

a

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 2082/2004

New Delhi this the 10th day of March, 2005

Hon'ble Mrs. Meera Chhibber, Member (J)
Hon'ble Shri S.K. Malhotra, Member (A)

1. Vijay Kumar Kaul, LDC
S/O Shri P.M.Kaul,
R/O H-680, Palam Extn.-1,
Dwarka, New Delhi-110045
2. Vijay Kumar Mattoo, LDC
S/O Shri P.N.Mattoo,
R/O 1321-A, Maruti Vihar,
Chakkarpur, Gurgaon-122002
Haryana.
3. Kuldeep Sahib, LDC
S/O Late Shri M.L.Sahib,
R/O 25-A, Kashmiri Colony,
Paprawat Road, Najafgarh,
Delhi.
4. Ujwal Kachroo,
S/O Late Shri B. N.Kachroo,
A-26, IInd Floor,
East Uttam Nagar,
New Delhi-110059

..Applicants

(By Advocate Shri Susheel Sharma)

VERSUS

1. Union of India
Through the Secretary,
Ministry of Defence, South Block,
New Delhi.
2. Director General of Ordnance Services,
MGOs Branch, Sena Bhavan,
Army Headquarters, DHQ PO,
New Delhi- 110011
3. The Commandant,
Central Ordnance Depot,
Delhi Cantt-110010.



20

- 2 -
4. The Commandant,
Central Aviation Support Depot,
Delhi Cantt-110010.
 5. Officer In Charge,
AOC Records,
Post Bag No.-3, Trimulgherry,
Secunderabad- 15 (AP).

...Respondents

(By Advocate Shri Shamudin Khan)

O R D E R

Hon'ble Mrs. Meera Chhibber, Member (J)

This O.A. has been filed by four applicants, who have sought quashing of the order dated 21.7.2004 whereby the request for granting them the benefit of the judgment has been rejected. They have further sought a direction to the respondents to extend the benefit of the judgment dated 12.07.2001 of the Hon'ble High Court of Punjab and Haryana delivered in the case of Union of India and Ors. Vs. Praveen Kumar & Ors. in Writ Petition No. 1158/2001 since they are similarly placed as that of the applicants in O.A. No. 1476-PB-1991 (respondents in Writ Petition No. 1158/2001).

2. It is submitted by the applicants that they were selected in the year 1984 as LDCs but were not given the appointment letters. Applicant No. 4 was given the appointment in December, 1993 in compliance of Tribunal's order dated 24.8.1993 passed in O.A. No.29/JK/92 while applicants Nos. 1,2 and 3 had been given appointment in May, 1996 in compliance of the judgment dated 24.7.1995 given by the Hon'ble High Court of Jammu and Kashmir at Jammu in SWP No. 1052/1991.

3. Seven similarly placed persons filed O.A./TA No. 539/HP/1986 before the Tribunal at Chandigarh Bench in the year 1986 for giving them appointment letters. Before they could be issued the appointment letters, they filed another O.A. 1476/PB/91 seeking directions to the respondents to appoint them as LDCs w.e.f. 1.5.1985 with all consequential benefits, including seniority, pay and

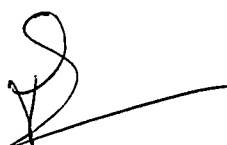


- 3 -

allowances, etc. The Tribunal decided the case in favour of the applicants therein and also granted them 50% back wages and counted their services w.e.f. May, 1985. The said decision was challenged by Union of India before the Hon'ble High Court of Punjab and Haryana by filing Writ Petition No. 1158/2001, which was finally decided vide judgment dated 12.7.2001 upholding all other directions of the Tribunal but set aside the order to the extent of grant of 50% back wages to the applicants therein.

4. After receiving the said judgment, applicants herein gave representations for giving them the same benefits but the same had been rejected, on the ground that they were not party to the said O.A. Therefore, they are not entitled for the said relief. Applicants have, therefore, filed the present O.A. seeking the same benefits. Counsel for the applicants relied on the judgments given by the Hon'ble Supreme Court in the case of K.C. Sharma and Ors. Vs. Union of India & Ors. reported in 1998 SCC (L&S) 226 and O.A. 799/2003 given in the case of Smt. Shanta Khurana Vs. The Commandant, Central Ordnance Depot and Ors.

