

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD

OA/021/00925/2019

Reserved on: 02.09.2020

Pronounced on: 09.09.2020



**THE HON'BLE MR.ASHISH KALIA : JUDICIAL MEMBER**  
**THE HON'BLE MR.B.V.SUDHAKAR : ADMINISTRATIVE MEMBER**

Sunil D.Shivalekar, Aged about 46 yrs,  
S/o Dattatarya, Office Superintendent,  
O/o The Deputy Chief Labour Commissioner (C),  
Govt of India, Ministry of Labour and Employment,  
Vidyanagar, Hyderabad-500007.

...Applicant

(By Advocate : Mr.T.Koteswara Rao)

Vs.

1. Union of India, Represented by its Secretary,  
The Government of India,  
Ministry of Labour & Employment,  
Shramasakti Bhawan, Rafi Marg, New Delhi – 110 001.
2. The Chief Labour Commissioner (C),  
The Government of India,  
Ministry of Labour & Employment,  
Shramasakti Bhawan, Rafi Marg, New Delhi – 110 001.
3. The Deputy Chief Labour Commissioner (C),  
Government of India, Ministry of Labour & Employment,  
ATI Campus, Vidya Nagar, Hyderabad 500007.
4. R.Jaya Lakshmi, Aged about 52 years,  
Office Superintendent,  
The Deputy Chief Labour Commissioner (C),  
Shastri Bhavan, Haddows Road, Chennai-600006.
5. A.K.Bandyopadhyaya,  
Office Superintendent,  
The Deputy Chief Labour Commissioner (C),  
Asansol, West Bengal. ....Respondents

(By Advocate : Mr.L.Pranathi Reddy, Addl.CGSC)

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**ORDER****(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)**

2. The OA is filed assailing the letter dated 14.10.2019 in ordering the training programme to juniors of the applicant, which is a precursor to the promotion to the post of Labour Enforcement Officer.

3. Brief facts of the case are that the applicant was appointed as LDC on 7.3.1994 and later, promoted as UDC on 4.4.2002. Respondents issued circular dated 10.3.2014 for filling up 20 Office Superintendents (for short "OS") posts by UDCs who have rendered regular service of 10 years. Respondents granted promotions vide impugned order dated 30.5.2014 to 19 UDC which included the private respondents who were placed at Sl. Nos.51 & 52 of the seniority list whereas the applicant was listed at Sl.No.50. Aggrieved, applicant filed OA 493/2018 which was disposed on 22.3.2019 directing respondents to grant promotions in accordance with seniority-cum-fitness as per Circular 10.3.2014. Respondents arranged the training programme to the private respondents for further promotion to the post of Labour Enforcement Officer (for short "LEO") vide Order dated 14.10.2019. The applicant claims that the respondents without implementing the orders of the Tribunal in OA 493/2018, going ahead with the training of the private respondents is arbitrary and hence, the OA.

4. The contentions of the applicant are that, he being senior to the private respondents, has to be sent for the training and consequently, promote him as LEO. Orders of the Tribunal in OA 493/2018 have not been implemented and hence, Contempt Petition has also been filed.

5. Respondents in the reply statement state that the applicant has not approached the competent authority before approaching the Tribunal. Orders of the Tribunal in OA 493/2018 have been complied. As per the latest seniority list as on 01.04.2019, circulated on 08.04.2019 (Annexure R-2), the applicant is junior to the private respondents. Recruitment rules stipulate that office Supdts. with 5 years of service and who have undergone 4 weeks training in Labour laws and administrative matters are eligible for promotion to the post of LEO. Applicant was appointed as OS on 8.2.2018 whereas the private respondents on 30.5.2014 and hence, the applicant, being junior and also for having not rendered 5 years service in OS cadre, he was not considered for the training programme.

Applicant filed a rejoinder wherein he claims that the communication received in regard to the implementation of the orders of the Tribunal in OA is not in consonance with the directions of the Tribunal therein. Respondents did not deny that the private respondents were juniors to the applicant and have not given reasons for not promoting the applicant as OS in 2014. Respondents seeking a choice for place of posting before granting promotion is new to service jurisprudence. If a Govt. Servant does not join the promotional post, then he can be denied promotion for next one year as per relevant rules.

