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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 849 198 6
T.A. No.

DATE OF DECISION 12.1.1987

Shri Prem Singh

Applicant.
Petitioner

Shri E.X. Joseph,

Applicant
Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondents

Shri M. L. Verma,

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman

The Hon'ble Mr. Kaushal Kumar, Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether to be circulated to all the Benches? *Yes*

Kaushal Kumar
(Kaushal Kumar)
Member 12.1.87

K. Madhava Reddy
(K. Madhava Reddy)
Chairman 12.1.87

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

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REGN. No. MP 848/86 &
DA 849/86.

Dated: 12.1.1987

Shri Prem Singh .. Applicant

Vs.

The Union of India & Ors. .. Respondents

CORAM: Hon'ble Mr. Justice K. Madhava Reddy, Chairman
Hon'ble Mr. Kaushal Kumar, Member

For the applicant .. Shri E.X. Joseph, counsel.

For the respondents .. Shri M.L. Verma, counsel.

(Judgment of the Bench delivered by Hon'ble
Mr. Justice K. Madhava Reddy, Chairman).

The applicant was appointed as a Sepoy in the Central Excise Collectorate, Delhi, with effect from 24.6.1976. He was promoted and appointed as a Lower Division Clerk on an ad hoc basis vide Order No. II-3/67/Estt-I/81 dated 20.10.1981 (Annexure 'A' to the application). His name figures at serial No. 14 in the list of Sepoys who were approved for promotion under Establishment Order No. 307/1981. One Shri Shyam Singh who was placed at serial No. 15 and 8 others were junior to the applicant. As admitted by the Respondents in their counter, Shri Shyam Singh, who was junior to the applicant, was promoted in 1981 and was regularised as L.D.C. in the year 1985. While Shri Shyam Singh is continued as L.D.C., the applicant was reverted as a Sepoy vide order dated 25.9.1986 (Annexure 'B'). It is this order which is called in question in this application under Section 19 of the Administrative Tribunals Act, 1985. Even as admitted by the Respondents in paragraph (v) of their reply, ~~xxx~~ "the officials

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[Signature]

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listed above in the application were not regularised on the basis of their working as L.D.Cs on ad-hoc basis but they were promoted from time to time on the basis of the seniority in the grade of Sepoys and on the recommendations of the D.P.C. as per the vacancy position". As further admitted by them in paragraph (vi) of the reply ~~XXXX~~ "the official junior to the applicant listed at Sl. No. 15 was considered by the D.P.C. alongwith the applicant for promotion to the regular post of L.D.C. from the grade of Sepoys (Group 'D'). But the applicant was considered 'not yet fit' due to adverse entries in the year 1984". It is also stated in the counter that "the services of Shri Shyam Singh working as ad-hoc LDC were regularised by the DPC who found him fit and that the appointment of the applicant was purely on ad-hoc basis and as such cannot be regularised on the basis of such appointment".


2. It cannot be denied that if the applicant's appointment was made against the quota reserved for promotees as he was found ^{and} fit by the D.P.C. / on the basis of the panel prepared by the D.P.C., even if such promotion was ad-hoc, he would have the right to continue so long as his juniors continue. Admittedly, vacancies ^{because} are available ~~to~~ Shri Shyam Singh, who is junior to the applicant was regularised. While Shri Shyam Singh is continued, the applicant cannot be reverted. Shri M.L. Verma, learned Counsel for the Respondents seeks to justify the reversion of the applicant on the basis of Circular issued in F.No.A.12034/32/81-Ad.IIIB dated 8.7.1981. These instructions justify reversion only when the vacancies are


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required to be filled in by persons selected by the Staff Selection Commission. It is not the case of the Respondents that the applicant's reversion is necessitated to accommodate any L.D.C. selected by the Staff Selection Commission. In reply to the rejoinder filed by the Respondents, it was clearly admitted that "there is quota of 10% for promotion of Sepoys to the grade of L.D.C. Out of this 10% quota, 5% on the basis of seniority-cum-fitness basis and rest 5% on the basis of qualifying examination. The applicant was not found fit to be promoted to the grade of L.D.C. on both the counts as stated above." But as admitted earlier by the Respondents, the applicant was recommended by the D.P.C. to be promoted as L.D.C. in view of his seniority, educational qualification and his performance in the grade of sepoy. If he is now being reverted because his performance as L.D.C. is not satisfactory, that would amount to a punishment. That cannot be done without enquiry according to Rules.

3. Viewed from any angle, the impugned order of reversion cannot be sustained. It is accordingly quashed and the application is allowed. The Respondents are directed to retain the applicant as L.D.C. and if he is reverted he shall be restored to the post of L.D.C. within one week of the receipt of this order.

There will be no order as to costs.


(KAUSHAL KUMAR)
MEMBER
12.1.1987


(K. MADHAVA REDDY)
CHAIRMAN
12.1.1987