

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

RESERVED

Dated: This the 14th day of Oct 2009

Original Application No. 726 of 2004(U)

Hon'ble Mr. A.K. Gaur, Member (J)

Hon'ble Mr. S.N. Shukla, Member (A)

Ved Pal Kukreti, aged about 51 years, S/o Shri Satya Kukreti, R/o Wing No. 4-H-108, Prem Nagar, Dehradun (Uttaranchal).

. . . Applicant

By Adv: Shri Rakesh Verma

V E R S U S

1. The Union of India, through the Surveyor General of India, Post Box No. 37, Dehradun-248001.
2. The Director (Northern Circle), Department of Survey of India, 17, East Canal Road, Post Box No. 3 Dehradun-248001 (Uttaranchal)

. . . Respondents

By Adv: Shri S. C. Mishra

O R D E R

Hon'ble Mr. S.N. Shukla, AM

This OA has been filed seeking the following reliefs: -

- "i. To issue a writ, order or direction in the nature of Certiorari quashing impugned order dated 18.12.2002 served on 8.1.03 rejecting the appeal of the petitioner dated 29.5.2002 and thereby denying the promotion on the post of Assistant/head Clerk in the pay scale of Rs. 5000-8000.
- ii. To issue a writ, order or direction in the nature of Mandamus directing the respondent No.1 and 2 to promote the petitioner on the post of Assistant/head Clerk in the pay Scale of Rs. 5000-8000 with effect from 11.12.2001 when the other persons including several juniors have been promoted with all consequential benefits as may be stipulated by this Hon'ble Tribunal.

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iii. To issue any other suitable writ, order or direction in the facts and circumstances of the case which this Hon'ble Tribunal may deem fit and proper.

(iv). To award cost of the petition."

2. Very briefly the facts stated in this OA are as under:-

i. The petitioner has been working as UDC in the office of Photo Sector Northern Circle, Survey of India, Dehradun under the immediate supervision of respondent No. 2. On 9.8.1999, the petitioner has been allowed benefit of 2nd financial upgradation in the pay scale of Rs. 4500-7000 after holding the petitioner 'fit' by a duly constituted DPC (Screening) committee vide order dated 09.05.2000. As per hierarchy, the next higher post is Assistant/head Clerk to which the persons are promoted on the basis of seniority-cum-fitness. The gradation list is maintained by the respondents for the purpose of transfer and other relevant matter in which the petitioner is placed at Sl. No. 66 (Annexure-A-I).

ii. On 11.12.2001 DPC assembled in the year 2001 and on the basis of its recommendation, 71 persons were promoted to the post of Asstt/Head Clerk including in the Northern Circle where petitioner is posted and the

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petitioner was however left out (Annexure-A-II).

iii. On being superseded by the respondents the petitioner made representation seeking reason of his being ignored for promotion (Annexure-A-III). The representation was disposed off with the remark that he has been found not 'yet fit' by DPC (Annexure-A-IV).

vi. The petitioner preferred an appeal in detail in which he invited attention of the respondents towards the fact that he has been allowed benefits under 2nd financial upgradation under ACP Scheme by DPC (Annexure-A-V). This obvious that his CRs up to the year 1998 were 'good' for granting of 2nd financial upgradation. If at all he has been given entry 'below good' for 1999 and 2000 for which he had no opportunity to represent. On 18.12.2002 the aforesaid appeal has been rejected by the respondent no. 1 by an impugned order (Annexure-A-VI).

v. ACP scheme clearly stipulates that ~~the~~ Departmental ~~the~~ Screening Committee shall be the same as that of Departmental

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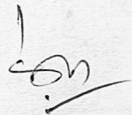
Promotion Committee for regular promotion (Annexure-A-VII). The petitioner seeks quashing of the impugned order dated 18.12.2002 and a direction to the respondent No. 1 and 2 to promote him in the next higher scale of Rs. 5000-8000 w.e.f 11.12.2001 when other juniors have been promoted.

3. The relevant paragraph of the impugned order reads as under:-

"दिनांक 28-11-2001 को हुई विभागीय पदोन्नति समिति में श्री वेदपाल कुकरेती प्रवर श्रेणी लिपिक के नाम पर सहायक/मू०लि० के पद पर पदोन्नति के लिए विचार किया। विभाग में पद के भर्ती नियमों के अनुसार सहायक/मुख्य लिपिक के पर रू० 5000-8000 के वेतन कम में Selection के आधार पर भरे जाते हैं। इस पद के लिए प्रवर श्रेणी लिपिक के पद पर 5 वर्ष का कार्यकाल आवश्यक है तथा प्रवर श्रेणी लिपिक के ग्रेड में पिछली पांच वर्षों की गोपनीय रिपोर्ट के आधार पर मूल्यांकन किया जाता है। भारत सरकार द्वारा प्रतिपादित भर्ती नियमों के अनुसार इस पद हेतु बैचमार्क "Good" निर्धारित है। लेकिन श्री वेदपाल कुकरेती, प्रवर श्रेणी लिपिक का पिछले पांच वर्ष का गोपनीय रिपोर्ट का मूल्यांकन बैचमार्क "Good" से नीचे है।"

4. The applicant has filed a delay condonation application which does not seem to have been opposed by the respondents. Even otherwise considering the reasons given in the delay condonation application appear to be plausible and hence the delay stands condoned.