5. Respondents on the other hand have opposed this O.A. by submitting that only those general category candidates, who were placed higher in the merit list were appointed prior to them excepting one Shri Kala Ram, who was appearing at Serial No. 14 in the merit list, that too because he belongs to SC category. The applicants herein were at Serial Nos. 25, 19, 24 and 8, respectively in the merit list. They could not be given appointment earlier due to imposition of the ban on recruitment by the Government. However, subsequently as per the directions of the High Court of Jammu and Kashmir, the petitioners were given appointment as and when the vacancies became available strictly as per their placement in the merit list. Applicants Nos. 1,2 and 3 were given appointment in May, 1996 while applicant No. 4 was given appointment on 11.12.1993 whereas the persons whose names have been given by the applicants in Para 4.4 were at Serial Nos. 3,4 and



98

- 4 -

7 in the select list. Therefore, they cannot claim the same benefits as have been given to some other persons especially when in the case of applicant No. 4 when he approached the Tribunal by filing O.A. No. 29/JK/92, the Tribunal had passed the following order:

"....this O.A. is allowed in terms of the directions to the respondents to issue appointment letter to the applicant for the post for which he was duly selected in 1984 within a period of six weeks from the date of receipt of copy of this judgment. It is made clear that the appointment shall have prospective effect and the applicant is held not entitled to any back wages or seniority for the simple reason that it is neither the case of the applicant nor it has been shown to us that any person junior to him in the panel has already been appointed".

Since the applicant No. 4 never challenged the said judgment before any High Court, therefore, it had attained finality and since in that judgment, it is specifically mentioned that his appointment shall have prospective effect and he could not be entitled to any back wages or seniority, therefore, he cannot now turn around and claim the benefits given by the Tribunal in some other case when the facts are distinguishable. They have referred to the judgment given by the Hon'ble High Court of Jammu and Kashmir wherein a direction was given to the respondents that petitioners shall be appointed as LDCs as and when the posts become available on their own turn as per their merit position in the select list. They were, therefore, given the pay and allowances from the date of their appointment and their seniority was also fixed from the said date.

6. They have specifically stated that none of the persons who was below the petitioners in the merit list was appointed prior to the applicants and since Jammu and Kashmir High Court had given them the direction to appoint the persons as and when the vacancies become available as per their own merit position, naturally they had to be given the appointment only when vacancies became available. As far as applicant No. 4 Shri Ujwal Kachroo is concerned, they have stated that he is higher than the other applicants being at Serial No. 8 and since in



B

5

his case a specific direction was given that he would not be given the benefit of seniority, naturally the other applicants, who were below him in the merit list could not have been given something more than what was given to Mr. Ujwal Kachroo. They have thus submitted that their request was rightly rejected by the respondents and this case calls for no interference.

7. We have heard both the counsel and perused the pleadings as well.

8. The way counsel for the applicants argued the case and projected the facts, the first feeling which came to our mind was that they should also have been given the same benefits as were given to Praveen Singh and others but when we saw the different orders passed by different Benches of the Tribunal and the Hon'ble High Court, absolute different picture emerges out which clarifies the position ^{others in SC} which is explained hereinbelow. B

9. The first case was filed by Praveen Singh and six others which was decided on 25.8.1987 and since no reply was filed by the respondents, the Tribunal accepted the facts as stated by applicants in the O.A. and directed the respondents to issue appointment letters to the applicants against the vacancies which were not filled up so far in order of merit in the examination. Since this direction was not carried out, those applicants filed CP No. 25/1986, therefore, the respondents issued appointment letters in favour of those applicants w.e.f. 11.1.1990. They again filed O.A. 1476/PB/1991 with a prayer to appoint them as LDC w.e.f. 1.5.1985 with all consequential benefits, including seniority, pay and allowances, etc. The said O.A. was decided vide order dated 13.10.2000 by giving directions to the respondents to either issue a fresh order of appointment or amend the order of appointment issued in favour of these applicants so that they are given appointment with effect from due date from which the other selected candidates have been given appointment. Of course, respondents were given liberty to verify the due date. The Tribunal further directed the respondents to pay



