

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO. 164 OF 1999  
ALLAHABAD THIS THE 30th DAY OF APRIL, 2003

HON'BLE MAJ. GEN K.K. SRIVASTAVA, MEMBER-A  
HON'BLE MR. A.K. BHATNAGAR, MEMBER-J

Mohd. Mobin Khan,  
S/o Sri Abdul Ajij Khan (D.C.M.) CGMWB  
Division III Varanasi,  
presently residing sadar Bajar near  
Pani Tanki House no.69,  
Varanasi and Permanent,  
R/o Village and Post Belauliviya Mariadpur,  
District - Mau.

(The petitioner is a candidate of class III Employee which  
effected retired from Govt. Services on ground of disability.

.....Applicant

(By Advocate Shri O.P. Gupta)

Versus

1. Union of India,  
through Ministry of water resources,  
Head Quarter Office,  
Central Ground Water Board,  
N.H. IV Faridabad (Harayana).
2. Chief Engineer and Member Central  
ground water,  
H.N. IV Faridabad Harayana.
3. Executive Engineer,  
Central Ground water Board,  
Division No.3,  
Varanasi.
4. The Regional Director,  
B.R. D.G.W.B.,  
Lucknow.

.....Respondents

(By Advocate KM. Sadhna Srivastava)

O R D E R

HON'BLE MAJ GEN K.K. SRIVASTAVA, MEMBER-A

In this O.A. filed under section 19 of Administrative Tribunals Act 1985, the applicant has prayed for quashing the order dated 01.02.1999 through which the applicant has been retired on the ground of dis-ability (Annexure A-9) and has prayed that direction be issued to the respondents to appoint the applicant in the pay scale of Assistant Foreman or Store Superintendent.

2. The facts, in short, giving rise to this O.A. are that the applicant was appointed as a Helper in October 1969 on ad-hoc basis in the respondent's establishment. His services were regularised in February 1972. The applicant during his service career was promoted as Compressor Driver in 1975 and later on in 1977 he was promoted as Assistant <sup>Driller</sup> Mechanic in 1988. The applicant was promoted as D.C.M. in the scale of <sup>Rs</sup>4500-7000/- and was further promoted on the post of D.I.C./scale/<sup>in the</sup> <sup>of</sup> <sup>Rs</sup>7000-10,000/-. On 19.10.1994 the applicant took charge of Rig unit in the resultant vacancy. The applicant met with an accident on 21.02.1995 and was admitted in Gorakhpur hospital on 22.02.1995. He was transferred to B.H.U. on 25.02.1995. The applicant's <sup>left</sup> leg was amputated. He lost vision in right eye and had multiple fractures in left hand. The applicant was under treatment from 24.02.1995. The applicant was discharged on 03.08.1996 with fitness certificate for light duty and sitting job only with effect from 04.08.1996. He was referred to C.M.O. S.S.P.G. hospital Varanasi for medical examination vide respondent's order dated 06.10.1997. The Medical

Board Varanasi medically examined the applicant and issued a certificate dated 21.10.1997 with <sup>in</sup> the <sup>in</sup> remarks <sup>in</sup> that the applicant is fit to perform the duty like writing, maintenance of submission of report, maintenance of log book and Store Account Book. <sup>etc</sup> The case of the applicant was considered by the respondents and the applicant was retained in service. The job of L.D.C. was offered to the applicant with certain conditions. The applicant was attached to Establishment-II for performing maintenance of Stationary Register etc., vide office order no.39 of 1998 dated 27.02.1998. The Head quarter office vide letter dated 21.07.1998 addressed to respondent no.3 <sup>submitted</sup> / <sup>informed</sup> that the case of the applicant for appointment as L.D.C. on medical ground was considered with certain conditions with direction to respondent no.3 to apprise the applicant about the same and also to obtain his willingness. As per applicant he joined as L.D.C. in March 1998. He made representation on 03.01.1999 (Annexure-8) to the authorities to retain the applicant in service as Store Superintendent/ Store Foreman being <sup>partly</sup> physically handicapped on the ground that he is educationally and otherwise competent to hold the post requested for.

3. The grievance of the applicant is that the applicant <sup>compulsorily</sup> has been/retired with effect from 01.02.1999, Hence this O.A. which has been contested by the respondents by filing counter affidavit. Shri D.P. Gupta, learned counsel for the applicant submitted that the applicant met with a serious accident while on duty and, therefore, his case has to be considered for giving him an equivalent post of D.C.M.

The respondents offered the applicant <sup>in</sup> <sup>in</sup> the post of




L.D.C. treating him to be a fresh appointee and treating him as junior in the grade of L.D.C. Such an action of the respondents is not tenable in the eyes of law.

4. The learned counsel for the applicant on the day of accident was drawing basic pay of Rs5,625/- in the pay scale of Rs4,500-7,000/- and therefore, there should have been no difficulty for respondents in adjusting the applicant as Assistant Foreman in the scale of Rs5,000-8,000/- or as Store Superintendent in the scale of Rs5,000-9,000/- for which the applicant is fully competent and eligible. The learned counsel for the applicant finally submitted that the applicant did work as L.D.C. but the respondents instead of considering the case of the applicant on humanitarian grounds, retired him with effect from 01.02.1999. The case of the applicant merits consideration.

5. Opposing the claim of the applicant Km. Sadhna Srivastava, learned counsel for the respondents submitted that since the applicant had suffered 70% dis-ability, he was to be paid an amount of Rs53,581/-. The applicant was paid Rs30,599/- through Workman Compensation Commission after deducting an amount of Rs22,982/- on account of dis-ability leave on full pay for 120 days and 96 days of H.P.L.