5. In the counter affidavit the respondents have supported the impugned order dated 18.12.2002 for the same reasons as stated therein.



6. Heard learned counsel for the parties. Perused the pleadings and also the written submission filed on behalf of the applicant. No written submissions have been filed by the respondents.

7. To briefly sum up, the applicant's contends as he has never been communicated any entry below 'GOOD' and has never been allowed **any opportunity to make representation against such entries, hence the D.P.C. has wrongly and illegally taken into account the entries for the year 1999 and 2000 which renders the finding of the D.P.C. as illegal and as such the petitioner is liable to be directed to be considered a fresh by the review D.P.C. ignoring the said entries of 1999 & 2000.**

8. In support of his contention the learned counsel for the applicant relied upon the following decisions:

- i. Judgment and order rendered by Division Bench of Bangalore Bench of this Tribunal in OA 70/99 dated 16.08.1999 in the case of **V.P. Poullose Vs. Director South Survey of India, southern Circle and others.**
- ii. The Hon'ble Supreme Court decision in case of Dev Dutt Vs. Union of India and Ors. Reported in Civil Appeal No. 7631 of 2002 dated 12.05.2003.

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9. Earlier similar issues came up for consideration of this Tribunal in **OA No. 336/02 B.N. Tiwari Vs. Union of India and others** and **OA No. 507/08 Indu Shekhar Tripathi Vs. Union of India and others.** After considering the judgment of the Hon'ble Supreme Court in Dev Dutt's case this Tribunal followed the judgment and order of Hon'ble Supreme Court in case of **(1999) 3 Supreme Court Cases 362 Babu Ram Vs. Jacob and others.** In the context of the issue before their Lordship the Hon'ble Supreme Court in that case had given a finding as under: -

"The prospective declaration of law is a device innovated by the Apex Court to void reopening of settled issues and to prevent multiplicity of proceedings. It is also a device adopted to avoid uncertainty and avoidable litigation. By the very object of prospective Generation of law, it is deemed that all actions taken contrary to the declaration of law prior to the date of declaration are validated. This is done in the larger public interest. Therefore, the subordinate forums which are legally bound to apply the declaration of law made by the Supreme Court are also duty-bound to apply such dictum to the cases which would arise in future only. In matters where decision opposed to the said principles have been taken prior to such declaration of law, cannot be interfered with on the basis of such declaration of law."

10. The learned counsel for the applicant on the other hand relied on the following decisions:

- a). **(2007) 1 S.C.C. (L&S) 823 : P.V. George & Ors Versus State of Kerala and others.**
- b). **(2009) 1 S.C.C. (L&S) 812 : Rajasthan State Road Transport Cooperation and another Vs. Bal Mukund Bairwa (2)**
- c). **2003 SCC (L&S) 1076 : M.A. Murthy Vs. State of Karnataka and others.**

11. In support of the contention that every judgment of the Hon'ble Supreme Court pro-pounding some law becomes precedent and law of the land for all the time

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under Article 141 of Constitution of India, unless it is specifically mentioned in the judgment itself by the Hon'ble Supreme court the same will have prospective effect only.

12. This Tribunal has with great respect studied the observations of the Hon'ble Supreme Court wherever relief upon by the learned counsel for the applicant regarding the retrospective / prospective declaration of law. The Tribunal has consistently followed the ratio laid down by Hon'ble Supreme Court in Babu Ram's (supra) such as in our decision in OA No. 336/02 and OA No. 507/08. Only for the sake of better appreciation of our stand an abridged portion of the operative part of the said judgment is again reproduced below:-

"the subordinate forums which are legally bound to apply the declaration of law made by the Supreme Court are also duty-bound to apply such dictum to the cases which would arise in future only. In matters where decision opposed to the said principles have been taken prior to such declaration of law, cannot be interfered with on the basis of such declaration of law."

13. In the case of the applicant he was ignored by the DPC held in the year 2001 and he had filed this OA in the year 2004. Both these events felt prior to the judgment and order of the Hon'ble Supreme Court in Dev Dutt's case and hence in line with the principle of prospective application of law as held by the Hon'ble Supreme Court in Babu Ram's case the benefit of the

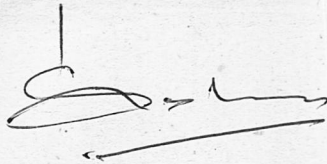
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ratio laid down by the Hon'ble Supreme Court in Babu Ram's case is not available to the applicant.

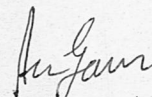
14. In so far as the applicant's reliance on this Tribunal's Bangalore Bench of the order in OA 70/99 of in V.P. Poullose's case, in our considered view this decision of the Bangalore bench is only of academic interest after the judgment of Hon'ble Supreme Court in Babu Ram's case.

15. It is our belief that the DOP&T has already issued instructions to all departments to communicate the contents of confidential reports to all employees henceforth after all the stages of writing of confidential report are completed.

16. In view of the above observations the OA stands dismissed. No cost.



Member (A)



Member (J)

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