

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 37 of 1986
Ex. No.

DATE OF DECISION 31-3-86

Shri Uday Ram Pokhiyal Petitioner

Shri Vimal Goel Advocate for the Petitioner(s)

Versus

Chief Administrative Officer Respondent
Ministry of Defence

Mrs. Raj Kumari Chopra Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.P. Mukerji, Member

The Hon'ble Mr. H.P. Bagchi, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?

JUDGMENT:

The applicant has come up under Section 19 of the Administrative Tribunals Act praying for the following three reliefs:

Ex. 1) Loss of 16 years uninterrupted service as LDC/UDC from 21st Nov. 1955 to 21st Oct.

1971, be made good and the same be taken into consideration for computation of seniority as it is a well settled law that Past Service if it is continuous service called by whatever name, must always be counted towards seniority and for all other purposes.

ii) ~~This Hon'ble Court be pleased to set~~ aside the order dated 4th Nov. 1985, passed by CAO, Shri S.K. Bhardwaj with a further declaration to the effect that applicant is governed by Old Rule of Temporary Service Rule Defence Service 1949 and further linking the applicant with the New Rule of 1963, has resulted injustice and gross discrimination, for which the Respondents be directed to compensate the applicant in terms of money, after refixing his seniority.

iii) Costs of the legal proceedings and any other order deemed fit and proper under the circumstances of the case.

2. The case in brief is that the Petitioner was made quasi permanent in Class IV grade in 1950 in the Armed Forces Headquarters and appointed as temporary LDC on 21.11.55. He was continued as temporary LDC when on 3.6.64 he was promoted as officiating UDC. He officiated in that capacity till 1975 when he was reverted as LDC. Earlier

he had been confirmed as LDC on 22.10.71. In April, 1978 he was given a regular promotion as UDC. His earlier grievance was that he should have been confirmed as LDC on completion of three years of service on 21.11.58 and that his seniority in the grade of LDCs should be fixed on the basis of his continuous length of officiating service since 21.11.55. The stand taken by the Respondent has been that the Armed Forces Headquarters Clerical Service Rules came into force on 1.3.68 and prior to that date seniority and confirmation in the grade of LDC were governed by various Executive Orders and Administrative instructions issued by the Ministry of Defence in consultation with the Ministry of Home Affairs and the UPSC from time to time. In accordance with these instructions passing of a typewriting test held by the UPSC was a pre-condition for confirmation. Seniority was based on the date of confirmation. On the basis of his relative seniority as temporary LDC he was considered for confirmation by the Departmental Promotion Committee (DPC) in 1964 against a vacancy of 1960 but since the petitioner had not passed the UPSC typewriting test he was warned to pass the requisite test within the first four chances from the date of warning failing which he would forfeit his claim to confirmation in the LDC grade.

He along with others was given further extension to pass the test for seeking confirmation from due dates. The Petitioner did not pass the UPSC typewriting test but in spite of that he was promoted as UDC in June '64. Because of his failure to pass the typewriting test he should have been reverted from the UDC grade on 10.4.70 but on compassionate grounds he and others of his category were continued as UDC till 1975.

Ultimately the petitioner was exempted from passing the UPSC typewriting test with effect from 22.10.71 and confirmed in the grade of LDC from that date. He got his promotion as UDC on a regular basis in 1978.

3. In 1975 the petitioners and a number of others of his category went to the Hon'ble High Court of Delhi under Civil Writ Petition No. 423/75 praying that they should be confirmed as LDC from due dates and not from the date of exemption and their seniority should be based on length of continuous service. The learned Single Judge in his judgment dated 8.4.81 rejected the first request about pre-dating confirmation as LDC, holding that the passing of the UPSC typewriting test was mandatory for confirmation but he allowed the second relief holding that the petitioners should be granted seniority on the basis of continuous length of service and confirmed as

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LDC from due dates. He also held that passing of Departmental typewriting test cannot be held at par with UPSC test. The Government filed appeal against the verdict of the learned single judge before the Division Bench of the Delhi High Court who in their order dated 5.3.82 upheld the first finding of the Single Judge about confirmation but allowed the appeal on the second point holding that seniority should be determined by the date of confirmation and not by the length of continuous service. The individuals aggrieved by the decision of the Division Bench filed before the Supreme Court a Special Leave Petition No.8676 of 1982 which has since been admitted and converted into Civil Writ Petition No.4133 of 1982. It may however be noted that the present applicant is not one of the appellants before the Hon'ble Supreme Court.

4. Now the applicant has come before us seeking only the relief of getting his seniority fixed on the basis of length of continuous officiation. He has not sought any relief regarding confirmation from an earlier date under the impression that if he can improve his seniority by virtue of his length of service as LDC/UDC he could thereafter easily get himself confirmed from an earlier date irrespective of the fact that he had failed to pass the typewriting test held by the UPSC. Be that as it may, his unifocal thrust in the present application is to get his seniority determined on the basis of length of service. This matter has been very much

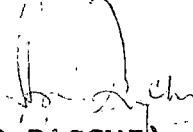
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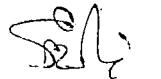
at issue both before the Single Judge as well as the Division Bench of the Hon'ble High Court of Delhi and is one of the main points for adjudication by the Hon'ble Supreme Court. As the matter stands, the judgment of the Division Bench of the Hon'ble High Court of Delhi before whom the applicant was one of the petitioners over-ruled the order of the Hon'ble Single Judge and held that seniority should be based on the date of confirmation and not the length of officiating service. Thus the applicant cannot derive benefit from the judgment of the Hon'ble Division Bench. The learned counsel for the applicant in his detailed arguments tried to ~~violate~~ isolate the applicant from the other petitioners before the Hon'ble High Court on the basis of his earlier date of appointment as LDC and indicated that the applicant was unwillingly made a petitioner before the Hon'ble High Court. We are not at all impressed by this argument nor can this argument enable him to escape from the consequences of the court's verdict. The learned counsel has not been able to show any orders or instructions issued by the Ministry of Defence or the Armed Forces Headquarters by which the applicant's seniority when he was working as a LDC/UDC could have been fixed on the basis of his length of service. On the other hand there are clear indications that even before the rules

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were promulgated in 1968 seniority used to be determined on the basis of date of confirmation, i.e. confirmed officers were always placed above those who were officiating in a temporary capacity.

5. In the result, considering that the matter is sub-judice we do not consider it either necessary nor desirable to go into the merits of the application which has to be rejected for the reasons indicated in the preceding paragraph. In the circumstances of the case, there will be no order as to costs.


(H.P. BAGCHI)
JUDICIAL MEMBER


(S.P. MUKERJI)
MEMBER

Review appl. filed