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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA No.556/87

Date of decision:- 05-03-93

Shri Laxman Singh

..

Applicant

versus

Union of India through
Secretary,
Ministry of Defence,
New Delhi & ors.

..

Respondents

CORAM:- HON'BLE SHRI B.N.DHOUNDIYAL, MEMBER(A)
HON'BLE SHRI A.K.SINHA, MEMBER(J)

For the Applicant .. Sh.E.X.Joseph, Counsel.

For the Respondents .. Mrs.Raj Kumari Chopra,
Counsel.

1. Whether local reporters may be allowed to see the judgement?
2. To be referred to the reporter or not? yes

JUDGEMENT

(Delivered by Hon'ble Shri B.N.Dhoundiyal,
Member(A))

The applicant Shri Laxman Singh, an L.D.C. working in the Defence Institute of Physiology and Allied Sciences(DIPAS) is aggrieved by the impugned seniority list issued on 14.4.87 which adversely affected his seniority thereby depriving him of promotion to the post of U.D.C.

2. The case of the applicant is that he had joined as L.D.C. on 11.9.68 whereas Respondent No.4, Shri Pawan Kumar and Respondent No.5, Shri Vikas Chandra joined on 23.4.73 and 4.1.69 respectively. In the seniority list issued on 13.10.86, the applicant was shown at No.1, Respondent No.4 at No.3 and Respondent No.5

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at No.2. The impugned seniority list issued on 14.4.87 gave first position to Respondent No.4, 2nd position to Respondent No.5 and the applicant was relegated to No.3 position. On 15.4.87, a D.P.C. meeting was called and Respondents 4&5 were granted promotion to the post of U.D.C on the basis of seniority-cum-fitness. The following reliefs have been prayed for:-

- (a) Order striking down, quashing and setting aside the revised seniority list issued on 14.4.87 granting seniority over the applicant to respondents Nos.5 and 4;
- (b) Declaration that the applicant is senior to respondents no.5 and 4;
- (c) Order striking down and quashing any promotion/selection made on the basis of the revised seniority list which is impugned.
- (d) Direction that the applicant will be entitled to promotion as UDC on the basis of seniority-cum-fitness if the DPC finds that the applicant was fit for the said promotion.
- (e) Grant of consequential benefits to the applicant;
- (f) Grant of any other relief which this Hon'ble Tribunal deems necessary in the facts of the case; and
- (g) Grant of cost of this application to the applicant."

2. The respondents have stated that there are 40 units under the Defence Research & Development Organisation. and promotion from the grade of L.D.C. to that of U.D.C. is made on unit basis i.e. each unit has its own separate seniority roll of L.D.Cs. Since the posting

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of an LDC from one unit to another unit can adversely affect the seniority of LDCs already serving in the unit and ordinarily the inter-unit transfers are not allowed. In case of transfers on compassionate grounds, the persons concerned are given seniority from the date of joining the new unit. The applicant was serving in Defence Laboratory at Jodhpur and reported for duty in DIPAS on 14.12.73 while Shri Pawan Kumar Jain (Respondent No.4) had been working there since 23.4.73 and Shri Vikas Chandra (Respondent No.5) reported for duty on 12.11.73. They were, therefore, assigned seniority on the basis of their dates of joining in DIPAS. The DPC of DIPAS met on 15.4.87, which is the normal scheduled date for holding DPC meeting simultaneously in all the units and recommended promotion of Respondents No.4 and 5 whose names occurred at Sl.Nos 1&2 in the seniority list. The seniority list of LDCs had to be revised as per directions given by the Deptt.of Personnel & Training on the basis of the instructions contained in Ministry of Home Affairs Memo.dated 22.12.59. Both the applicant and Respondent No.5 have been treated as transferees for fixation of their seniority. The promotions were subject to the decision in the case of Vikas Chandra Vs.U.O.I in T-81/86 filed before the Central Administrative

Tribunal, Principal Bench.

3. We have gone through the records of the case and heard the learned counsel for the parties. A circular letter was issued by the DIPAS on 14.9.73 intimating that a vacancy of LDC existed for which they invited suitable volunteers from the R&D Establishments/Laboratories having two to three years of service. There was no mention that those selected will be treated as fresh entrants. The respondents have relied on OM dated 22.12.59 from the Ministry of Home Affairs particularly in Para 7(i) of the general principles for determination of seniority which reads as under:-

" The relative seniority of persons appointed by transfer to a Central Service from the subordinate offices of the Central Government or other departments of the Central or State Governments shall be determined in accordance with the order of their selection for such transfer".

On the other hand, the applicant has relied on instructions issued by the Ministry of Defence on 6.12.74 providing that those transferred on compassionate grounds will reckon seniority from the date of reporting ^{for duty} in the new unit but those transferred on administrative grounds will carry forward their previous seniority. He has also laid stress on the fact that the petition filed by Shri Vikas Chandra against the previous seniority list was dismissed by the Principal Bench of this Tribunal on

17.5.88. *hw*

4. We hold that the applicant has been transferred to DIPAS in public interest and not on the basis of his request on compassionate grounds. There was no mention either in the circular inviting applications or in his appointment letter that his seniority would be forfeited. Had such condition been stipulated at the time of his transfer, he would have a choice to continue working in his previous unit. We, therefore, hold that the applicant is entitled to succeed and the respondents are directed to count his service as LDC in the previous unit for fixing^{br} his seniority. The impugned seniority list dated 14.4.87 is hereby quashed and set aside. A review DPC shall be constituted^{br} to consider his case for promotion on the basis of the revised seniority list and if recommended for promotion, he will be given seniority in cadre of UDC from the date his immediate junior was so promoted with all consequential benefits. This order shall be complied with by within a period of six months from the date of receipt by the respondents.

No costs.

A. K. Sinha
(A.K.SINHA)
MEMBER(J) 5/8/93

B. N. Dhoundiyal
(B.N.DHOUNDIYAL) 5/8/93
MEMBER(A)