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PRINCIPAL BENCH, NEW DELHI.
OA.No.279/91
Dated this the 24th May, 1995.

Hon. Shri N.V. Krishnan, Vice Chairman(A)
Hon. Dr. A. Vedavalli, Member(J)

Jawahar Lal Batra,
S/o Shri Ghansham Dass Batra,
L.D.C. (Saving Bank Control Organisation),
Sonipat Head Post Office, Sonipat.
R/o C/o Shri Sant Lal,
Advocate, C-32(B),
New Multan Nagar,
Delhi 110 056

...Applicant

By Advocate: Shri Sant Lal.

versus

1. Union of India through
The Secretary,
Ministry of Communications,
Department of Posts,
New Delhi 110 001.
2. The Postmaster General,
Haryana Circle, Ambala Cantt. ...Respondents

By Advocate: Shri M.L. Verma (None appeared).

- O R D E R (Oral)
(By Shri N.V. Krishnan)

The applicant is employed as a LDC in the Sonapat Head Post Office. He is aggrieved by the orders of the department reverting him as a LDC and posting him to the Haryana Circle.

2. The brief facts are that, prior to 1.4.87, the North-west Postal Circle was in existence. The applicant joined as LDC and on the basis of a competitive examination, he was promoted as a ^{U.} ADC w.e.f. 4.6.86 and posted at Sangrur H.O. in the State of Punjab.

3. The North-west Postal Circle was trifurcated in 1987 into three independent circles- ie. Punjab, Haryana and Himachal Pradesh. The staff belonging to North-west Postal Circle were given two options to

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choose the circle, to which they wished to be allotted. The applicant's first choice was Haryana Circle which was rejected. The 2nd option was for Punjab, which was accepted. He, therefore, continued at Sangrur as a UDC.

4. Thereafter, on 1.7.88, the applicant applied for a voluntary transfer to Haryana Circle under Rule-38 of the Postal Manual (Vol-IV). That Rule is extracted in Annexure A-15. His request was accepted and the Annexure A-2 order dated 30.3.89 was issued. The relevant extract is as follows:-

"Approval of the Post Master General, Haryana Circle, Ambala is hereby conveyed to inter circle transfer of Shri J.L. Batra, UDC, SBCO Sangrur, Punjab Circle as LDC on reversion under the provisions of Rule 38 of P&T Man.Vol.IV & orders contained in para No.(iii) of D.G.Posts letter No.69/7/87-SPM-I dated 12.8.87.

| Sr. No. | Name & Designation of the official | Division to which belong | Division to which transfer is sought for | Transfer against deptt. or direct quota. |
|---------|--|--------------------------------|--|--|
| 1. | 2. | 3. | 4. | 5. |
| 1. | Shri J.L.Batra UDC SBOC, Sangrur on reversion as LDC. | Punjab Circle Chandigarh | As LDC SBCO Haryana Circle | - |

Note (1) below the order reads as follows:-

"1. That the seniority of the official on joining duty in New unit will be determined in accordance with the provision of rule 38 of P&T Man.Vol.IV as amended from time to time."

5. In other words, his request was accepted after reverting him as a LDC and posting him in Haryana Circle. His seniority as a LDC was determined by the Annexure A-9 order dated 29.11.89. He was placed above all the LDCs working in the Circle on the date of his joining, in accordance with the instructions

contained in the DG's letter dated 12.8.87 which is at Annexure A-1. He was promoted as UDC by the order dated 5.1.90(Annexure A-10). Subsequently, by the Annexure A-3 order dated 12.2.90, the order promoting him as UDC was cancelled.

6. By another order dated 29.1.90 (Annexure A4), his seniority as LDC earlier fixed by the Annexure A-9 order was superceded and his place has been fixed below all the LDCs working in the Haryana Circle on the date of his joining under rule 38 and the Annexure A1 letter dated 12.8.87. His representations were rejected. Hence this OA, in which, he wants a declaration that he should be deemed to have continued as a UDC in the Haryana Circle after voluntary transfer under rule 38 and quashing of all orders to the contrary.

7. The respondents have filed a reply opposing his claim. It is stated that the applicant applied for transfer in July 1988 along with a declaration and his posting in Haryana after reversion and his seniority therein have been strictly determined in accordance with Rule-38 of the P&T Manual, Vol.IV and the DGPT letter dated 12.8.87. It is admitted that the applicant's seniority was initially fixed by mistake at the top of all LDCs and he was also given promotion. As these were contrary to the rules and instructions, they were cancelled and the seniority was rectified.

