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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.136/91

New Delhi this the 1st Day of March, 1995.

Hon'ble Sh. N.V. Krishnan, Vice-Chairman (A)
Hon'ble Dr. A. Vedavalli, Member (J)

1. N.C. Goel,
S/o Sh. S.D. Goel,
R/o A-113, Prashant Vihar,
Delhi-110 085.

2. G.K. Gulati
3. I.C. Pathak
4. K.L. Virmani
5. R.C. Sharma
6. J.S. Rose
7. S.K. Monga
8. S.K. Malhotra
9. M.L. Bhatia

(Applicants No.2 to 9 c/o Applicant No.1)

...Applicants

(By Advocate Sh. Mahesh Srivastava)

Versus

1. Union of India through
Secretary, Ministry of
Food and Agriculture,
Government of India,
Krishi Bhavan,
New Delhi.

2. Chairman,
Delhi Milk Scheme,
West Patel Nagar,
New Delhi-110 008.

...Respondents

(By Additional Standing Counsel Sh. M.K. Gupta)

ORDER(Oral)

Hon'ble Mrs. N.V. Krishnan:-

The 9 applicants before us are employees of the Delhi Milk Scheme. They are aggrieved by the fact that they have not been promoted earlier as Upper Division Clerks (UDCs), which is to be filled up by a competitive examination. Their representation has been rejected by the letter dated 16.8.90 (Annexure A) which

states that the request cannot be acceded to with reference to the Rules and that no junior has been promoted. Hence, the following prayer has been made:-

"i) Direct the respondents, their officials and agents to promote the petitioners as U.D.C. with retrospective effect from the date their juniors were promoted and given all other consequential benefits."

2. The brief facts are as follows:-

2.1 The applicants were working as Cash Clerks in the DMS. According to the recruitment rules notified on 25.6.63, 75% of the posts of UDCs will be filled up on the basis of the seniority and 25% by competitive examination limited to "LDC grade".

2.2 The applicants had appeared in the 1971 examination for the 25% vacancies.

2.3 On 26.6.75, when one more examination was to be held, the Annexure 'B' circular was issued. It alerted for the purpose of examination Lower Division Clerks (LDCs), Cash Clerks, Cash Counter Clerks for promotion. It also stated that those who had appeared in the examination in 1971 and had qualified therein by securing 45% marks, are exempted from the 1975 test - the list of such persons was enclosed. It included the names of the applicants. Inspite of the applicants having passed the 1971 examination, they were not promoted as UDCs at all. N.C. Goel and J.S. Bose, two of the applicants, sent representations on 23.1.90 and 19.2.90 which are at Annexure 'C' collectively. It would appear that others also sent similar

representations. All these representations have been rejected by the Annexure-A memorandum dated 16.8.90, referred to above.

3. The respondents have filed a reply. They have raised a preliminary objection regarding limitation because they state that, as early as on 3.12.75, the applicants have been informed that as per the latest decision "they are not eligible for promotion to the post of UDCs on the basis of departmental competitive examination. Accordingly their names have been omitted." It would appear that the applicants made representations in this regard which have been disposed of by the memorandum dated 18.9.82 (Annexure 'B') in which it was recalled that the exemption granted to them from appearing in the 1975 departmental test, on the ground of having passed it in 1971, was withdrawn by the memo dated 31.12.75 because at that time, according to the notified recruitment rules, the Cash Clerks/Counter Cash Clerks were not eligible to appear in such competitive examination. They were informed that, in accordance with the revised recruitment rules for the posts of UDC notified in 1979, the Cash Clerks/Counter Cash Clerks have again been made eligible for appearing in the competitive test for the posts of UDC. It is, therefore, contended that the OA is barred by limitation. Secondly, they are entitled to promotion only after the rules were amended in 1979.

4. The applicants have filed a rejoinder more or less reiterating what has been mentioned earlier. In addition, they have stated that one Rajwanshi Parshad, Cash Clerk who was exempted from appearing in the 1975 examination vide Annexure 'B' memorandum did not appear in any subsequent examination and yet he was promoted as UDC on 30.12.76. He was appointed as Cash Clerk on 30.12.1976 and was junior to all the applicants.

