

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 28th DAY OF APRIL, 2004

Original Application No. 09 of 2001

CORAM:

HON.MR.JUSTICE S.R.SINGH,V.C.

HON.MR.D.R.TIWARI, MEMBER(A)

Ashwani Kumar Sharma, aged
about 44 years, Son of Sri M.L.Sharma,
presently serving as Office Supdt.
grade in the office of Indian Military
Academy(IMA), Dehradun.

.. Applicant

(By Adv: Shri Rakesh Bahadur)

Versus

1. Union of India through
Secretary, Ministry of Defence-
New Delhi.
2. Director General of Military
Training, Army Head Quarters,
DHQ, Post office, New Delhi.
3. Commandant Indian Military
Academy, Dehradun.
4. Nand Kishore Sharma
a/a 50 years, son of
Shri N.C.Sharma, working as
Assistant in Indian Military
Academy, Dehradun.

.. Respondents

Alongwith Original Application No.430 of 1995

Nand Kishore, son of Sri Nanak
Chand Sharma, at present posted as

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Accountant, Indian Military
Academy, Dehradun.

.. Applicant

(By Adv: Shri Sudhir Agrawal)

Versus

1. Union of India, through
Secretary, Ministry of Defence,
Army Headquarter, New Delhi.
2. The Director General of
Military Training, General
Staff Branch, Army Headquarter,
DHQ, New Delhi.-11
3. The Commandant, Indian Military
Academy, Dehradun.
4. Ashwani Kumar Sharma, Upper
Division Clerk, Indian Military
Academy, Dehradun.
5. P.D.Thapliyal, Upper Division
Clerk, Indian Military Academy,
Dehradun.

.. Respondents

O R D E R (Reserved)

JUSTICE S, R, SINGH, V.C.

Shri nand Kishore Sharma, the applicant of OA No.430/95 was appointed as Lower Division Clerk at Indian Military Academy, (IMA), Dehradun vide order dated 1.8.1962, whereas, Shri Ashwani Kumar Sharma, the applicant of OA No.09/01 was appointed as Lower Division Clerk in the same institution vide order dated 7.1.1974. One Shri P.D.Thapliyal, arrayed as respondent no.5 in OA No.430/95 was appointed as Lower Division Clerk in Garhwal Rifle Regimental Centre

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Lansdown on 12.4.1968. It appears that Ashwani Kumar Sharma was declared surplus in March 1975 due to reduction of establishment of IMA but absorbed as LDC at C.O.D, Agra where he joined on 9.4.1975. P.D.Thapliyal (respondent no.5 in OA 430/95) who was appointed as LDC in Garhwal Rifle Regimental Centre, Lansdown w.e.f. 12.4.1968 and Ashwani Kumar Sharma were transferred on their own request, to ACC wing of Indian Military Academy, Dehradun with bottom seniority vide order dated 8.8.1977.

It may be worthwhile to note that Indian Military Academy, Dehradun and Army Cadet College (in short ACC), Pune were two independent units under the Ministry of Defence but vide letter dated 10.6.1977, the Ministry of Defence, Govt. of India, notified the sanction of the President of India for shifting of Army Cadet College, Pune to Indian Military Academy, Dehradun and the NDA Wing of the Officer's Training School, Madras to Ghorpuri, Pune in the accommodation vacated by the ACC thereby visualising that ACC on move to Dehradun will become ² ~~an~~ wing of the IMA and NDA wing on move will become a wing of NDA Khadakwasla; the staff and transport given in Appendix B thereof was rendered surplus to the requirement of Army Cadet College, Pune consequent on its move to Dehradun w.e.f. 1.7.1977; the surplus staff and transport of the ACC, it was further provided in the letter, "will be transferred to the NDA Wing (as per Appendix 'A' to this letter) and also make up deficiencies of the NDA." The staff and transport as given in Appendix 'B' was declared surplus to the requirement of ACC consequent on its move to Dehradun. Item No.21, shows 8 posts of Clerks (UDC/LDC/Steno) that was rendered surplus while 16 posts of LDC/UDC including

