

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 8<sup>th</sup> day of November, 2001.

Original Application No. 731 of 1996.

CORAM :-

Hon'ble Mr. SKI Naqvi, J.M.

Hon'ble Maj Gen K.K. Srivastava, A.M.

Sushil Singh Son of Shri R.B. Singh,  
R/o LIG 230, Preetam Nagar,  
Allahabad.

(Sri ABL Srivastava, Advocate)

. . . . . Applicant

Versus

1. Union of India through  
The Secretary to Govt. of India,  
Department of Personnel & Training,  
New Delhi.
2. The Hon'ble Chairman,  
Central Administrative Tribunal,  
Principal Bench, Faridkot House,  
New Delhi.
3. The Hon'ble Vice Chairman,  
Central Administrative Tribunal,  
Allahabad Bench.
4. The Registrar,  
Central Administrative Tribunal,  
Allahabad Bench,  
Allahabad.
5. Shri Manoj Kumar Gupta,  
C/o Registrar, C.A.T. Allahabad.

(Sri Amit Sthalekar/Km. Sadhna Srivastava, Advocates)

. . . . . Respondents

O R D E R (O\_r\_a\_l)

By Hon'ble Mr. SKI Naqvi, J.M.

The applicant Sri Sushil Singh has come up  
impugning the order dated 08-7-1996 (Annexure-A-1 to the  
OA) and has prayed for a writ of Mandamus restraining  
the respondents to interfere with his working on the

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post of Lower Division Clerk (L.D.C.) and also a direction to the effect that the applicant be regularised as L.D.C. to which he was promoted against the reservation provided for physically handicapped employees vide O.M. dated 20-11-1989.

2. The applicant has grievance against the impugned Office Order No.115/96 issued under Memo No.CAT/Alld/Admin/4-GR(B) dated 08-7-1996 in which the applicant has been assumed to have been reverted as Peon and promoted as Jemadar retrospectively w.e.f. 21-6-1996. This order has been impugned mainly on the ground of being arbitrary, whimsical and bad in law, inasmuch as, the applicant had already been confirmed w.e. 19-8-1991 as Peon vide order dated 23-8-1991 and as a confirmed Peon in Group 'D' cannot be placed under probation once again. He has also mentioned that he cannot be appointed to intermediary post of Jemadar without being reverted to his substantive post. The applicant has also mentioned that this reversion is not arising out of any administrative exigencies like reduction of sanctioned strength in the cadre of L.D.C., not because of any unsatisfactory performance service or any complaint against him. The applicant has also referred to the Department of Personnel and Training O.M. dated 08-12-1980 and pleaded that being physically handicapped, he cannot be posted as Jemadar. The applicant has also taken a ground that promotion of Sri Manoj Kumar Gupta (respondent no.5) from the post of Jemadar to the post of L.D.C. vide order dated 08-7-1996 retrospectively w.e.f. 21-6-1996 is illegal being based on presumed reversion of the applicant. The other ground taken to impugn the order under challenge is that on the face of promotion of respondent no.5 to the post of L.D.C. is indicative of the position that there <sup>existed</sup> ~~existed~~ vacancy in

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the cadre of L.D.C. but the respondents <sup>unseated</sup> ~~unfitted~~ the position for extraneous consideration to provide promotion to respondent no.5.

3. The respondents have contested the case and filed the counter reply. The position of pleading is that respondent nos.1 to 4 filed their short counter at the stage of hearing on interim relief and thereafter detailed counter has been filed by these respondents. Respondent no.5, namely, Sri Manoj Kumar Gupta, preferred a separate counter reply and then the applicant filed a rejoinder to these counters. Respondent nos.1 to 4 filed another supplementary counter affidavit, which has been replied by the applicant through supplementary rejoinder affidavit.

4. Heard Sri ABL Srivastava, counsel for the applicant and Sri Amit Sthalekar, counsel for respondent nos.1 to 4 and Km. Sadhna Srivastava, counsel for Sri Manoj Kumar Gupta (respondent no.5). Perused the record, the law referred from either sides <sup>and</sup> as also took ~~into~~ consideration the written arguments preferred from the side of the rival contesting parties.