14

- 6 -

all the consequential benefits of increment, etc. to the applicants therein but since they had not worked actually on the post, they were granted 50% of the back wages. It is against this order that Union of India filed Writ Petition No. 1158/2001. The Hon'ble High Court after examining every thing quashed the direction of the Tribunal to the extent of grant of 50% back wages on the principle that they had not worked on those posts from an earlier date. Therefore, they have no right to claim arrears thereof. The other directions were, however, upheld by the Hon'ble High Court of Punjab and Haryana.

10. In the meantime, some other persons filed SWP No. 1052 of 1992 in the High Court of Jammu and Kashmir at Jammu wherein the respondents had clarified the position that all the persons could not be appointed due to the ban imposed on the recruitment but only selected candidates upto Serial No. 7 could be appointed excepting a person at Serial No. 14, who belongs to SC. The petitioners were informed that their selection was subject to availability of vacancies and they shall be considered on their own turn. It was ultimately directed by the Jammu and Kashmir High Court to the respondents to appoint the petitioners as LDCs as and when the posts become available, on their own turn as per their merit position in the select list (page 35). It was, therefore, pursuant to this direction that as and when the vacancies became available, respondents kept giving appointment to the persons who were selected in 1984 as per their turn in the merit list. As we have just mentioned above, this case was filed in the year 1991 and was disposed of vide judgment dated 24.7.1995. Thereafter, the respondents gave appointment to the applicants before us also as per their turn in the merit list as and when the vacancies became available. They were given the appointment in May, 1996 while applicant No. 4, who was at Serial No. 8 in the merit list was given the appointment in December, 1993 meaning thereby that respondents gave appointments to those who were selected in 1984 strictly as



13

-7-

per their position in the merit list but as and when the vacancies became available. Now, as far as Ujwal Kachroo is concerned, he also filed an O.A. bearing No. 29-JK-1992 in the Tribunal at Chandigarh Bench, circuit at Jammu, praying therein that he should be appointed as LDC. A detailed judgment was given by the Tribunal on 24.8.1993 (page 37 at 41) but in the said order it was made clear that the appointment shall be prospective and he would not be entitled to any back wages or seniority for the reason that it is not the case of applicant nor it has been shown that any person junior to him in the panel has already been appointed prior to him. This judgment clearly shows that even they had followed the same principle that appointment had to be given in accordance with the position in the merit list and it could not be given with retrospective effect because no person junior to him had been appointed before that date. This judgment was given on 24.8.1993 and since Ujwal Kachroo was the next available person in the merit list, he was immediately given the appointment on 11.12.1993 on availability of vacancy.

11. It is in this background that we have to test whether the applicants before us can claim their appointment with effect from 1985 with all consequential benefits, as claimed by them or not. It is correct that applicants were also selected as LDC in 1984 but all the selected persons of 1984 could not be given the appointment as a ban had been imposed. Thereafter, a direction was given by the Hon'ble Jammu & Kashmir High Court that rest of the persons should be given the appointment strictly as per their position in the merit list as and when the vacancies become available. Naturally their appointment had to be given on the availability of vacancies only, it could not have related back to 1985 simply on the ground that few other persons had been given retrospective appointment unless applicants could show us that any person below them in the merit list has been given appointment from a retrospective date. This is not the case of the



16

8

applicants and even otherwise from the perusal of merit list shown by the respondents in the counter affidavit, it is absolutely clear that applicant No. 4 was at Serial No. 8 in the merit list while applicant Nos. 2, 3 and 1 were at Serial Nos. 19, 24 and 25, respectively. Applicants before us have not been able to show us that any person below them was at all given appointment ahead of them or was given the consequential benefits as are being claimed by the applicants before us. In these circumstances, we do not think that the claim made by the applicants is either valid or justified. The person at Serial No. 14 Shri Kalu Ram was given appointment earlier because he belongs to SC and was utilized against the reserved quota whereas all the applicants before us belong to general category.