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one steno typist was authorised to NDA alongwith number of other staff mentioned in Appendix 'A'. It was further visualised in the said letter that in order to minimise the disturbance to civilian staff of the Army Cadet College, Pune consequent on its move to Dehradun, the ACC would transfer minimum number of civilian staff to National Defence Academy Wing, to the extent of its authorisation, and to NDA Khadakwasla to the extent of its deficiencies and carry nucleus staff to Dehradun. Adjustment of personnel was left to Army Headquarters and for the purpose of implementation of the shifting of staff guidelines were laid down vide Army HQ AG's Branch letter No.93945/Org.1(pers)(a) dated 05 Aug.1977.

It would be worthwhile to quote the letter dated 10.6.1977 conveying the sanction of the President for shifting of the ACC, Pune to IMA, Dehradun to the Chief of Army Staff, New Delhi as under:-

No.85484/GS/MT6(B)/1474/D(GS-II), GOVERNMENT OF INDIA,
MINISTRY OF DEFENCE,

NEW DELHI, 10 Jun 1977

To

The Chief of Army Staff
New Delhi

Sub: SHIFTING OF THE ARMY CADET COLLEGE PUNE TO INDIAN MILITARY ACADEMY, DEHRADUN AND NDA WING AT OFFICER'S TRAINING SCHOOL, MADRAS TO PUNE.

Sir,

1. I am directed to refer to this Ministry's letter No.92131/GS/MT6(A)/1860-B/D(GS-II) dated 01 January 1976 and convey the sanction of the President to the shifting of the Army Cadet College Pune to Indian Military Academy, Dehradun and the NDA Wing of the Officer's Training School, MADRAS to Ghorpuri, PUNE in the accommodation vacated by the Army Cadet College. The ACC on move to DEHRADUN WILL BECOME A Wing of the IMA, and NDA Wing on move to PUNE will become a Wing of the NDA KHADAKWASLA. The moves will be completed under the arrangements of the Army Headquarters.

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2. The additional staff, transport and bicycles as given in the attached Appendix 'A' to this letter, will be authorised to the NDA with effect from 01 Jul 77 for the NDA Wing over and above the existing PE of the National Defence Academy, KHADAKWASLA
3. The staff and transport as given in Appendix 'B' to this letter will be rendered surplus to the requirements of the Army Cadet College consequent on its move to DEHRADUN i.e. 1st July 1977. The surplus staff and transport of the ACC will be transferred to the NDA upto the full authorisation of the NDA Wing (as per Appendix 'A' to this letter) and also to make up deficiencies of the NDA. The staff which cannot be absorbed in this manner will be adjusted under the normal Surplus and Deficiency Procedure. The surplus service personnel will be adjusted by the Army Headquarters.
4. In order to minimise the disturbance to the civilian staff of the ACC consequent on its move to DEHRADUN, the ACC is hereby permitted to transfer maximum number of civilian staff to NDA Wing, to the extent of its authorisation, and to NDA Khadakwasla to the extent of its deficiencies and carry nucleus staff to Dehradun where it can recruit civilian staff necessary to bring the establishment to the authorised extent.
5. This letter issues with the concurrence of the Ministry of Finance vide their UO No.1474/D(GS-II) dated 10 Jun 1977.

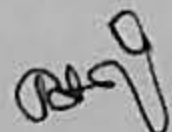
Yours faithfully,

Sd/xxxxx

UNDER SECRETARY TO THE
GOVERNMENT OF INDIA

Copy to:-

It appears that a combined seniority list of LDCs posted at Indian Military Academy, Dehradun including those of its ACC Wing was prepared on 1..5.1978(Annexure A 5 to OA No.430/95) wherein Shri Nand Kishore Sharma was shown at sl.no.12-A, while Ashwani Kumar Sharma (in short A.K.Sharma) and P.D.Thapliyal were shown at sl.nos 43 and 44 respectively. By order dated 26.4.1979 A.K.Sharma and P.D.Thapliyal were given adhoc/officiating promotion to the post of Upper Division Clerk on the



