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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

REGN NO. OA 73/86.

Shri R.A. Devasahayam

Applicant

Vs.

Union of India, through Secretary
Ministry of Defence and others ...

Respondents

REGN. NO. OA 61/86.

Shri A.J.Ilango

...

Applicant

Vs.

The Chief Administrative Officer,
A.F.H.Q., New Delhi. ...

Respondent.

CORAM:

Shri Justice K.Madhava Reddy, Chairman.

Shri B.C. Mathur, Vice-Chairman.

For applicant No.1

In person.

For applicant No.2

No one appeared

For respondents ... Mrs. Raj Kumari Chopra, Counsel.

(Judgment of the Bench delivered by
Shri Justice K.Madhava Reddy, Chairman).

These two matters will be conveniently
disposed off by a common judgment. We would refer to

Shri R.A. Devasahayam Applicant in OA No.73/86 herein
after as the Applicant No.1 and Shri A.J.Ilango, the

Applicant in OA 61/86 as Applicant No.2. The applicant

No.1 is at present an Assistant in the Directorate

of Naval Armament Inspection, Naval Headquarters, New

Delhi. He joined the Madras Engineering Group, Bangalore

on 5.4.1954 as L.D.C. He was transferred to the Office of the Chief Administrative Officer, Armed Forces Headquarters, New Delhi as L.D.C. on 9.9.1955. He was promoted as U.D.C. on an officiating basis on 6.6.1964 and served as such until February, 1970. Pursuant to a circular calling for options from persons working as LDCs or officiating UDCs who were willing to go abroad to work in the office of the Military Adviser's Department, High Commission of India at London, the applicant exercised his option. He was accordingly reverted as LDC and posted as L.D.C. at London on 4.3.1970. Having served there from 1970 to 1975, he rejoined the AFHQ as L.D.C. on 28.2.1975.

2. During the year 1971, all those who were in India in the category of LDCs and officiating as UDCs were confirmed as UDCs with retrospective effect i.e. from 1968. The applicant, however, was not confirmed. He made written representation that he should be confirmed with effect from 23.2.1968 when he was first appointed as UDC and when his juniors were confirmed.

3. The 2nd applicant Shri A.J.Ilango ~~was~~ is similarly placed. While the applicant was officiating as U.D.C. he was reverted as LDC and posted in London in 1974. After the 1st applicant returned to India in 1975 he made several representations. The 2nd

applicant returned to India in 1978 and made representations and he was confirmed with retrospective effect.

Referring to the case of Shri A.J.Ilango, 2nd applicant

herein, the applicant No.1 once again submitted a

representation for his confirmation as UDC with

retrospective effect but that representation was also

rejected. It may be noticed that Shri A.J.Ilango was

junior to the applicant. However, Shri Ilango's

confirmation was later cancelled. Shri Ilango made a

further representation and accepting his representation,

the respondents by order dated 1.1.1983 restored the

previous order of confirmation.

4. The applicant No.1 once again submitted a

representation quoting the case of Shri Ilango and

the respondents by order dated 5.4.1984 confirmed him

as U.D.C in AFHQ Clerical Service and assigned seniority

on notional basis above Shri Haqiqut Singh and below

Shri Kesar Singh Rawat with effect from 23.2.1968 and

as an Assistant with effect from 8.2.1981. The applicant

further claimed that he should have been promoted as an

Assistant on 2.6.1977 when his junior was promoted.

That representation was accepted and by order dated 20.4.85

the applicant was informed that he was an Assistant on

notional basis w.e.f. 2.6.1977. The applicant, however,

was not given any monetary benefits or seniority.

In these applications, the two applicants claim all

consequential benefits of seniority and all other monetary benefits that flow from their retrospective confirmation as UDCs.

Following the order 5. The applicant in OA No.73/86 has prayed for the following reliefs:-

"In view of the facts mentioned in para 6 above the applicant prays for the following reliefs:-

- (a) Regular confirmation in the grade of Upper Division Clerk with effect from 23rd February, 1968 as given to his junior Shri Haqiquat Singh.
- (b) Protection of pay during his stay in the office of the High Commission of India at London which was brought down to Rs.180.00 from Rs.200.00.
- (c) That the pay should be fixed as per the Third Pay Commission with effect from 1st January, 1973 taking into account the last drawn pay viz. Rs.200.00.
- (d) For the implementation of the Respondent's orders in Daily Order Part II issue No.24 dated 5th April, 84 (Annexure 'C') in spirit and in letter.
- (e) That the gradation of Annual Confidential Reports earned from the year 1977 to 1982 should read mutatis mutandis for Assistant grade as the applicant was not promoted by the respondent in time erroneously which will make good for the applicant's placement in the select list of Assistants drawn by the Respondent vide (Annexure 'J').
- (f) That the pay and allowance in the grade of Assistant be paid with effect from 2nd June, 1977, like the applicant's junior Shri Haqiqat Singh.

