

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 13¹⁵ DAY OF April, 2011)

Hon'ble Dr.K.B.S. Rajan, Member (J)
Hon'ble Mr. S. N. Shukla, Member (A)

Original Application No.519 of 2004
(U/s 19, Administrative Tribunal Act, 1985)

Indra Bhan Kunwar, Son of late Jugal Kishore, employed as Draughtsman Grade-I, in C.Q.A.(M), P.B.No. 229, Kanpur Nagar.

..... ***Applicant***

By Advocate; Shri R.K. Shukla

Versus

1. Union of India, through Secretary, Ministry of Defence Production, Govt. of India. New Delhi.
2. The Director General Quality Assurance, Department of Defence Production/DGQA, Ministry of Defence, DHQ PO New Delhi.
3. The Controller, Controller of Quality Assurance (T&C), Post Box No.294, Kanpur 208004.
4. Shri C.L. Sharma, Chief Draughtsman, C/o Drawing Office, through Controller of Quality Assurance (GS) P.B.No. 294 Kanpur.
5. Shri M.L. Sharma, Chief Draughtsman through Controller of Quality Assurance (GS) P.B.No.294 Kanpur.
6. Shri Arun Kumar, Draughtsman through the Controller, Controllate of Quality Assurance, Kanpur.

..... ***Respondents***

By Advocate : Shri D. N. Mishra



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ORDER

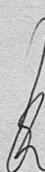
(Delivered by Hon. Dr. K. B. S. Rajan, Member-J)

1. The applicant is aggrieved of wrong fixation of seniority at the level of Draughtsman III and consequential and corresponding delay in his promotion at the level of Chief Draughtsman. While limitation is one aspect to be considered on the one hand, the legal issue involved in regard to fixation of seniority is to be seen on the other hand.
2. First certain basic facts required for the purpose of having an idea of the issue:
3. The applicant was appointed as Draughtsman III (DM III for short) on 17-10-1983. His appointment under the Recruitment Rules is by way of direct recruitment. (It is appropriate to mention at this very juncture that as per the applicant there is a fixed ratio for Direct Recruitment in the post of DM Gr. III while as per the respondents, direct recruitment is catered for only under "failing which clause")
4. The applicant was promoted to the post of DM II in 1991 and in the panel, he had topped the list. Respondent No. 4 C.L. Sharma was shown junior to the applicant and Respondent No. 5 and 6 were never empanelled.

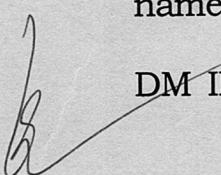
5. In 2000, the respondents had published a seniority list of Chief Draughtsman Gr. II, and Grade I in which the name of the applicant had been shown below that of the other two draughtsman, whose position in the seniority list was junior. One Mr. Arun Kumar has also been shown senior to the applicant. Annexure A-VI of the OA refers.

6. Hence, the applicant made a representation dated 14-11-2003 for correction of seniority in the grade of Draughtsman Gr. I. Annexure A-VII refers. The said representation was rejected vide Annexure A-1. It is against this order that the applicant has come up in this O.A., wherein he has prayed for the following relief:-

- (i) Issue a writ, order or direction in the nature of Mandamus directing the respondent No. 3 to recast the seniority list showing over and above to the petitioner to that of respondents No. 4, 5 & 6 in accordance with seniority rules of 1959 fixing inter-se seniority of direct recruits and promotees.
- (ii) To issue a writ, order or direction in the nature of Mandamus commanding the respondent No. 3 to promote the petitioner on the higher grade and pay from the same date from which his juniors have been promoted with all consequential benefits.
- (iii) To issue any other order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case.
- (iv) To award costs throughout to the petitioner.



7. Respondents have contested the O.A. According to them, the mode of appointment to the post of DM III was by promotion and the post does not have separate quota for direct recruitment and hence, seniority of the applicant was made on the basis of length of service, i.e. he has been shown junior to all those DM III on the date of his appointment as DM III. The applicant, on the basis of his seniority in the grade of DM III got his promotion as DM II on 15-11-1991 against one ST backlog point of 1985 in exchange with SC in the 3rd year of recruitment. He was again promoted as DM I w.e.f. 15-11-1995. A combined seniority roll of DM III in the Gentex Subject was circulated in October, 1987 in which the name of the applicant (Date of Joining 18-10-1983) figures in at serial No. 27, below shri S.P. Sharma who was holding the post of DM III w.e.f. 02-09-1980. similarly, the name of respondents 4 (Shri C.L. Sharma) and 5 (Shri M.L. Sharma) were figuring in Sl No. 19 and 20. Respondent No. 6, Arun Kumar was reverted to the post of Tracer w.e.f. 01-04-1987 and as such was not included in the said seniority list. In 1991, the applicant was promoted by exchange of ST vacancy to SC vacancy and he was shown as senior to C.L. Sharma; however, this was an error and the same was rectified by review panel issued vide order dated 05-11-2004. In 1991, M.L. Sharma and Arun Kumar were not promoted and hence, in the panel, their names were not reflected. These two were promoted in 1992 as DM II and hence, obviously these were junior to the applicant.



Thus, person senior to the applicant is C.L. Sharma, respondent No. 4, while the other two, i.e. Respondent No.; 5 and 6 stand junior to the applicant. Based on the revised seniority list dated 05.11.2004 Annexure CA-5, further promotion to the post of Chief Draughtsman Grade-II and Chief Draughtsman which were under review would be made and the benefit of pay fixation as per rules would also be made. In that event, while respondent No.4 alone would be senior to the applicant and respondent Nos. 5 and 6 would be junior, the grievance of the applicant would get redressed and thus the application becomes infructuous.

8. The applicant has filed his rejoinder, wherein he has denied the contentions of the respondents with reference to fixation of seniority in the grade of DM-III and also submitted that though, the respondents had stated that the promotion of the applicant as Chief Draughtsman-II and Chief Draughtsman would be considered, till the date of filing of rejoinder nothing had happened.

9. The respondents later on submitted additional affidavit annexing therein a copy of letter dated 27.02.2006. Under the said letter they have annexed the result of review DPC for the year 1996 to 2001 for various posts and in respect of Chief Draughtsman, the initial promotion and consequential seniority had been modified as under:-

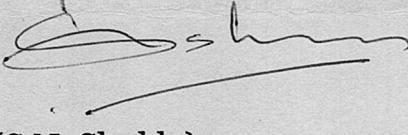
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Initial Promotion	Result of Review DPC
1. C.L.Sharma (R-4)	1. C.L. Sharma
2. M.L. Sharma (R-5)	2. I.B.Kunwar
3. Arun Kumar (R-6)	3. M.L. Sharma
4. I.B. Kunwar (Applicant)	

10. With the above development, the grievance of the applicant gets substantially reduced. Insofar as, seniority position in DM-III is concerned, since the appointment of the applicant is under the failing which clause, obviously his appointment shall be after completing the process of promotion and hence his seniority would be based on length of service only. This was exactly that was followed by the respondents.

11. In view of the above as no grievance subsists, **this O.A. is disposed** of having been rendered infructuous. Latitude is, however, granted to the applicant to make representation if, in case after fixing the seniority there has been any deficiency in fixation of his pay etc. in which event, respondents shall address the same and inform the applicant of their decision. No costs.



(S.N. Shukla)
Member-A



(Dr. K.B.S. Rajan)
Member-J

Sushil