strength of ACC Wing Indian Military Academy, Dehradun w.e.f. 1.5.1978 This was done without any selection by Departmental Promotion Committee. It appears that Admn.officer, IMA, Dehradun by his letter dated 10.12.1979 pointed out that promotions of A.K.Sharma and P.D.Thapliyal were irregular as they had not completed the requisite three years service as LDCs after they joined at IMA,Dehradun. The Army headquarter by its letter dated 2.1.1980 took the same view and accordingly both were reverted vide order dated 24.2.1980. Shri Nand Kihore Sharma, the applicant of OA No.430/95 was promoted to the post of UDC, after selection by Departmental Promotion Committee, w.e.f. 1.8.1980. A.K.Sharma and P.D.Thapliyal preferred representations against their reversion. The representations were, however, rejected by order dated 4.8.1980. Subsequent representation preferred by A.K.Sharma was also rejected by Army headquarter vide letter dated 16.8.1985. Aggrieved, A.K.Sharma approached the Central Administrative Tribunal for relief in OA No.1422/86 which came to be dismissed vide order dated 4.3.1987. Review petition filed by him also met the fate of dismissal vide order dated 26.4.1989. Aggrieved by the orders passed by the Tribunal, A.K.Sharma filed SLP in the Hon'ble Supreme Court which were converted to civil appeals No.8919/94 and 8920/94. Both the civil appeals were allowed vide order dated 2.12.1994 and the orders passed by the Tribunal set aside holding that for the purpose of eligibility, the service rendered by A.K.Sharma as LDC before his transfer to Dehradun had also to be counted. He was held eligible for consideration for promotion as UDC w.e.f. 1.5.1978. In the meantime, he had been promoted as UDC w.e.f. 1.4.1987 in his own turn based on

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the seniority list of LDCs of IMA while Nand Kishore Sharma was further promoted as Accountant vide order dated 2.8.1993.

The department, it appears, convened a review DPC on 11.2.1995 to consider A.K.Sharma and P.D.Thapliyal LDCs borne on the cadre strength of LDCs of ACC Wing only as its peace establishment stood before its merger to IMA, Dehradun for promotion to the 2 posts of UDC lying vacant in ACC Wing from before 1.5.1978. Consequently, others who were senior to A.K.Sharma and P.D.Thapliyal in the combined cadre of LDC at IMA, Dehradun were not considered and on the recommendation of the review DPC, A.K.Sharma and P.D.Thapliyal were promoted as UDCs w.e.f. 1.5.1978 vide order dated 20/22.4.1995. Thapliyal was further promoted vide order dated 13.9.1995 as Accountant w.e.f. 7.2.1987(notionally) and 12.9.1995(actually) and as a consequence, Nand Kishore Sharma was reverted. A.K.Sharma was also given consequential further promotion as Office Superintendent grade II w.e.f. 1.4.1992(notionally) and 1.9.1995(actually). N.K.Sharma has filed OA No.430/95 challenging the legality of promotions of A.K.Sharma and P.D.Thapliyal and that of his reversion by means of OA No.430/95.

It appears, that the issue was also raised before the Govt. of India and the IMA, Dehradun in its comments dated 27.8.1996 sent to the Govt. of India admitted that as a result of treating ACC Wing separate as on 1.5.1978 no other LDC at IMA, Dehradun was considered for promotion alongwith A.K.Sharma and P.D.Thapliyal and

