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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

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Regn.No. OA-2135/92

Date of decision: 25.9.92

Shri Inder Singh Applicant

Versus

Union of India & Anr. Respondents

For the Applicant Shri Inderjit Sharma, Advocate

For the Respondents Shri M.K. Gupta, Proxy Counsel
for Shri Madan Lokur, Advocate

CORAM:

The Hon'ble Mr.P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr.B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*
2. To be referred to the Reporters or not? *No*

JUDGMENT

(of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice Chairman(J))

The applicant, who is working as Assistant Keeper in the National Zoological Park under the Ministry of Environment and Forests, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying that the impugned order dated 16.7.1990 passed by the respondents be quashed, and that he be deemed to continue as a Lower Division Clerk right from the day his order of suspension was revoked by the respondents w.e.f. 3.3.1988. He has also claimed arrears of pay and other

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consequential benefits.

2. The facts of the case are as follows. The applicant was appointed as an Assistant Keeper in the National Zoological Park, New Delhi, in 1967. He came out successful in a written departmental examination conducted by the respondents for appointment as L.D.C. in 1983 and secured the second position. He was posted as L.D.C. vide order dated 18.4.1983 in the Accounts Section vice Shri Ram Dutt, U.D.C.

3. The applicant has stated that he continued to work as L.D.C. in short term and other leave vacancies. He was, however, placed under suspension w.e.f. 13.10.1987 which was revoked by the respondents on 3.3.1988. In the departmental enquiry initiated against the applicant for the alleged misconduct for reselling the tickets to the visitors, the applicant was found to be not guilty and ^{the} disciplinary authority exonerated him from the charges levelled against him by his order dated 22.3.1990. However, after the revocation of the order of suspension, the applicant has not been paid the salary of L.D.C. but only the salary of Assistant Keeper.

4. The applicant has contended that a post of L.D.C. is lying vacant and as the disciplinary authority has exonerated him from the charges levelled against him, he

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should be appointed to the said post as he has been duly empanelled for the post of L.D.C. after holding a written test in 1983.

5. The basic contention of the respondents is that the test was conducted in 1983 for consideration of the departmental candidates for promotion to the 10 per cent quota and the remaining 90 per cent is to be filled up through the Staff Selection Commission. 11 posts of L.D.C. have already been filled and there is no vacancy in the said post as alleged by the applicant. They have also stated that the applicant was appointed only on ad hoc basis and he is liable to be reverted back to his substantive post of Assistant Keeper.

6. We have gone through the records of the case and have considered the rival contentions. The learned counsel for the applicant argued that the applicant would have continued in the post of L.D.C. but for the departmental enquiry initiated against him. After the said enquiry ended in his exonerated, he is entitled to be appointed to the post of L.D.C. In this context, he relied upon the judgement of the Supreme Court in Union of India Vs. K.V. Janakiraman, J.T. 1991 (3) SC 527. As against this, the learned counsel for the respondents argued that the departmental test conducted in 1983 was

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to consider the departmental candidates for appointment as L.D.C. on ad hoc basis as and when necessity arose. The National Zoological Park has total 11 posts of L.D.C. sanctioned, which have already been filled up. The learned counsel for the respondents also stated at the Bar that the applicant has been promoted as Zoo Keeper on regular basis which is in his normal line of promotion. He was posted to work in the office to assist the clerical staff as per his personal request. There is no provision for promotion of Assistant Keeper to the post of L.D.C.

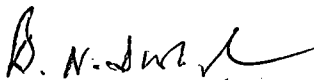
7. The applicant has stated that the respondents have appointed one, Miss Shagufta Khan, as L.D.C. without any examination. The respondents have stated that she was appointed on compassionate grounds, being the dependent of a deceased employee.

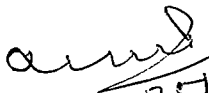
8. On careful consideration of the rival contentions, we are of the opinion that no mandamus can be issued to the respondents to appoint the applicant as L.D.C. if no vacancy in the said post exists. At the same time, we are of the view that the applicant should not be subjected to another written test as a pre-condition for appointment to the post of L.D.C., as and when vacancy arises. The application is, therefore, disposed of with a direction

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to the respondents to consider appointing the applicant as L.D.C. in the 10 per cent quota earmarked for departmental promotion, whenever a vacancy arises in future without holding any qualifying written test in his case for that purpose. There will be no order as to costs.


(B.N. Dheundiyal) 25/9/91
Administrative Member


25/9/92
(P.K. Kartha)
Vice-Chairman(Judl.)