

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 14th day of January 2003.

Original Application no. 996 of 2001.

Hon'ble Mr. Justice R.R.K. Trivedi, Vice-Chairman
Hon'ble Maj Gen K.K. Srivastava, Administrative Member.

1. Manoj Kumar Verma, s/o Sri S.C. Verma,
R/o 128 A/2, Abu Bakarpur Preetam Nagar,
Allahabad. Presently posted as Data Entry
Operator 'A' at the office of the Principal Controller
of Defence Accounts (Pension), Allahabad.

2. Raj Kumar Srivastava,
S/o late S.P. Srivastava,
R/o C-76/III, Ganga Vihar,
Topkhana, New Cantt,
Allahabad.
Presently posted as Data Entry Operator 'A'
at the office of the Principal Controller of
Defence Accounts (Pension), Allahabad.

... Applicants

By Adv : Shri S. Narain

Versus

1. The Union of India, through the Ministry of Defence
(Finance Wing) Govt. of India,
NEW DELHI.

2. The Controller General of Defence Accounts,
West Block- V, R.K. Puram,
NEW DELHI.

3. The Principal Controller of Defence Accounts,
(Pension),
ALLAHABAD.

... Respondents.

By Adv : Shri P.D. Tripathi

....2/-

OR D E R

Hon'ble Maj Gen K.K. Srivastava, Member-A.

In this OA, filed under section 19 of the A.T. Act, 1985, the applicants have prayed that the orders dated 23.9.1999, 12.11.1999, 3.2.2000, 31.7.2000 & 8.6.2001 (Ann A1 to A5) be quashed and the respondents be directed to grant promotion to the applicants to the Grade of Data Entry Operator (in short DEO) Gde 'B' with effect from the date their immediate juniors/batchmates were promoted with all consequential benefits.

2. The facts, in short, giving rise to this O.A. are that the selection for the post of Junior Key Punch Operator (in short Jr. KPO) were conducted by Joint Controller of Defence Accounts (Pay and Accounts Office, Other ranks Army Medical Core) (in short ^h JCDA, ^h PAO (ORs)) on 12.4.1989 in which the applicants were declared successful. After Medical Examination and Police Verification, applicant no. 1 joined the post of Jr. KPO on 19.8.1989 and applicant no. 2 joined on 7.7.1989 at PAO (ORs), 39, Gorkha Training Centre, Varanasi. Their dates of appointments were notified by part II orders dated 18.8.1989 & 31.8.1989. The selections to the post of Jr. KPO were provisionally governed by Recruitment Rules 1971 which were applicable in case of the applicants. Subsequently, due to change in the pay structure w.e.f. 11.9.1989 the recruitment rules were amended in the year 1992 and the post of Jr. KPO was redesignated as DEO Grades 'A' to 'D'. During mid-1999 the applicants came to know that certain DEOs, who as per applicants, were junior to them, were promoted to Gde. 'B' w.e.f. 22.12.1997. The applicants filed representation on 9.7.1999 before CDA, which was rejected vide order dated 12.11.1989 on two grounds. Dis-satisfied with the same they filed another representation on 29.9.1999 which was also rejected by order dated 12.11.1989. Since applicants

felt that the reply of the respondents dated 12.11.1999 was unsatisfactory and confusing, the applicants filed another representation dated 23.12.1999, but the same was also rejected by the respondents vide order dated 3.2.2000. The applicants again represented on 17.2.2000 which was also rejected by the respondents vide order dated 31.7.2000. The applicants once again preferred a detailed representation on 31.8.2000 reiterating their grievances, which was also rejected by order dated 8.6.2001, though as per direction of the respondents dated 5.3.2001, the applicants had supplied the relevant documents asked for. Aggrieved by this the applicants have filed this OA, which has been contested by the respondents by filing counter affidavit.

3. Shri S Narain the learned counsel for the applicants submitted that rejection of the applicant's representations time and again was based on incorrect facts and was wholly illegal. The main ground for rejection of the applicant's claim by the respondents is that the dates of selection in respect of persons listed in the representations have been anti-dated. As per the service regulation and rules the date of selection is the basis for determination of inter-se-seniority and subsequent promotions to the next higher grades. The learned counsel for the applicant submitted that there is no rule or regulation for anti-dating. The respondents have acted in an arbitrary/manner. Inviting our attention to para 16 of the OA and also annexure 7, the learned counsel for the applicants submitted that the dates of selection of 7 out of 8 promotees is after 28.2.1989 whereas the respondents have stated that promotions had been released only in respect of such DEOs 'A' whose date of selection was

28.2.1989 or before. Learned counsel for the applicants further submitted that perusal of annexure 8 will reveal that the date of selection in respect of 8 persons including Shri Victor Sidnis and Shri Arun Kumar Gupta have been anti-dated to 10.2.1989, though the date of selection of Shri Victor Sidnis is the same as that of the applicant i.e. 12.4.1989, whereas the date of selection of Shri Arun Kumar Gupta is 25.4.1989 i.e. after the date of selection of the applicants. By not promoting the applicants before Sri Arun Kumar Gupta and Shri Victor Sidnis an irreparable loss has been caused.