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accordingly Govt. of India Army Headquarter vide its letter dated 2.12.1999 clarified that since amalgamation of ACC wing with IMA,Dehradun was w.e.f. 1.7.1977 hence promotion against the two posts of UDC lying vacant in ACC Wing as on 1.5.1978 was to be made, as per order of the Hon'ble Supreme Court, after considering the candidatures of A.K.Sharma and P.D.Thapliyal alongwith other eligible LDCs on the strength of IMA,Dehradun as on 1.5.1978 on the criterion of seniority-cum-fitness and, accordingly,by means of letter dated 5.2.01 a review DPC was proposed to be held with a view to comply with the judgment of Hon'ble Supreme Court in civil appeals referred to above in accordance with the clarification issued by Army Headquarter vide letter dated 2.12.1999 regarding the correct date of amalgamation of ACC Wing with IMA,Dehradun i.e. 1.7.1977. A.K.Sharma preferred a representation questioning the legality of the proposed review DPC. His representation came to be rejected by order dated 20.3.01 holding that he had P.D.Thapliyal would be considered for promotion w.e.f. 1.5.1978 alongwith other eligible LDCs of IMA,Dehradun. The orders dated 20.3.01 and 5.2.01 are the subject matter of impugnement in OA No.09/01.

We have heard Shri Rakesh Bahadur appearing for A.K.Sharma(Applicant in OA No.09/01), Shri Sudhir Agrawal,learned counsel appearing for N.K.Sharma,(applicant in OA No.30/95) and perused the pleadings as well as documents annexed thereto.



The crucial question that calls for determination is as to what is the correct date of amalgamation of ACC Wing with IMA, Dehradun. In case it is held to be 1.7.1977 then LDCs borne on the cadre strength of IMA, as on 1.5.1978 would be eligible for promotion and on that reckoning no exception can be taken to the review DPC which was proposed to be held vide order dated 5.2.01 impugned in OA 09/01. Shri Rakesh Bahadur, learned counsel appearing for the applicant A.K.Sharma has submitted that 1.7.1977 was the date of shifting of ACC Pune to Dehradun as a wing of IMA, Dehradun took place "provisionally" on 3.6.1978 and "finally" on 1.5.1979; N.K.Sharma borne on the cadre strength of IMA as on 1.5.1978 was not eligible for promotion against the vacancies in the UDC in ACC Wing; promotion of the applicant A.K.Sharma w.e.f. 1.5.1978 was never challenged by N.K.Sharma even though he was very much on the strength of IMA, Dehradun; the department has through out taken the stand that ACC Wing and IMA were two independent units; and, that there was no power of review or revision of the order dated 2.4.1995 whereby A.K.Sharma and P.D.Thapliyal were promoted as UDC w.e.f. 1.5.1978. Shri Sudhir Agrawal on the ^{other} ~~hand~~ ² has submitted that effective date of merger of ACC Pune as a wing of IMA, Dehradun was 1.7.1977 and therefore, proceeds the submission of Shri Agrawal, all those eligible LDCs borne on the Peace Establishment (civilian) of IMA, Dehradun as on 1.5.1978 ~~ought~~ ^{ought} to be considered for promotion to the two posts of UDC lying vacant in ACC Wing on 1.5.1978; promotion A.K.Sharma and P.D.Thapliyal sans considering other eligible candidates, submitted the counsel, was violative of Articles 14 & 16 of the Constitution and hence the review DPC was rightly

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convened.

It would be evident from paragraphs 1 & 3 of the letter dated 10.6.1977, that the ACC on its move to Dehradun became a wing of IMA w.e.f. 1.7.1977 and if once it became a wing of IMA w.e.f. 1.7.1977, the question of it being an entity separate from IMA even after 1.7.1977 cannot be legitimately perceived. Consequently, nucleus staff of ACC that was carried to Dehradun as per Clause(4) of the letter dated 10.6.1977, became a part and partial of the staff of IMA w.e.f 1.7.1977 irrespective of whether the actual decision as to transfer of surplus civilian staff of ACC to NDA wing Khadakwasla to the extent of its authorisation and to the extent of its deficiency was taken subsequent to 1.7.1977. Therefore, all those eligible LDCs who were on the roll of IMA(inclusive of the LDCs in the ACC as on 1.5.1978) were entitled to be considered for promotion against the two vacant posts of UDC in the ACC Wing, IMA Dehradun. The argument that 1.7.1977 was the date of shifting of ACC,Pune to Dehradun and that the merger of ACC with IMA, Dehradun finally took place on 1.5.1979 has no cutting edge and cannot be countenanced in view of the clear and unambiguous language used in the letter dated 10.6.1977 according to which the staff and transport as given in Appendix-B came to be rendered surplus to the requirement of the ACC consequent on its move to Dehradun w.e.f. 1.7.1977 and since the ACC was shifted to Dehradun as wing of IMA, it became of a part of IMA w.e.f. 1.7.1977. In this view of the matter N.K.Sharma, on the cadre strength of LDCs in IMA,Dehradun was as much eligible for promotion to the post of UDC as any other