(g) That his name appearing at Sl. No.418 of the Respondent seniority list drawn vide No.72038/ASSTI/CAO/P-1 dated 16th January,86 (Annexure 'F') be rectified. That the seniority be granted from 2nd June,1977 in Assistant grade and the date of promotion to the grade of Assistant Civilian Staff Officer be notified as the applicant's juniors have already been promoted".

6. The Applicant in QA No.61/1986 has prayed for

the following Reliefs:-

(a) that the seniority of the applicant in the Assistant's grade with effect from 27th March, 1979 be restored and count his Annual Confidential Reports as service rendered in the Assistant's Grade for the promotion to the post of Assistant Civilian Staff Officer as he was confirmed in the grade with effect from 30th November, 1981(Encl. 14);

(b) that the applicant was penalised by way of giving nominal seniority and pay due to lapse on the part of respondent, whereas he could have been placed in actual position in the Assistant grade with effect from 27th March,1979. This should be restored;

(c) that the applicant will be retiring on superannuation with effect from 30 Sept. 1988 and in case his seniority is not restored, he will be at a great loss in as much as he will be losing his promotion and also enhanced pensionary benefits after rendering 33 years exemplary service;

(d) that the applicant is facing mental agony and hardships because all of his juniors have become seniors. Had the respondent

11. The court further held that if the court had not taken into account the hardship suffered by the applicants, the court would have been compelled to accept the respondents' contention that the applicants had not been promoted in accordance with the seniority list.

Now the question arises that if the court had taken into account the hardship suffered by the applicants, the court would have been compelled to accept the respondents' contention that the applicants had not been promoted in accordance with the seniority list (Encl.10) drawn up by the respondents in violation of the provision of Article 14 and 16 of the Constitution of India must be quashed".

7. From the above narration of the facts, it is

clear that both as regards seniority and promotion, the claim of the applicants have been accepted by the respondents themselves, though belatedly.

8. The 1st applicant's junior Shri Haqiqut Singh

was promoted as ACSO in February, 1984. In the seniority list of permanent Assistants of AFHQ Civil Service published on 10.8.1984, the first applicant is shown at Sl. No.418 and the second applicant is at Sl. No.420.

It is the claim of the applicant that Shri Haqiqut Singh was junior to him as L.D.C. The claim of the applicant that he should have been promoted as an

Assistant w.e.f. 2.6.1977 when Shri Haqiqut Singh, junior

to him was promoted as ACSO is accepted even by the

Respondents. That being so, he cannot be deprived of

the benefits of this promotion either as regards seniority or emoluments.

Shri Haqiqut Singh who was promoted and held the position of ACSO, was senior to the first applicant in the category of LDCs,

junior to the second applicant in the category of ACSOs.

It happened to continue in India while the applicants

upon exercising their option were posted in London.

The mere fact that both the applicants were posted in

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in the way of their promotion and deprive them of their promotion. Now that they have promoted, the Applicants and they are deemed to have been promoted with retrospective effect and confirmed as UDC and also as

Assistants from the date when their juniors were promoted as a natural corollary, they should also have been given their due seniority as well as all consequential benefits in the matter of their pay, allowances and other emoluments. It is, however, argued that since they do not actually work as UDCs or Assistants from that date, they cannot claim any monetary benefits.

They could only be notionally promoted with retrospective effect. This contention, however, cannot be upheld; firstly for the reasons that for no fault of theirs, their representation was not immediately considered and allowed. Secondly in a similar case of one Shri J.N. Sharma, Assistant who went to London as UDC was given not only the benefit of seniority but also all other monetary benefits even by creating a supernumerary post of Assistant for the relevant period. There is no reason why the applicants should be treated differently.

We, therefore, hold that the applicants would be entitled to all monetary benefits both in the category of UDCs and ~~and~~ Assistants. The first applicant should be treated senior to Shri Haqiqut Singh in the categories of UDCs and Assistants. He shall be considered for all future promotions on that basis.

9. So far as the second applicant is concerned, he was confirmed as U.D.C. with effect from 2.3.1968 and assigned seniority on notional basis above Shri S.P.Battacharjee and below Shri O.P.Chopra. Shri O.P.Chopra and Shri S.P. Battacharjee were promoted as Assistants w.e.f. 27.3.1979. Now that his representation has been accepted by the respondents, both in regard to seniority and confirmation in the category of UDC and Assistants, he shall also be entitled to all monetary benefits.

10. It is stated that the second applicant Shri A.J.Iango has since taken voluntary retirement, the question of any further promotion would not, therefore, arise in his case but he shall be considered for promotion on the above basis until the date of his voluntary retirement.

11. These applications are accordingly allowed but in the circumstances, there will be no order as to costs. The respondents shall calculate the amounts due to the applicants in the light of our judgment and disburse the same to the applicants within 3 months from the date of receipt of this order.



(B.C.Mathur)
Vice-Chairman
22.12.1986.

ATTESTED TRUE COPY
Dated..... 9/2/87

Section Officer
Central Administrative Tribunal
Principal Bench, Faridkot House
N. Delhi

(K.Madhava Reddy)
Chairman
22.12.1986.