5. As per applicant, he is a Graduate and physically handicapped duly enrolled with National Employment Exchange. He was selected in the Central Administrative Tribunal, Allahabad Bench, under the Category of Physically Handicapped within 3% reserved quota. He joined on 25-9-1986 as per appointment letter. He was confirmed in Group 'D' vide Annexure-A-3 dated 23-8-1991. Learned counsel for the applicant also referred the seniority list of Group 'D' employees and has alleged that the applicant has not been placed at his due place keeping in view his merit, in comparison to other members in the cadre. It has also been mentioned that respondent no.5

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has wrongly been placed above the applicant because of his being only under Matriculate whereas the applicant is a Graduate and thereby educationally more qualified. It has also been placed on behalf of the applicant that he was promoted as L.D.C. in September, 1995 alongwith respondent no.5 but the respondent no.5 was reverted w.e.f. 29-2-1996 on account of reduction of sanctioned post while the applicant continued to work as L.D.C. Learned counsel for the applicant also pressed that the applicant was appointed and promoted as L.D.C. on consideration of being physically handicapped but was illegally reverted and junior to him promoted retrospectively vide order dated 08-7-1996. The applicant preferred a representation which was decided vide Memo. dated 10-10-1990 through <sup>which</sup> his claim has been turned down. The learned counsel for the applicant also pressed for doctrine of Promissory Estoppel with reference that the respondents assured to consider the applicant for promotion when he completes five years' service in Group 'D' after 25-1-1991 but they did not adhere to it. Regarding ad hoc appointment the applicant has contended that he was promoted on ad hoc basis for <sup>2</sup>189 days only, which was extended from time to time and this act of respondents is against the prescribed norms in view of the existing vacancy in the L.D.C. Cadre. Learned counsel for the applicant also raised the point that during pendency of the judicial proceedings and without issue of show cause notice the respondents reduced the emoluments of the applicant at his back, which is against the principles of natural justice and the law laid down by the Principal Bench in Chandra Bhan Vs. Union of India and Others, A.T.C. (1987) 3 CAT 432 and Calcutta Bench decision in Narayan Chakravarty Vs.

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Union of India and Ors, ATC (1996) 32 CAT 540. It has also been raised from the side of the applicant that right from October, 1986 till date, the applicant is continuously performing the duties of Despatch Clerk which is a post of L.D.C. Cadre Group 'C', but he is being paid scale of Jemadar. The learned counsel for the applicant also referred to the ratio in Chief of Naval Staff & Others Vs. G. Gopal Krishnan Pillia, A.T.C. 1996(1) SC 275 and Union of India and Ors Vs. SK Sharma, 1992(2) SCC 728 to fortify his contention that the appointment made in the Tribunal in Group 'D' prior to 15-9-1986 could only be on ad hoc basis and cannot claim seniority over those appointed after 15-9-1986. In short the applicant has a claim that he was appointed under Handicapped Quota and should have been placed in the seniority list of the cadre in accordance with his merit and above those who were not having such a merit as that of the applicant and also that he was rightly promoted to the post of L.D.C. taking into consideration his merit and reservation under Physically Handicapped Quota and also that the impugned order reverting him to the post of Jemadar was bad in law and is not in accordance with merit because another candidate of the cadre who has wrongly been shown above him in the seniority list has been give promotion to a vacant post.

6. Km. Sadhna Srivastava, learned counsel for the respondent no.5 raised a basic objection that the impleadment of Sri Manoj Kumar Gupta is an instance of misjoinder of unnecessary party because no relief is directed against this respondent. It has also been mentioned that the respondent no.5 was appointed as Peon on temporary basis on 29-1-1986. He was confirmed in the cadre of Peon w.e.f. 19-8-1991. She has also