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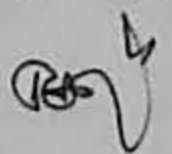
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eligible LDC including A.K.Sharma and P.D.Thapliyal working in ACC wing as on 1.5.1978. The Army Headquarters and its subordinate officers, in our opinion, were under a mistaken notion that ACC Wing was separate and independent unit of IMA and it was because this misconception that they had earlier confined consideration to only those eligible LDCs who were working in ACC wing. The consideration of LDCs of ACC Wing to the exclusion of those who were working in IMA was illegal and violative of Article 14 and 16 of the Constitution. The Ministry of Defence, in our opinion, was justified in its view that consideration for promotion to the post of UDC in ACC Wing ought not to have been confined to LDCs of ACC Wing only. There is nothing in the judgment of the Supreme Court which may exclude consideration of eligible LDCs of IMA nor is there anything to suggest that only A.K.Sharma and P.D.Thapliyal were eligible for promotion to the posts of UDC lying vacant in ACC Wing to the exclusion of LDCs working in IMA.

Relying upon the affidavit filed by Shri S.P.Lakhera, C.G.O(Estt) Officer, IMA, Dehradun filed on behalf of the department before the Supreme court in earlier litigation between the parties, Shri Rakesh Bahadur urged that the respondents had throughout taken the stand that ACC Wing and IMA were separate units until their final merger that took place on 1.5.1979 followed by provisional merger w.e.f. 3.6.1978 and, therefore, proceeds the submission, it is now not open to them to say that the merger/amalgamation of ACC with IMA took place on 1.7.1977. It is true that in the affidavit referred to above, it has been stated that "final and formal merger" of ACC Wing with IMA took place on 1.5.1979

and that "the establishment of Army Cadet College and

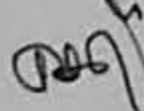
Indian Military Academy was amalgamated provisionally w.e.f. 3.6.1978 and final merger came on 1.5.1979", but at the same time it has further been stated therein, that "upon the merger of ACC Wing with IMA w.e.f. 3.6.1978 the whole civilian group 'C' and 'D' staff of the ACC Wing was placed at appropriate level of seniority." The Apex court did not return any verdict on the question of merger nor was it called upon to do so. In that case the question was only whether the service rendered by applicant Ashwani Kumar Sharma at C.O.D, Agra before his transfer, on compassionate ground to ACC Wing, IMA Dehradun with bottom seniority was to be taken into reckoning for the purpose of determining whether he was eligible for promotion to the post of UDC having completed the requisite 3 years service as LDC. The Hon'ble Supreme Court held that the period of service prior to his transfer to Dehradun had to be taken into consideration while considering his eligibility for promotion to the higher post of UDC. The statement made in the affidavit relied on by learned counsel does not contain any conscious admission as to the date of amalgamation of ACC with IMA. On the other hand, it was stated in the affidavit that "promotions particularly regular promotion if made separately for IMA and ACC Wing after move of ACC Wing in 1977 upto the date of formal merger, were against the move orders of ACC to Dehradun by government." The expression "formal merger" of ACC Wing with IMA Dehradun may have been used in the sense of merger of



the reduced peace Establishment of ACC Wing with the existing PE of the IMA. We may also refer to sub-para (e) added to letter No.93945/Org 1 (pers) (a) dated 05 Aug.1977 vide letter dated 3rd June 1978 annexed as Annexure -A4 as under:-

"(e) The reduced PE of the ACC will be provisionally amalgamated with the existing PE of the IMA, pending finalisation of a combined revised PE for the IMA."

