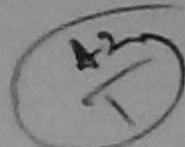


CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD



Original Application No: 209 of 1988

Lahar Kumar Mukherjee & others Applicants.

Versus

Union of India & others Respondents.

Hon'ble Mr. Justice U.C.Srivastava, V.C.

Hon'ble Mr. K.Obayya, Member-A

(By Hon'ble Mr. K.Obayya, Member-A) v/c, V.C.,

The applicants are 3 in numbers working as Assistants in the office of Additional Director General of Ordnance Factories (A.D.G.O.F) Ordnance Equipment Factories (O.E.F) Group Head Quarters at Kanpur. In this application they have prayed that their promotion to the post of "Assistants" on the basis of selections vide the letter 24.1.1984 (Annexure A-7) be deemed to be promotion on regular basis and that the respondents be restrained from reverting them to the lower post of U.D.C.s so long as their ^{are} juniors/allowed to continue on higher posts.

2. The applicants were appointed as LDCs in the office of Director General Ordnance Factories, (D.G.O.F.) Calcutta on different dates during the years 1965-1966. The appointments were temporary, on probation of 6 months and liable to be terminated without notice. The appointments however were continued and according to the applicants, they are deemed to be confirmed after completion of 3 years service. In the year 1969 the Group Head Quarters of O.E.F.s was set up at Kanpur, and vide circular 30 dt. 28.8.1973

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options were asked from willing employees to go on transfer to Kanpur to fill up posts of Superintendents, Assistants and certain other posts; As the transfer would involve shifting of the families from Calcutta, incentives by way of lumpsum grants of Rs. 500/- in addition to 15% of pay for 2 years in lumpsum or instalments in addition to T.A. and other normal allowances,

The applicants gave their willingness were offered, and they were transferred to Kanpur in the year, 1974 on promotion as U.D.C. The applicants joined at Kanpur and were further promoted as "Assistants". In the seniority lists published in 1975 and also in 1983, the applicants figured at S.No: 5.7.&8, but they were over looked for ~~one~~ promotions to the post of Assistants, when those at serial nos. 1 to 4 and 9 were in the seniority list promoted on 7.1.1984. On representation, the applicants were also promoted vide order dated 29.9.84. It would appear that recruitment Rules of O.E.F.s were notified in 1979, giving retrospective effect from 1965, the rules were challenged before the Calcutta Bench of the Tribunal, which held the rules as valid (O.A. No. 359/91 decided on 29.8.1986).

3. It is contended by the applicants that their appointment as U.D.C. was on regular basis by-passing seniors who were unwilling to go to Kanpur and as such they cannot be deemed to be juniors to those who were promoted later. Notwithstanding this by the impugned orders of reversal dated 16.2.1988 and 19.2.1988, the applicants were informed that being juniors they are being reverted as U.D.C.s. The applicants assail the orders of

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reversion as arbitrary, discriminatory and against the Rules.

4. The respondents have contested the case and it is pointed out that for the period prior to 1973 the recruitment was regulated by Rules 1971 by which 90% of the posts were to be filled-up through U.P.S.C. However, due to non-availability of U.P.S.C. candidates, certain appointments were made subject to replacement by U.P.S.C. candidates. The applicants were appointed in this category and in appointment order, this was clearly indicated. The applicants were advised to qualify in U.P.S.C. examination. Seniority list was prepared on the basis of date of appointments as the appointments of U.P.S.C. candidates was on regular basis and according to merit as indicated in the U.P.S.C.'s list and others who were appointed on adhoc basis were placed below. The seniority assigned to U.P.S.C. candidates was challenged by some of the adhoc appointees, and as the matter was subjudice, the seniority lists of L.D.C.s could not be revised. For the Head Quarters set up at Kanpur out of turn promotions were given to those who opted to go to Kanpur, this promotion was on provisional basis subject to review of seniority and Ministry's decision. It is stated that the promotion of applicants as Assistants was on adhoc basis and seniority issue which was under challenge was decided by the Calcutta Bench of the Tribunal on 29.8.1986, wherein it was held that regular appointees will rank senior to those who were appointed on adhoc basis. Consequently, the candidates selected by the U.P.S.C. were

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placed above the candidates who were promoted on adhoc basis and, because of the review of seniority the applicants became junior. It is also stated that what was given to the applicants was incentive and not an assurance of promotion.

5. We have heard the counsels of the parties. Admittedly, the applicants were appointed as L.D.C.s at Calcutta on adhoc basis pending selection of appointment of regular candidates by U.P.S.C. The adhoc appointments however, continued and that is how ~~they~~ they were continued in service and were also promoted as U.D.C. etc. The learned counsel for the applicant placed reliance of the decision of the Calcutta Bench in O.A. 359/91 decided on 30.12.1991 that was a case of L.D.C. appointed on adhoc basis but later on he was selected by U.P.S.C. and hence a direction was given to give him seniority from the date of appointment. That decision is not helpful in this case as the applicants were noting ~~they~~ selected by U.P.S.C.. So far as the seniority of U.D.C.s etc. is concerned the claim of the applicants is that when they were sent to Kanpur they were given promotion as U.D.C. The conditions for appointment are indicated in the order dated 28.6.1970 calling for options from the employees (Annexure, A-1) para 3 of the said letter states that "Ministrial staff and class IV staff in the DGOF Head Quarters and OEF group Head Quarters will continue to be in common rooster for all purposes and the latter unit, regarded as

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part and parcel of DGOF Head Quarters. The promotion order of the applicants Annexure, A-2 A-3 indicate that the offers of promotion are treated as "volunteers" within the meaning of DGOF circular No. dated 28.6.1973. These letters dated 28.6.1973 and the promotion order dated 15.2.1974 read together would clearly indicate that the applicants have been sent on promotion to Kanpur as "volunteers" and as such that would not give them the benefit of seniority on the promoted post. It was only an adhoc measure. That being the case it cannot be said that the applicants are senior merely because they were promoted earlier as U.D.C. and had the benefit of higher pay scale etc. But for purposes of seniority they remain where they were in Calcutta office, as Kanpur office was treated as part of Calcutta office. Their original seniority as at Calcutta remained unchanged. Whatever benefits were given to them at Kanpur that would not entitle them for any higher seniority as they have to take turn only in accordance with the seniority maintained at the Head Quarters at Calcutta. For these reasons as their reversion was because of their lower position in the seniority list, we do not see any ground made out for our interference and accordingly this application is dismissed ^{as} without any merit. No order as to cost.

Rukhsar
Member-A

U.
V.C.

Allahabad Dated: 27th April 1993.
(Rka)