, instead of moving a fresh representation for his promotion against the vacancies falling in the year 2013, filed the instant OA, whereby challenging the legality and correctness of the impugned order dated 30.01.2012 and the speaking order/letter dated 05.03.2012, as mentioned in the preceding paragraphs. Thus, the applicant is before us in the 3rd round of litigation.

10. The solitary contention raised by learned counsel for applicant is that the impugned order passed by the respondent No.3, has been passed contrary to the Record Office Instructions dated 13.04.2004 and also it is in the teeth of the judgment dated 20.10.2011, passed by a coordinate Bench of this Tribunal, in earlier OA no.277/2008, *Maharani DeenYadav v. U.O.I. &ors.* decided on 20.10.2011, wherein, in Para6, it has been clearly observed that *"the commanding officer is to recommend the name of eligible candidate with his recommendation for placing before AOC record for consideration for promotion to the higher post."*

11. Learned counsel for the applicant, on the basis of aforesaid observation, has vehemently argued that in wake of the observation in para 6, it was not only mandatory for the respondents but it was their bounden duty to recommend the case of the applicant for promotion and they did not have any choice of not recommending his case as was done by them and the rule to recommend the name should have been applied as a thumb rule by the respondents.

12. Some malafide intention on the part of respondent no.3, has also been alleged with the averments that as the applicant was functioning as Branch Secretary of the 'Messenger Association' in the department and he had dared to question the Commandant to inform him that under which provision he was taking the interview, the respondent No.3 got annoyed and did not recommend his case for promotion.

13. In support of his claim, learned counsel for the applicant has placed reliance on the following judgments of Hon'ble Apex Court:-

- (i) N. Suresh Nathan and others vs. Union of India and others reported in (2010)5 SCC 692
- (ii) National Airport Authority vs. Nilu Sharma and others reported in AIR 1999 Supreme Court 194.
- (iii) Jaghnath vs. Union of India and another reported in AIR 1992 Supreme Court 126.

14. To the contrary, learned counsel for the respondents has vehemently opposed the OA by contending that due to the reason that

the applicant's case for promotion was not recommended by the competent authority/Commandant and as the competent authority was very well empowered to do so in terms of Record Office Instructions dated 13.04.2004, the applicant's case was not considered for promotion.

15. It is next contended by ld. counsel for the respondents that in so far as the promotion of the persons junior to the applicant is concerned, all the candidates whose applications were recommended by the Commandant/Officer commanding of the Depot/Unit, were promoted to the post of LDC. However, due to poor performance of the applicant, his applications were not recommended by the then Commandants of COD Chheoki in the year 2007, 2008 and 2010. As a result, he could not be promoted.

16. In this regard our attention has been drawn to Record Office Instructions dated 14.04.2004. The relevant Para 4(f), 5(a) and 5(c) of which are reproduced below:-

“4(f)- Recommendations of the Comdt/OC/CO unit.

5(a) AOC Record Office will call for recommendations from Comdt COs/OCs units in respect of the educationally qualified Go 'D' employees (Non Industrial) who volunteer and fulfil the conditions stipulated at para 3(c) and (d) above, Recommendation of the Comdt/COs/OC will be as per format given at Appx 'A'.

5(c) Depots/Units will fwd the applications of the eligible individuals to AOC ® by the stipulated date, Each application will be countersigned by the Comdt/COs/OC, alongwith recommendations report.

Appx 'A'-

Countersignature/recommendations of Comdt/CO/OC

The individual fulfills all conditions laid down as per the ROI, The individual is fit/capable and hence may be granted the promotion of Lower Division Clerk.

Recommended/Not recommended

Sig of Comdt/Cos/OC

17. Learned counsel for the respondents has vehemently contended that the oblique (/) mark placed between the two words recommended/not recommended, in the last line of aforesaid Record Office Instruction, cited above, clearly indicates that the competent authority is not bound to recommend the name of a Group 'D' employee for his promotion to LDC as a thumb rule and he has been given a choice either to recommend or not to recommend an employee's name for promotion and it is the sole discretion of Commandant to recommend his name after assessing his fitness and capability for promotion to the post of LDC.

18. It is contended that as the performance of the applicant was found below standard due to lack of basic knowledge of English, his name was not recommended to the post of LDC, considering the nature of the work he was supposed to perform after being promoted to LDC.

19. While drawing our attention to Para-6 of the judgment dated 20.10.2011, it has been submitted by learned respondents' counsel that

a bare reading of this paragraph clearly indicates that there is some typographical error in it.

20. Para-6 of the judgment dated 20.10.2011 passed by this Tribunal reads as under:-

“6. From perusal of the above, it is clear that the Commanding Officer is to recommend the name of eligible candidate with his recommendation for placing before AOC (Records) for consideration for promotion to the higher post. In the instant case, from perusal of the impugned order, it is clear that the case of the applicant was itself considered by the Officiating Commandant, COD, Chheoki and the same was not forwarded to AOC (Records), which is contrary to their own instructions. Therefore, we find that the impugned order is in violation of Annexure-4 and hence is liable to be set aside.

