

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. NO.1307/2004

New Delhi, this the 7th day of March, 2005

HON'BLE MR. SHANKER RAJU, MEMBER (J)
HON'BLE MR. S.K. MALHOTRA, MEMBER (A)

Mr. Mahesh Kumar Sharma,
S/o Late Shri R.S. Sharma,
R/o Qtr. No.68 Double Storey,
Block No.6, Tilak Nagar,
New Delhi – 110 018

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Applicant

(By Advocate : Shri M.K. Bhardwaj)

Versus

Union of India & Ors. through:

1. The Secretary,
Ministry of Defence,
South Block, New Delhi – 01
2. Engineers in Chief,
Office of Engineer in Chief,
Army Headquarters, Kashmir House,
New Delhi – 11
3. Headquarters,
Chief Engineer,
Western Command,
Chandi Mandir
4. Head Quarter,
Chief Engineer,
Delhi Zone, Delhi Cantt.
5. Garrison Engineer (Project) West,
Delhi Cantt.
6. Civ-7040
Shri Banka R. Davidutta, UDC,
Chief Engineer, Western Command,
Chandi Mandir
7. MES-312409
Smt. Rama Rani Gaur, UDC,
GE (East), Jalandhar

8. MES 312388,
Smt. Savita Kumari, UDC,
GE(I), R&D Delhi

9. MES 312418
Sh. Jeet Singh Sharma, UDC,
GE (AF), Subroto Park, Delhi

10. MES 312416
Smt. Nirmal Kaur, UDC,
GE (AF) Halwara

11. MES 312795
Arun Kumar Sondhi, UDC
GE (AF) Tuglakabad

12. MES 312379
Smt. Raj Rani, UDC
Chief Engineer,
Western Command,
Chandi Mandir

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Respondents
(By Advocate : Shri K.R. Sachdeva)

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O R D E R

BY S.K. MALHOTRA, MEMBER (A) :

This OA has been filed by the applicant with the prayer to quash and set aside the show cause notice dated 17.5.2004 (Annexure 'A-II') whereby he has been asked as to why he should not be given the seniority from the date of select panel and financial benefit from the date of actual assumption of charge of the post of UDC, instead of date of occurrence of the vacancy. He has also prayed for quashing the promotion order dated 8.5.2004 and the panel/seniority list dated 25.8.2003 to the extent he has been denied promotion. He has also sought a direction being issued to the respondents to promote him to the post of Assistant from the date his immediate junior has been promoted.

2. The facts of the case, briefly stated, are that the applicant joined the respondents as LDC after qualifying the selection process held as per the Rules. He was promoted to the post of UDC w.e.f. 19.12.1994 as a result of

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restricturing after rendering 19 years of service as LDC. The applicant along with others has been promoted to the post of UDC by a common order dated 5.9.1995 by which he has been given seniority and financial benefits w.e.f. 19.12.1994.

3. Based on this promotion order, respondents issued all India seniority list of UDCs in which the name of the applicant was inadvertently shown at Serial No.534 by treating the seniority w.e.f. 1.1.1995 instead of 19.12.1994 (Annexure A-IV), whereas it should have been at Serial No.486 by giving him seniority w.e.f. 19.12.1994. The grievance of the applicant is that while many of his juniors have been promoted as Assistants in the panel of Assistants issued vide order dated 25.8.2003, he has been ignored although he is senior. He has been making representations but to no avail. Instead of promoting him as Assistant, he has now been issued a show cause notice on 17.5.2004 for change of his seniority as UDC. Hence this OA.

4. The respondents have filed their counter reply in which they have stated that the applicant has been given seniority as UDC w.e.f. 19.12.1994, i.e., from the date of occurrence of vacancy. This is not in conformity with the instructions of DOP&T, according to which the date of seniority is the date of issue of the panel. This anomaly has occurred in respect of the applicant and many others and the same is under correction. It is in order to correct this anomaly that show cause notices have been issued to individual employees, including the applicant. In so far as his promotion as Assistant is concerned, it has been contended that his name was not included in the panel, as he was not coming in the normal zone of consideration as per vacancy position. Once the seniority is re-fixed, in accordance with the DOP&T's instructions, a review DPC for promotion to the post of Assistant will be held and the case of the applicant will also be considered, if he is due according to the revised seniority list.

5. We have heard both the learned counsel and have also gone through the pleadings on record.

6. The controversy involved in the case is whether the seniority as UDC is to be reckoned from the date of occurrence of the vacancy or the date of empanelment. According to the respondents, it has to be from the date of empanelment but inadvertently, the applicant and many others were given seniority from the date of occurrence of vacancy, which is in violation of the instructions of DOP&T. This inadvertent mistake is now being corrected for which show cause notices have been issued to the applicant and other employees who are similarly situated. It appears that the applicant has not yet replied to this show cause notice and has rushed to the Tribunal for setting aside the same. He has thus not exhausted the departmental remedies available to him under Section 20 of the Administrative Tribunals Act, 1985. The application is, therefore, premature.

7. In view of the above, we will not, at this stage, like to examine the OA on merit. The applicant should comply with the provision under Section 20 of the Administrative Tribunals Act, 1985 and in case he is still aggrieved, he will be at liberty to approach the Tribunal for redressal of his grievance. The OA being premature is dismissed. No order as to costs.

Amay
(S.K. Malhotra)
Member (A)

S. Raju
(Shanker Raju)
Member (J)

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