It would be evident from the letter dated 3.6.1978 that it was ^{the} reduced PE of the ACC that stood provisionally amalgamated with the existing PE of the IMA "pending finalisation of a combined revised PE for the IMA." Letter dated Aug.05,1977 read with the letter dated 3.6.1978 does not abnegate the pastulate of the letter dated 10.6.1977 that the ACC on move to Dehradun became a Wing of IMA w.e.f. 1.7.1977. As provided in the letter dated 10.6.1977, the ACC ON ITS move to Dehradun carried with it only the 'nucleus staff' and it was this reduced PE (Peace Establishment) of the ACC that was finally amalgamated with the existing PE of IMA on 1.5.1979. This in our opinion, has nothing to do with the amalgamation/merger of ACC as a Wing of IMA, Dehradun which took place on 1.7.1977. The applicant A.K.Sharma himself was not among the reduced PE of ACC in that he came to be transferred with bottom seniority to ACC Wing IMA, Dehradun from C.O.D, Agra on compassionate ground on 8.8.1977 Those who did not comprise the nucleus staff of the ACC but joined the ACC Wing by way of transfer after 1.7.1978 became members of the cadre strength of IMA on their so joining the ACC Wing.

 Amalgamation of reduced PE of ACC with the PE of IMA

w.e.f. 1.5.1979 is not to be confused with the date of amalgamation of ACC with IMA, Dehradun which took place on 1.7.1977.

Before parting with the case it may be observed that consequent upon merger of ACC Wing with IMA w.e.f. 1.7.1977 a revised seniority list of LDCs of IMA was published in D.O. Part II Civilians Bharatiya Sainya Academy (IMA), Dehradun on 9.9.02 and upon consideration of the candidates on the touch stone of seniority-cum-fitness, the review DPC in its meeting held on 11.11.02 recommended Shri D.P. Bharatwal and N.K. Sharma, Assistants to be promoted to the post of Office Superintendents notionally from 18.12.1977 to 31.10.2000 and 1.11.2000 (FN) respectively. A.K. Sharma and P.D. Thapliyal came to be reverted since they were much lower in position in the combined seniority list as a result of change in the combined seniority list.

Conclusions deducible from the above discussions may be summed up as under:-

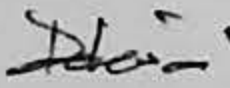
- (i) ACC, Pune on its move to Dehradun vide order dated 10.6.1977 became a wing of IMA Dehradun w.e.f. 1.7.1977 with nucleus staff carried with it as per clause (4) of the letter dated 10.6.1977;
- (ii) The nucleus staff of ACC Wing i.e. the reduced PE of ACC Wing finally merged with IMA, Dehradun w.e.f. 1.5.1979;
- (III) The LDCs of ACC Wing and those in the IMA constitute one and the same cadre;
- (iv) The expression 'final merger/amalgamation' is to be construed as merger/amalgamation of the reduced PE of ACC Wing with the existing PE of IMA ^{and} for the purpose of seniority etc it would relate back to 1.7.1977 i.e. the date w.e.f. which the ACC, Pune became a wing of IMA, Dehradun;
- (v) The seniority of the LDCs of ACC Wing

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and those of IMA has to be decided by taking the LDCs of ACC Wing to be on the cadre strength of IMA; and

- (vi) Contrary view on the question of merger would adversely affect a large number of LDCs of IMA otherwise senior to the applicant A.K.Sharma resulting in violation of Fundamental right guaranteed by Articles 14 & 16 of the Constitution.

In view of the foregoing conclusions, the OA No.09/01 fails and is dismissed being devoid of merits, whereas ,OA No.430/95 is dismissed asⁿ having been rendered infructuous in view of the subsequent developments that took place during the pendency of the OA. Parties shall bear their own costs.


MEMBER(A)


VICE CHAIRMAN

Dated: April 28 , 2004

Uv/