6. The respondent's counsel further submitted that the applicant was offered the post of L.D.C. vide their letter dated 21.07.1998 addressed to respondent no.3 but the applicant never gave his willingness for the same. The applicant throughout has been claiming for post in higher




scales. When the willingness from the applicant was not received for more than six months, the applicant was retired from the post of D.C.M. with effect from 01.02.1999.

7. The respondent's counsel also submitted that the applicant has claimed <sup>in parity</sup> ~~priority~~ with the cases of Shri L.L. Verma, Shri U.S. Nagi and Shri Mahendra Singh. The cases of the above persons were considered as per recruitment rules. <sup>adjusted</sup> The applicant could not be <sup>in</sup> the post of Assistant Foreman or Store Superintendent as both these posts <sup>are</sup> to be filled up hundred percent by promotion failing which by direct <sup>recruitment</sup>. Since for both the posts eligible persons are available in the feeder grade, the post cannot be filled up by any other method as per Recruitment Rules. The learned counsel for the respondents submitted that the present O.A. is devoid of merit and is liable to be dismissed.

8. At this juncture the learned counsel for the applicant submitted that the applicant has been praying for protection <sup>of</sup> ~~of~~ last pay drawn. The scale of L.D.C. is Rs3,000-4,500/- whereas the applicant was in the scale of Rs4,500-7,000/- and was drawing the basic pay of Rs5,625/-. The respondents were willing to give only the maximum of L.D.C. and were not prepared to protect his last pay drawn. Therefore, the applicant never refused the post of L.D.C. but he has been agitating before the authorities concerned for protection of his last pay drawn. In the end the learned counsel for the applicant has prayed for mercy.

9. We have heard counsel for the parties, considered their submissions, and perused records.



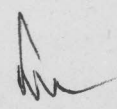
10. Admittedly the applicant met with an accident, lost his one leg and the visions in one eye and other physical infirmity. However, he was declared medically fit by the Medical Board through their letter dated 21.10.1997 (Annexure A-4) with recommendation that he may be assigned <sup>light</sup> duty like writing, maintenance and submissions of reports, maintenance of log book, Store Accounts etc. The recommendation of the Medical Board were never challenged by the respondents and, therefore, the respondents were <sup>required</sup> to examine the case of the applicant on the basis of the medical recommendations.

11. The respondents have submitted that the applicant could not be adjusted as Assistant Foreman or Store Superintendent in the higher scales because both the posts are to be filled up 100% by promotion failing which by direct recruitment. They have also submitted that for both the posts eligible persons were available.

~~\_\_\_\_\_~~ <sup>We are ?</sup>  
also agree with the submission of the respondents given in para 13,14 and 15 stating that the cases of Shri L.L. Verma, Shri U.S. Negi and Shri Mahendra Singh are different and those cases were decided under the then prevalent rules.

We also do not find any illegality in the respondents <sup>offering</sup> the post of L.D.C. to the applicant but we <sup>are</sup> ~~are~~ certainly dis-approve <sup>the</sup> the action of the respondents in <sup>laying</sup> down the conditions and not protecting the last drawn pay of the applicant.

12. The offer of appointment of L.D.C. conveyed to the



respondent no.3 vide Head quarter letter dated 21.07.1998  
(Annexure-7) reads as under:-

"It is to inform you that the case of Shri Mohd. Mobin Driller-Cum-Mechanic for appointment as LDC on medical grounds and protection of his pay was forwarded to Ministry and after considering the case they have observed that the pay drawn by Shri Mohd. Mobin as Driller-Cum-Mechanic cannot be protected on his appointment to the post of LDC. However, he will be granted advance increments equal to the number of years of services rendered in the post of DCM while fixing his pay in the grade of LDC, the pay so fixed should not exceed the maximum of the pay scale of the post of LDC. After fixing the pay in the manner indicated above the annual increments will be decided under FR 26 if otherwise admissible. You are requested to apprise the position to Shri Mohd. Mobin. In case he is willing to be appointed as LDC his option may be obtained and sent to this office for further necessary action in the matter. He may also be informed that in case he is not willing to be appointed as LDC on these terms he will be retired from Govt. services on the grounds of disability."


13. We have gone through the representation of the applicant dated 03.01.1999 carefully. We find that the applicant has been praying for a equivalent job with pay protection. May be that the applicant's stand would have different in accepting the post of L.D.C. if he was assured about his pay protection. From the records, we do not find that the applicant at any stage has shown his unwillingness to join as L.D.C. The applicant met with an accident rendering him physically handicapped while on duty and, therefore, he was entitled for pay protection which the respondents could easily grant in the shape of personal pay (Difference between the maximum of L.D.C. and the last pay drawn).

14. In the facts and circumstances, and in our aforesaid discussions, the O.A. is allowed. The order dated 01.02.1999 (Annexure-9) retiring the applicant with effect from 01.02.1999 is quashed with the following directions to the respondents:



- (i) The applicant will be reinstated as L.D.C. in case he gives his willingness within a month of the communication of this order protecting his last pay drawn by grant of personal pay.
- (ii) In case the applicant gives his willingness and joins as L.D.C., the applicant shall be entitled for 50% of the wages for the period from 01.02.1999 to the date of reinstatement. Such pay shall be granted after deducting the pension and other allowances already drawn. The period referred to above shall be counted for pension purposes.
- (iii) The post retiral benefits already granted to the applicant in the shape of D.C.R.G., leave encashment etc., shall be adjusted from the post retiral benefits which would accrue to the applicant at the time of his superannuation.

15. There will be no order as to costs.

  
Member-J

  
Member-A

/Neelam/