5. The matter was heard on an earlier occasion when we felt that it would facilitate disposal if the recruitment rules were made available because, neither party had filed the relevant rules with their pleadings. The recruitment rules have been produced by the learned counsel for the respondents. We have gone through them in detail with a view to finding out whether there is any substance in the contention of the learned counsel for the respondents that the applicants were not eligible to appear in the examination at all, for, if they came to the conclusion that there was no need to determine the other issues regarding limitation and jurisdiction.

6. However, after having perused the rules and the arguments advanced by the learned counsel for the parties, we are satisfied that whatever may have been the intention of the Department, the initial notification of 1963 did permit the Cash Clerks to appear in the 25% competitive examination. The schedule to the recruitment rules relating to UDCs makes it clear that 75% of the posts will be filled up

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by promotion on the basis of seniority subject to rejection of the unfit. 25% will be filled up by competitive examination limited to "LDC grade" having put in three years' service. The feeder categories for promotion are indicated in column 12 of the schedule to the Rules as LDCs, Cash Clerks and Steno Typists. There is no indication whatsoever that the entry in column 12 relating to the feeder category is restricted or has been made against entry 'a' in column 11 which relates to promotion on seniority basis. On that ground alone, it has to be held that, whether it is by promotion on seniority basis or by examination basis, all persons, mentioned in column 12 would be eligible viz. UDCs, Cash Clerks and Steno Typists. This is confirmed by the entry 'b' in column 11 where the examination is not limited to LDCs but is limited to "LDC grade", meaning thereby that the persons other than LDCs are also eligible.

7. It is not necessary to go deeper into this issue because the respondents have a case that in the circumstances mentioned above, this application is not maintainable. It is pointed out that all the applicants were informed on 3.12.75 that they are not eligible for promotion on the basis of the departmental competitive examination. Their representations were also rejected on 18.9.82 and 14.2.83. If they had any grievance they should have agitated the matter then. On 1.11.85 the Administrative Tribunals Act, 1985 came into force. Section 21 provides that if any grievance has arisen within three years prior to the commencement of the Act, i.e., between 1.11.82 and 1.11.85 the

agrieved party can file an application within one year of the commencement of that Act. In the present case it is quite clear that the grievance first arose as early as on 3.12.75 and later when the representation was rejected on 18.9.82, wherein the applicants were told that they were not eligible to appear in the competitive examination.

8. Not having resorted to the legal remedies then available to them, we find that under Section 21 of the Administrative Tribunals Act, 1985 we will have no jurisdiction to entertain this application.

9. The learned counsel for the applicant, however, states that the representation has been rejected only in 1990 (Annexure 'A'). That representation is made on the premise that juniors have been promoted. The respondents have replied in the Annexure 'A' memorandum that no official junior to any applicants has been promoted.

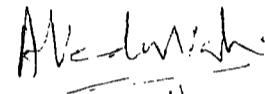
10. In fact, the entire case based on the recruitment rules is one which has been built up subsequent to the filing of OA. We find that no foundation, whatsoever, has been laid based on the recruitment rules. Even the prayers made do not seek a declaration that in terms of the rules applicable for recruitment to the post of UDC, the applicants are entitled to appear in the competitive examination. The grievance of the applicants is that juniors have been promoted and hence a direction is sought that the applicants should be promoted with retrospective effect

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from the date their juniors were promoted. This claim is denied by the respondents even in respect of Rajwanshi Parshad, referred to in the rejoinder. It is stated by the respondents that he has been promoted only on the basis of the seniority.

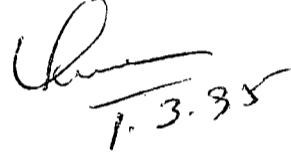
10. In the circumstances, we are of the view that the applicants have not established a case that any person junior to them as Cash Clerk has been promoted as UDC by the Department more particularly on the basis of passing 25% departmental examination. We, therefore, find no merit in this O.A. It is dismissed.

No costs.



(Dr. A. Vedavalli)
Member(J)

'Sanju'


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(N.V. Krishnan)
Vice-Chairman(A)