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8. Shri Santlal, learned counsel for the applicant alone was present. None appeared on behalf of the respondents. He was heard. We also perused the records.

9. The relevant portion of rule-38 which applies to this case is reproduced below:-

"(2) When an official is transferred at his own request but without arranging for mutual exchange, he will rank junior in the gradation list of the new unit to all officials of that unit on the date on which the transfer order is issued, including also all persons who have been approved for appointment to that grade as on that date."

If this rule alone had applied and if the request for transfer was accepted, the applicant who was then holding the post of UDC could have been transferred only as a UDC, but placed at the bottom of all the UDCs in Haryana Circle. However, consequent upon the trifurcation, the DGPT also issued instructions on 12.8.87 (Annexure A-1) to regulate the disposal of applications for voluntary transfer in various categories. In so far as the staff of the Savings Bank Control Organisation is concerned to which the applicant belongs, the instruction states as follows:-

"iii) SBCO STAFF:- (a) UDCs :- UDCs may be allowed to be reverted as LDCs and come to Haryana under rule 38 when vacancy arises. They will be given priority over LDCs.

(b) LDCs: Those who could not be absorbed in the Circle of their choice may seek transfer under Rule 38 when vacancies become available."

10. This instruction covers two categories- UDC's are covered by clause(a) and LDCs are covered by clause(b). If a UDC applies for transfer, it may be

allowed after reverting him as a LDC and he may come to Haryana Circle under Rule-38 and he may be given "priority over the LDCs". In respect of the LDCs they may seek transfer under Rule-38. It is in pursuance of this provision that the Annexure A-2 order was passed after accepting the applicant's request for transfer. It is made clear that the applicant has been reverted and posted to Haryana Circle. If the applicant had any grievance regarding reversion as LDC, he should have declined the transfer. Not having done so, he has acquiesced in that act of reversion, which is consequent upon the DO letter dated 12.8.87 (Annexure A-1). In the circumstances, the applicant cannot challenge the Annexure A-1 letter at this stage.

11. The question is whether the respondents have thereafter acted in conformity with the Annexure A-1 letter. It appears to us that sub-para (iii)(a) extracted above would apply to the applicant. In other words, his request of transfer could be accepted by reverting him as LDC and posting him in Haryana Circle and giving him priority over the LDCs. This can have only one meaning- namely, in the LDC's cadre, he would have to be placed at the top of the gradation list. Indeed this was how his seniority was determined in Annexure A-9 memorandum dated 29.11.89, following which, he was also given a promotion as UDC by the Annexure A-10 memorandum.

12. The respondents have suddenly cancelled both these memoranda and assigned seniority at the bottom of all LDCs. The only reason given in the reply filed

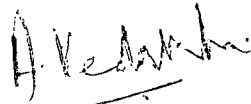
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is that the applicant had given a declaration when he applied for transfer and his seniority was fixed in LDCs cadre below all LDCs working in the Haryana Circle under the provisions of rule 38. We are unable to appreciate this argument. In the first place, the declaration given by the applicant, which has been produced as Annexure R3, ^{we nowhere state} that the applicant was ready to go to Haryana Circle as a LDC with bottom seniority. The declaration is strictly in terms of Rule 38, without any reference to the Annexure-1 letter. It would appear that the Annexure A-1 letter was not even brought to the notice of the applicant and persons like him seeking transfer. We, therefore, find there is nothing in the declaration to justify the action of the respondents. The proper construction is that the Annexure-1 letter dated 12.8.87 modifies para-38 to some extent. His case would therefore be considered under Rule-38 as so modified. That permits reversion as a LDC but requires that the transferee should be given priority over the existing LDCs. In our view, this can only mean seniority over all existing LDCs is assured.

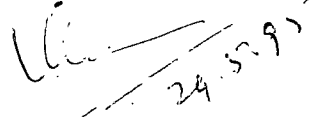
13. In this view of the matter, we find that the orders cancelling the seniority earlier determined and the promotion earlier granted are illegal and accordingly, the Annexure-3 and Annexure-4 orders, as also the subsequent Annexure A5 and Annexure A6 orders rejecting the representation are liable to be quashed and we do so. We dispose of this OA with a declaration that the Annexure A-8 and A9 orders respectively fixing his seniority in the grade of LDC and granting promotion as UDC are in force from the

dates they were issued and the applicant shall be given full benefits of these orders within two months from the date of receipt of this order.

14. The OA is disposed of accordingly.



(Dr. A. Vedavalli)
Member(J)



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

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