12. Apart from it since in the case of Ujwal Kachroo, the Tribunal had given clear and unambiguous directions that he should be given appointment with prospective effect and that he would not be entitled to any back wages or seniority, it is not even open to him to now seek a direction contrary to that judgment given by the Tribunal because he never challenged the judgment dated 24.8.1993 given in his case in OA 29-JK-92. The said judgment has attained finality. Therefore, this O.A. is not at all maintainable before us seeking contrary directions in view of the specific directions already having been given in his case earlier by the Tribunal which were never challenged by him. So long that judgment is there, applicant No. 4 cannot seek directions contrary to those directions.

13. It is seen that all the four applicants have filed a joint application before us. Therefore, their cases cannot be bifurcated as was being suggested by the counsel for applicants because they have either to sail or sink in the same boat. Since applicant No. 4's case has to be rejected on the ground as mentioned above and others have joined him, their cases get rejected automatically on this ground as well.

B

2X

- 9 -


14. Counsel for the applicants had relied on the judgment given by Hon'ble Supreme Court in the case of K.C. Sharma (supra). Perusal of the judgment shows it was a judgment in rem by the Tribunal because notification dated 5.12.1988 whereby certain amendments were carried out which adversely affected pension of the appellants retrospectively itself was quashed by the Tribunal when some other persons had approached the Tribunal but when similarly situated persons filed an O.A. seeking the benefit of that judgment, it was rejected by the Tribunal, on the ground that O.A. was barred by limitation. It was in that background that Hon'ble Supreme Court held that since earlier judgment was in rem and the notification itself was quashed, naturally the benefit had to be given to all other similarly situated persons since they were also affected by the same notification and the notification itself had been quashed by the Tribunal. Therefore, the judgment of K.C. Sharma and Ors. (supra) cannot advance the case of applicants before us because in this case the judgment given by the Tribunal in the case of Praveen Singh (supra) cannot be said to be a judgment in rem. On the contrary, it was a judgment in personam, which is evident from the fact that the relief was given to the applicants therein specifically which is evident from the portions as extracted above which have been underlined whereas in the present case appointment has been given to the applicant keeping in view the merit position of the individuals and the availability of the vacancies, as directed by Hon'ble High Court of J&K. Therefore, reliance on the judgment of K.C. Sharma & Ors. (supra) is absolutely misplaced in present set of facts. As far as the judgment given in Smt. Shanta Khurana (supra) by the Principal Bench is concerned, it is a one page order which only states that since in the earlier case direction was given to consider the case of applicant, this O.A. is also disposed of with the same direction. Therefore, neither any positive concrete direction was given in the said case giving any relief to the applicant nor it lays down any



2A

principle of law that in every case, the same benefit has to be given automatically to all other persons as well. Counsel for the applicant also relied on judgment dated 29.11.2004 in O.A. No. 1097/2004 but it is settled law that each case has to be decided in the given facts of the case. At this juncture, it would be relevant to quote latest judgment of Hon'ble Supreme Court in the case of Collector of Central Excise, Calcutta Vs. M/s Alnoori Tobacco Products and Anr. reported in 2004 (6) SCALE 232 wherein it was held that "disposal of cases blindly by placing reliance on a decision is not proper. Courts must see how the factual position fits in with the fact situation of the decision relied on. One additional or different fact may make a world of difference between conclusions in two cases". If the facts of present case are seen in the back ground as is explained above, we find that respondents have rightly rejected the claim of applicants for grant of appointment with retrospective effect from 1.5.1985 because they had to be given appointment as per their placement in the merit list and as and when the vacancies became available, therefore, it cannot relate to an earlier date especially when applicants have not been able to show us that any person (other than Kalu Ram) junior to them has been given appointment from a retrospective date or benefits thereof.

15. In view of the above discussion, we find no merit in the O.A. The O.A. is accordingly dismissed. No order as to costs.


(S.K. MALHOTRA)
MEMBER (A)


10/3/05
(MRS. MEERA CHHIBBER)
MEMBER (j)

'SRD'