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referred to confirmation order in which the applicant Sri Sushil Singh has been shown at Serial No.14 and the respondent no.5 has been placed at Serial no.6. The respondent has also referred the seniority list of Group 'D' employees dated 28-4-1995, the copy of which has been annexed as Annexure-CA-3 to the counter reply by this respondent in which the respondent no.5 is at Serial No.3 and the applicant Sri Sushil Singh is at Serial No.9. With this mention learned counsel for respondent no.5 asserted that the applicant <sup>could</sup> ~~was~~ not having ~~any~~ any grievance regarding confirmation and promotion of respondent no.5 as the respondent no.5 is being shown senior to the applicant Sri Sushil Singh at every stage when their seniority was <sup>under</sup> ~~a~~ consideration. It has also been pleaded that this position in the seniority list of the cadre has neither been challenged by the applicant nor any relief has been sought in this regard and, therefore, the grievance of the applicant Sri Sushil Singh regarding service status of respondent no.5 is misconceived and not tenable.

7. Sri Amit Sthalekar, learned counsel for official respondent nos.1 to 4 took <sup>us</sup> ~~me~~ through the order passed from time to time and also the provisions under C.A.T. Group 'B' and 'C' Posts Recruitment Rules, 1989 and clarified the position that there is provision of 3% reservation for handicapped candidates, which has been splitted into three categories making provision of 1% for Visually Handicapped, 1% for Hearing Handicapped and 1% for Physically Handicapped persons. The applicant was appointed under 1% reservation for Physically Handicapped persons. It has also been clarified that for promotion to Group 'C' there is 5% quota vacancies required to be filled from amongst the Group 'D' staff

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who possess educational qualification of High School or equivalent and <sup>have</sup> rendered five years regular service in Group 'D' post on the basis <sup>of</sup> Departmental Qualifying Examination (subject to maximum age limit of 45 years) and thereby the petitioner was not eligible for promotion since he did not complete five years of continuous service in Group 'D' in the year, 1990. There is also provision for 5% quota of vacancy to be filled on the basis of seniority-cum-fitness from Group 'D' employees possessing educational qualification of High School or equivalent with proficiency in typewriting. The petitioner did not come within the zone of consideration because of his low seniority position in 1990. The rest of 90% vacancies are to be filled by direct recruitment through open recruitment. The applicant was <sup>a candidate</sup> ~~considered~~ for the said examination but could not qualify the same. Sri Amit Sthalekar highlighted the position that the applicant deliberately concealed this fact and did not disclose before the Court that he appeared in the examination for direct recruitment but failed to qualify the same.

Learned counsel for respondent nos. 1 to 4 also stressed that for promotion purpose there could be only one post for handicapped candidates but for want of vacancy this post could not be provided to the applicant in view <sup>of already</sup> ~~of already~~ <sup>he</sup> ~~appointment of the~~ physically handicapped candidates in Group 'C' L.D.C. post. The official respondents have also clarified that the applicant was appointed as L.D.C. by order dated 28-9-1995 purely on ad hoc basis, without any claim in the seniority in the grade, for a period of 89 days or till availability of regular candidates, expiring on 25-12-1995 and vide order dated 21-12-1995 he was again appointed on ad hoc basis from 26-12-1995 to 23-3-1996 and likewise vide order dated 25-3-1996 he was appointed for a period from 24-3-1996 to 20-6-1996 and thereafter

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there is no extension, <sup>f</sup>and hence ad hoc appointment automatically ceased w.e.f. 21-6-1996. Referring this position, it has been emphasised that the case of the applicant is not the <sup>f</sup>position of reversion but it is non-extension of ad hoc appointment. Learned counsel for the official respondents also referred the law handed down in (1997) 2 SCC 1960, Committee of Management Basant College for Women Vs. Tribhuwan Nath Tripathi, according to which an ad hoc appointee has no right to continue in service after expiry of the period of such appointment. It has also been contended that through the OA filed in the year, 1996, the applicant cannot challenge seniority position and the promotions made and it was determined in the year 1991 and again in 1995. In reply to the contention of the applicant that being an employee under handicapped reserved quota, the applicant Sri Sushil Singh cannot be posted as Jemadar in view of Government of India O.M. dated 18-12-1980, Sri Amit Sthalekar, referred the Government of India, D.O.P.T. O.M. No. 36035/5/84-Estt.(SCT) dated 28-2-1986, Para 9, Chapter XXVI, which mentions that the list of jobs identified to suitable handicapped persons is not exhausted. Thus, it cannot be said that the post of Jemadar is not fit for physically handicapped persons.