21. Learned counsel for the respondents contends that Para-6 of the aforesaid judgment should be read as a whole and 7th line of this paragraph clearly indicates that in the 2nd line the word ‘forward’ should have been used in place of the word ‘recommend’ because in the 7th line it is clearly mentioned that *“the same was not forwarded to AOC record”*. Moreover, the first three lines show that there is a repetition of the word ‘recommend’ twice in the same line i.e. *“to recommend the names of eligible candidate with his recommendation.”* which does not appear normal and which clearly indicates that it was a typographical error. Moreover, the operative portion of the judgment, quoted below, is very clear having no ambiguity in it with use of word "forward" in clear terms.

7. Accordingly, the O.A. is allowed, the impugned orders are quashed and set aside. The respondents No.4/Commandant, COD, Chheoki, Allahabad is directed to forward the name of the applicant for relevant year for placing before AOC (Records),

Secundarabad for its consideration for promotion to the post of L.D.C. No costs.”

22. On the aforesaid grounds, it has been vehemently contended that the impugned order dated 05.03.2012, cannot be said to be in the teeth of judgement dated 20.10.11 passed in earlier OA filed by the applicant.

23. It is lastly submitted that even if there is any ambiguity, contradiction or some confusion in the body of the judgment, its operative portion, which is normally the last paragraph of the judgment, will prevail and a perusal of the last paragraph shows that the words used are “to forward” and not “to recommend”.

24. We have given our thoughtful consideration to the rival arguments advanced by learned counsel for both the parties and have carefully gone through the record including the judgments of Hon’ble Apex Court, filed by the applicant’s Counsel by means of a Supplementary Affidavit.

25. In N. Suresh Nathan’s case (supra), the Hon’ble Apex Court has held that merit is the sole criteria where the post in question is a selection post. On the basis of this judgment, learned counsel for the applicant has argued that where the post is not a selection post but a promotional post under departmental quota of promotion, merit is not a criterion and only seniority should be considered as sole criterion.

26. The aforesaid arguments advanced by learned counsel for applicant is devoid of any substance. Hon’ble Supreme Court in the

aforesaid case, has nowhere held that merit should not be considered while promoting a person and his promotion should be made only on the basis of seniority. To the contrary, Hon'ble Apex Court in the aforementioned case has held in unequivocal terms that "seniority therefore is not the only relevant consideration". For a ready reference, the operative portion of the aforesaid judgment of Hon'ble Supreme Court, as indicated in Para-50, is quoted below:-

*“50. For the aforesaid reasons, we set aside the impugned judgment of the High Court and direct the Government of Pondicherry to consider the case of all Section Officers or Junior Engineers, who have completed three years’ service in the grade of Section Officers or Junior Engineers, for promotion to the vacancies in the post of Assistant Engineer, Public Works Department, Government of Pondicherry, **in accordance with their merit**”*

(Emphasis applied by me).

27. The 2nd and 3rd cases cited by applicant’s counsel are also of no help to him because the facts are entirely different.

28. On and overall assessment of the facts and circumstances of the case, we are of the view that the language of Record Office Instruction No. C/02/2004 dated 13.04.2004 along with Appendix ‘A’ is very clear having no ambiguity in it. The use of the word ‘*recommended/not recommended*’ in the Appendix, with a mark of oblique in between, clearly indicates that the competent authority has the option either to recommend the name or not to recommend the name of a candidate of group 'D', claiming for promotion to the post of LDC.

29. Para-6 of the judgment dated 20.10.2011, on which much stress has been laid by ld. Counsel for the applicant, clearly indicates that the use of the word “*recommend*” at two place in the same line does not

make any sense and in the later part of para-6 the word "*forward*" is clearly mentioned. Moreover, the operative portion of the aforesaid judgment contained in Para-7 is very clearly worded, whereby COD Chheoki, Allahabad has been directed "to forward" the name of the applicant for relevant year for placing before AOC record for its consideration for promotion to the post of LDC.

30. Thus, there was no such direction to the respondents by this Tribunal earlier to recommend the case of the applicant for promotion.

31. The common sense also does not permit to have any such interpretation making it a thumb rule that the competent authority has no other option except to recommend the name of a candidate without examining whether he deserves to be promoted or not.

32. Therefore, the argument of learned counsel for the applicant that the Record Office Instruction dated 13.04.2004 and the judgment of this Bench dated 20.10.2011 have been violated and the competent authority was required to recommend the case of the applicant as a thumb rule, is not tenable.

33. The impugned order dated 05.03.2012 does not require any interference by this Tribunal. The OA being devoid of any merit is liable to be dismissed and is dismissed accordingly.

34. No order as to costs.

(Navin Tandon)

(Justice Vijay Lakshmi)

Member (A)

Member (J)

Sushil