4. Learned counsel for the applicant specifically mentioned about the case of Shri Victor Sidnis and submitted that on the date of selection i.e. 12.4.1989, Shri Victor Sidnis whose date of birth is 10.2.1964 was more than 25 years old and was ~~been~~ over-aged for being considered for selection. This disqualification has been over-looked by the respondents and in order to regularise and legalise his candidature, the respondents have anti-dated his date of selection as 10.2.1989.

5. Shri S Narain, learned counsel for the applicants, brought out the discrepancies in the seniority list annexed as annexures SRA 1 to Suppl Rejoinder Affidavit and pointed out that in number of cases the date of offering appointment is earlier to the date of selection. He raised a question for the respondents as to how could be the date of selection ^{be} at a later date and the date of offering appointment could be earlier. The entire exercise of anti-dating has been done by the respondents to favour certain persons, which is certainly against the laid down legal position.

6. Shri P.D. Tripathi, learned counsel for the respondents

5.

resisting the claim of the applicants submitted that no illegality has been committed by the respondents. It has been submitted by Sri P.D. Tripathi that ⁱⁿ ~~clerical~~ ⁱⁿ error was committed by erst-while CDA (ORs) Central Nagpur in their order wherein the dates of offering of appointment has been shown in the column of date of selection and vice-versa in some cases. In rectification thereof, the date of selection was anti-dated and accordingly the dates of selection in respect of Sri Victor Sidnis and Sri A.K. Gupta whose cases have been specifically mentioned by the applicants, were also anti-dated. The respondents have followed the instructions issued by DOPT vide their memo dated 3.7.1986 in which para 2.1 stipulates that the relative seniority of all the direct ⁱⁿ ~~recruitees~~ ⁱⁿ is determined by the order of merit in which they are selected. Sri P.D. Tripathi, submitted that in correcting the clerical error, the respondents have committed no illegality. They have ^{in accordance} ~~acted~~ ⁱⁿ with rules on the subject.

7. Heard learned counsel for the parties, considered their submissions and perused records.

8. The main grievance of the applicants is that there is no provision or rule for anti-dating the date of selection which has been done in many cases. The applicants have also specifically mentioned the cases of Sri Victor Sidnis and Sri A.K. Gupta. The contention of the applicants is that the date of selection of Sri Victor Sidnis ⁱⁿ ~~and Sri A.K. Gupta~~ ⁱⁿ is 12.4.1989 i.e. the same which is the date of selection of applicants and in case of Sri A.K. Gupta it is 25.4.1989 i.e. after the date of selection of the applicants. Both the above mentioned persons have been promoted as DEOs 'B', whereas the

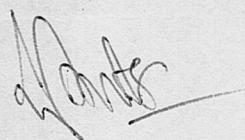
been
 applicants have *been* ignored. The sole argument of the respondents is that the dates of selection in respect of Sri Victor Sidnis and Sri A.K. Gupta was necessitated because of the fact that their dates of selection were wrongly mentioned in the column of date of offering of appointment and vice-versa due to clerical error committed by erst-while CDA (ORs) Central Nagpur in their records.

9. The respondents counsel produced the original record of initial selection in respect of Sri Victor Sidnis and Sri A.K. Gupta. We have closely perused the same and we have no doubt what so ever that the clerical error has been committed in this regard. Both the above persons were selected on 10.2.1989 alongwith persons shown at sl no. 2, 4, 5, 6 & 8 referred to in para 16 of the OA. The respondents have not disputed that the date of selection in respect of the applicants is 12.4.1989. Since Sri Victor Sidnis and Sri A.K. Gupta were selected earlier than the applicants, they certainly stand senior to them and the contention of the respondents that promotion had been released only in respect of DEOs 'A' whose date of selection was 28.2.1989 or before, is correct.

10. What we find interesting in this controversy is the use of phrase 'anti-dating'. In fact, if the respondents had clarified in clear terms as to why the dates of selection and the date of offer were interchanged there would have been no controversy. This *is*, in our view, is not a case of anti-dating, but the case of rectification of the clerical mistake.

11. In the present case we do not find any ground for interference as no illegality has been committed by the respondents. The OA is devoid of merit and the same is liable to be dismissed.

12. For the reasons stated above the OA is dismissed being devoid of merit with no order as to costs.



Member (A)



Vice-Chairman

/pc/