8. Regarding contention of the applicant that he is continuously working as Despatch Clerk right from the year, 1986 till date and the post is that of L.D.C. in Group 'C' Cadre, <sup>f</sup>and, therefore, he shall be promoted to that post and he becomes entitled for emoluments as admissible to the post of Despatch Clerk. Sri Amit Sthalekar mentions that in Allahabad Bench of C.A.T. there is no post of Despatch Clerk and an employee,

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who simply and casually makes some entries in the Despatch Register does not become a Despatch Clerk particularly when there is no sanction for such a post.

9. Learned counsel for the applicant also cited the law handed down in Smt. Suman Bala Vs. Union of India in OA No.2648/2000 decided at Principal Bench, New Delhi on 4-9-2001 and the law as per OA No.780/CH/1998 - Kunwar Singh Vs. Union of India decided on 4-5-2000. In Smt. Suman Bala case (supra) the position was quite different where the applicant therein worked at the post of typist which was sanctioned one and required expertise in that faculty, but that position is not in the case under consideration here. Likewise the case of Kulwant Singh (supra) stands on quite different footing.

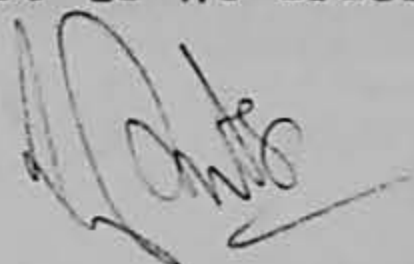
10. The facts and circumstances of the matter lead to a position that the main grievance of the applicant is that he has been wrongly placed in the seniority list and according to merit he should have been placed above those, who are less in merit in comparison to him and also that he was allowed due promotion to the post of L.D.C. and should have not been reverted to the post of Jemadar. So far as the position in the seniority list is concerned, the applicant has not impugned the same and sought no relief in the relief clause of the OA. Moreover, when this OA was filed in the year 1996, the question of seniority had already been cemented and because of bar of limitation period, it could not be successfully agitated. Regarding his promotion and reversion, it is quite evident from the pleadings, annexures thereto, and the legal position that, no doubt, the applicant was appointed under Handicapped Reservation Quota, but the

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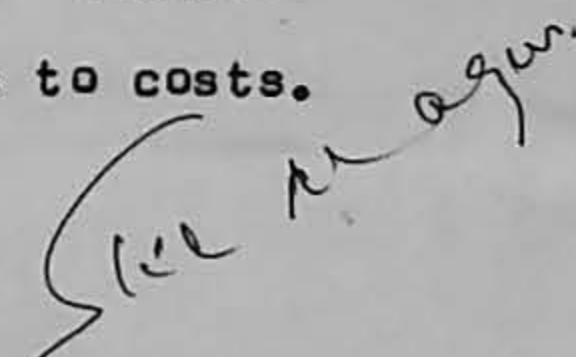


promotion allowed to him, rather out of turn, ignoring seniors to him, was perhaps under misconception of his entitlement under Handicapped Quota, but, subsequently, it came to know that in the cadre of L.D.C. there was another handicapped incumbent and, there was no more vacancy to accommodate another handicapped. Therefore, the applicant had to be reverted and the order passed under misconception has been set right. It is also not in dispute that respondent no.5, namely, Sri Manoj Kumar Gupta, joined in service on 29-1-1986 and the applicant was appointed on 25-9-1986 and joined accordingly and thereby Sri Manoj Kumar Gupta is senior to him and rightly considered for promotion on the basis of seniority and suitability.

11. For the above, we find that the relief sought for in this OA cannot be granted. The OA is dismissed accordingly. There shall be no order as to costs.



Member (A)



Member (J)

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