

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 24th day of March 2009.

Original Application No. 1176 of 2002

Hon'ble Mr. Ashok S. Karamadi, Member (J)

Hon'ble Mrs. Manjulika Gautam, Member (A)

1. Ram Bahadur Singh Son of Late
Sita Ram, Retired U.D.C No. 21330.
2. Bhanu Pratap Son of Sri Narvada Prasad
Retired U.D.C. No. 21717,
Air Force Station Manauri, District
Allahabad.

... Applicants.

By Adv: Sri K.P. Singh

V E R S U S

1. Union of India through the Secretary
Ministry of Defence, Parliament Street, New Delhi.
2. Air Officer Commanding, Air Force Station, Manauri,
Allahabad.
3. A.D.C.N.C. Head Quarter, Maintenances Command
Indian Air Force, Nagpur.
4. Air Officer Incharge, Air Head Quarters, Vayu
Bhawan, New Delhi.
5. Officer Incharge, A.F.C.A.O.
Subroto Park New, Delhi-10.
6. Deputy C.D.A. (A.F.) Subroto Park New Delhi-10.

... Respondents

By Adv: Sri S.C. Mishra

Manjulika Gautam

ORDER

By Hon'ble Mrs. Manjulika Gautam, A.M.

Applicants No. 1 & 2 were appointed as Group 'D' employees in Air force station Manauri, Allahabad on 26.10.1961 & 15.05.1961 respectively. After getting a No Objection Certificate from their Department they got their names registered in the employment exchange and applied for the post of Lower Division Clerk, which was advertised. Both were declared successful in the written examination, appeared for the interview and were given appointment letters placed at annexure A-3 & A-4. Subsequently both applicants were promoted as upper division clerks.

2. They were given the benefit of ACP scheme on 27.05.2000 till October 2001. Vide letter dated 31/01-10/2001 respondents no. 06 stated that the applicants are not entitled for the up-gradation as they have already received the benefit of two promotions.

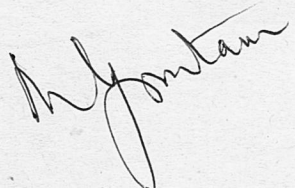
3. The crux of the matter is whether their appointment as LDC is to be treated as promotion or a fresh appointment. In the counter affidavit filed by the respondents it has been stated that during audit verification it was pointed out that the applicants were not eligible for financial up-gradation, as they had already been



promoted twice. Reference has been made to the clarification issued by the department of Personal Public Grievances and Pensions dated 10.02.2000 (annexure-I) wherein at Sr. 08 it has been stated that "Group 'D' employees" who become LDCs on the basis of departmental examinations stand on different footing. In their case relevant recruitment rules prescribe a promotion quota to be filled up on the basis on departmental examination."

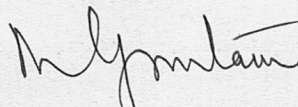
4. Detailed arguments were heard on this point and learned counsels of both sides were asked to clarify the position. The learned counsel for the applicant vehemently stated that the applicants posting as LDC was a case of fresh appointment as they had taken No Objection Certificate, applied for the post advertised, appeared for written test and interview and had been issued fresh appointment letters. There was no question of this being a promotion because no departmental examination was held. Learned counsel for respondents on the other hand referred to the clarification issued by DOPT, which has been quoted above.

5. Having heard the learned counsel and perused the record we are of the opinion that the clarification issued by DOPT at Sl. No. 08 makes it clear that the appointment on the post of LDC, which is made on the basis of departmental examination, is to be treated



as promotion. But in the case of the applicants it is very clear that they applied for the post, which was advertised, appeared for a written test interview alongwith many others and qualified. Therefore, it is a case of fresh appointment and, so, they were eligible for up-gradation, which was subsequently stopped, and recovery made from them.

6. The OA is accordingly allowed and the impugned order (Annexure A1) dated 31.1-10.2001 is hereby quashed. Respondents are directed to give the benefit of the financial up-gradation to the applicants from 09.08.1999. If any, recovery has been made the amount shall be returned to the applicants and all benefits arising from financial up-gradation may be given to them in terms of retiral benefits within a period of 3 months from the date of the receipt of the copy of this order. No cost.


MEMBER- A.


MEMBER- J

/SH/