Taking cognizance of the rejoinder, respondents filed an additional reply wherein they assert that the DPC recommended 37 UDCs to be promoted as OS which included the applicant. On 30.5.2014 orders of promotion were issued to 19 UDCs as per seniority and their place of choice. The applicant and many seniors to him, who were found eligible, were not considered for promotion as there were no vacancies in the places of their choice. The private respondents, though junior to the applicant, have agreed for posting in places where vacancies were available and hence, they were promoted as O.S in 2014. The private respondents were serialised

at Sl. Nos. 48 & 49 and the applicant at Sl. No. 47 in the seniority list of UDC published on 7.2.2014 (Annexure-VI to the additional reply). APARs of 50 officials were therefore called to examine grant of promotions to OS cadre, including the private respondents.

6. Heard both the counsel and perused the pleadings on record.

7. I. The dispute is about directing the private respondents for training before considering them for promotion to the post of LEO ignoring the claim of the applicant that the private respondents are junior to him.

II. As per the Circular dated 10.3.2014 for filling of posts of OS, a DPC met and cleared 37 UDC candidates for promotion to the post of O.S. Respondents issued orders to 19 of the candidates selected based on their seniority and places of choice. The applicant was also cleared and the vacancies available to post him were Chennai and Dhanbad which were not his places of choice and hence, he was not promoted. Along with him, even those senior to the applicant were not promoted for lack of vacancies in the places of their choice. The private respondents, on the other hand, were willing to go over to Chennai/ Dhanbad and therefore, were promoted in 2014 as OS. Clause 7 of the Circular dated 10.3.2014, extracted hereunder, clearly spells out that those who were found eligible for promotion, but do not express their willingness/unwillingness in writing to join in the promoted post, would be presumed to be disinterested to be considered for promotion as O.S.

*“7. The officials who are eligible but not interested in their posting outside their region will also give their unwillingness in writing, to the concerned regional heads. In cases any officer does not give his willingness/ unwillingness in writing to the concerned regional heads by the stipulated date it will be presumed that he/ she is not interested in being considered for promotion to the post of Office Superintendent.”*

The Ld. Counsel for the respondents submitted that since the applicant has not expressed any unwillingness in writing it is presumed that he was not interested in getting promoted and hence, not promoted. We agree with this contention since the applicant, though found eligible, did not choose to express willingness to get promoted as OS in accordance with Clause 7 cited. Whereas, private respondents, who figured in the seniority list dt. 7.2.2014 at Sl. Nos. 48 & 49 (Annexure VI), as referred to at clause 2 of the notification, were within the 50 number of candidates, whose APARs have been called and found eligible to be promoted, gave consent to be posted in Chennai and Dhanbad as OS. Hence, they were promoted in 2014 and posted to places referred. Applicant was later promoted in 2018 as O.S. Therefore, he would rank junior in the OS cadre to the private respondents and also he has not completed 5 years of service from 2018 to be eligible to be sent for the training in question. In contrast, the private respondents have the requisite eligibility by 2019 and hence, were considered.

III. In regard to the order of the Tribunal in OA 493/2018 it reads as under:

*“7. We, therefore, set aside the reply dated 20.07.2017 and direct the Respondents No. 1 & 2 to specifically address the question as to why the applicant was overlooked for promotion in the year 2014 and depending on the same, grant necessary relief to the applicant, within a period of six weeks from the date of receipt of copy of this order. There shall be no order as to costs.”*

The respondents could not consider the promotion of the applicant for the reason that though he was considered eligible to be promoted as OS, he did not express any willingness/unwillingness in writing as per Clause 7 of the notification of 10.3.2014 which portrays deemed disinterest to be considered for promotion as OS. Clause 7 was uniformly applicable to all those eligible and not just for the applicant. Even the promotions of the eligible seniors to the applicant were not

considered for a similar reason. This was not denied by the applicant in his rejoinder. The reply given by the respondents vide letter dt. 30.09.2019 (Annexure II to additional reply), in response to the direction of this Tribunal in OA 493/2018, is as under:

*“2. In this regard, it is to say that the Departmental Promotion Committee in its proceedings dated 27.05.2014 recommended 37 UDCs for promotion to the post of Office Superintendent and Sh. S.D. Shivalekar, UDC at that time, was 33<sup>rd</sup> in the list of 37 recommended UDCs. Following the recommendation of DPC and as per options exercised by the UDCs for the place of posting, promotion and posting order dated 30.05.2014 in respect of only 19 UDCs was issued. As per Seniority of UDCs and options given by them, regions were allotted to the candidates and when the turn of Sh. Shivalekar came, only two vacancies at Chennai and Dhanbad region were left. Sh. Shivalekar had not opted for any of the two regions and hence he was not considered for promotion at that time due to non-availability of vacancy at the regions opted by him.*

*3. In the process as mentioned above, it may be seen that many UDCs senior Sh. S.D. Shivalekar were not given promotion in the year 2014 on the same reasons i.e. non-availability of vacancy at the regions opted by the UDCs at that time and subsequently Smt. R. Jayalaxmi and Sh. Sh. A.K. Bandyopadhyaya (junior to Sh. Shivalekar) were promoted and posted in the Chennai and Dhanbad region respectively due to availability of vacancy at the regions opted by these two respectively Sh. S.D. Shivalekar, OS may be informed accordingly.*

*This issues with the approval of CLC (C).”*

The reply given above and for reasons of not expressing willingness to join as O.S., the order of the Tribunal can be construed to have been complied. We find no error committed in this regard by the respondents.

IV. Moreover, the issue of promotion to OS pertains to the year 2014. It is not explained by the applicant as to why he took 4 years to challenge the promotion to OS in 2018. In this period, the private respondents seniority has been settled in OS cadre. It is well settled that settled seniority cannot be unsettled as per Hon'ble Supreme Court observation in *Shiba Shankar Mohapatra v. State of Orissa, (2010) 12 SCC 471, at page 483 as under :*

*“30. Thus, in view of the above, the settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained.”*



V. Further, applicant claimed that the private respondents were listed at Sl.Nos. 51 & 52 and that they should not have been considered for promotion to the post of OS since only 50 candidates were supposed to be in the zone of consideration as per notification of 10.3.2014. This assertion is incorrect since the notification indicated that the promotion to OS would be considered based on the subsequent seniority list dated 7.2.2014 wherein private respondents have figured at Sl.Nos. 48 and 49 and hence, within the zone of consideration.

VI. Therefore, it is evident from the above that the applicant having not expressed his willingness for promotion in 2014 for the OS cadre has become junior to the private respondents. It was the mistake of the applicant to have not expressed his willingness to be considered for promotion to the post of OS on being found eligible, as per clause 7 of the notification dated 10.3.2014. Applicant cannot take advantage of his own mistake at this date and pass on the blame to the respondents stating that they did not promote him as O S. In this regard, we take support of the observation of the Hon'ble Supreme Court in ***A.K. Lakshmipathy v. Rai Saheb Pannalal H. Lahoti Charitable Trust, (2010) 1 SCC 287*** as under:

“they cannot be allowed to take advantage of their own mistake and conveniently pass on the blame to the respondents.”

Had the applicant expressed willingness for promotion and if the respondents were not to grant the same, then the applicant would have had a case to pursue. Having not done so, which was his mistake and therefore finding fault with the respondents at this juncture of time is against the observation of the Hon'ble Supreme Court. Unfortunately, it would tantamount to chasing a mirage in the desert. On the contrary, the private respondents, having put in 5 years of service in the OS cadre, would be eligible for undergoing the training, which is a pre-

requisite to be considered for promotion to the post of LEO. Applicant obviously cannot be sent for training since he was promoted in 2018 and therefore, has not rendered the 5 years service to be eligible to be sent for training in question.

VII. In view of the aforesaid circumstances, we find no merit in the case and hence, the OA is dismissed with no order as to costs. As a result, the interim order dated 23.10.2019 stands vacated.

(B.V.SUDHAKAR) (ASHISH KALIA)  
ADMINISTRATIVE MEMBER JUDICIAL MEMBER

Pv/evr