

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the 3rd day of ~~November~~^{December}, 2008.

**HON'BLE MR. A. K. GAUR, MEMBER-J
HON'BLE MRS. MANJULIKA GAUTAM, MEMBER-A**

ORIGINAL APPLICATION NO. 42 OF 2003

Gopi Chandra, Son of late Narayan Prasad, Resident of H.No.63/46,
Harbans Mohal, Kanpur.

.....Applicant.

VERSUS

1. Union of India through the Secretary, Ministry of Defence,
Dept. Of Def. Prodn., Govt. of India, New Delhi.
2. The Addl. D.G.O.F., Ordnance Equipment Fys. Group HQrs.,
'Ayudh Upaskar Bhawan', G.T. Road, Kanpur.
3. The General Manager, Ordnance Equipment Factory,
Kanpur.

.....Respondents.

Present for the Applicant: Sri R.K. Shukla
Present for the Respondents : Sri S.K. Anwar

ORDER

Delivered : by Hon'ble Mr. A.K. Gaur, Member-J :

Through this original application, the applicant has claimed the following main relief(s) :-

- (i) To issue a writ, order or direction in the nature of Mandamus, commanding the respondents to give financial up-gradation under ACP-II w.e.f. 6.5.2000 as provided in DOP&T letter dated 9.8.1999, with payment of arrears.
- (ii) To issue a Mandamus, order or direction to the respondents to place the petitioner after S/Shri Sakhawatullah, Kamlesh Kumar and Mohan Lal in the seniority list of Checkers and L.D.C. as ordered by the Hon'ble Tribunal on 23.10.1991.

✓

- (iii) To issue a *Mandamus*, order or direction to the respondents to appoint the petitioner on the post of LDC w.e.f. 1.6.1980 instead of 1.9.1980 in view of Hon'ble Tribunal's order dated 23.10.1991 read with subsequent order dated 24.1.1992 in Misc. Application No.33/92 in T.A. No. 1134 of 1986.
- (iv) To issue a writ, order or direction in the nature of *Certiorari* quashing the impugned order dated 6.1.2001 (Annexure-A-I) and order dated 18.5.2002 (Annexure-A-II), passed by the respondents."

2. The applicant was initially appointed on the post of Labour 'B' in the pay scale of Rs.196-3-232 on compassionate ground on 6.5.1976. Although, the applicant was appointed as Class IV Industrial post but by virtue of applicant's educational qualification and ability, he was engaged on clerical work from time to time. Subsequent to the applicant, three persons namely Shkhabatullah, Kamlesh Kumar and Mohan Lal were also appointed as Labour 'B' but during probationary period, they were appointed on the post of Checkers/LDCs from the date of their appointment on the post of Labour 'B'. As the applicant was already doing the job of clerical nature, was thus superseded by them, he filed a suit in the court of Munsif City Kanpur and having been failed, the applicant filed an appeal before the District Judge, Kanpur which subsequently came to this Tribunal after creation of Central Administrative Tribunal. While deciding the OA, this Tribunal passed the following observations :-

"Accordingly, this application is allowed only in part to the extent that the respondents were directed to consider the applicant's appointment on the post of Checker within a period of two months against the vacancies which arose after the promotion of the above three persons referred above, and in case the applicant was entitled for appointment let appointment be given to him with retrospective effect, though the applicant's previous appointment may be only notional and the applicant will get salary or leave from the date he gets the actual appointment, and even against the existing vacancies the preference and priority will be given to the applicant than to any other persons on the designated post."

✓

3. In pursuance of the order of this Tribunal, the respondent No.3 issued order dated 13.1.1992 appointing the applicant on the post of Checker w.e.f. 30.8.1976. (Annexure-A-IV). Subsequently, a Misc. Application was filed by the respondent No.3 praying that since the Checker post has already been abolished, the applicant should be shown as Lower Division Clerk, which was acceded by this Tribunal. Consequently, direction was issued on 22.1.1992 in this regard (Annexure-A-V). In pursuance of the order dated 22.1.1992, respondent No.3 issued Factory order dated 11.2.1992 notifying the applicant's appointment as LDC w.e.f. 1.9.1980 instead of Checker w.e.f. 30.8.1976. The grievance of the applicant is that disadvantage has been caused to the applicant knowingly and intentionally ignoring the direction contained in the judgment and order dated 23.10.1991, wherein it was directed to place the applicant after the above said three persons who had been redesigned as LDC w.e.f. 1.6.1980. The applicant should have also been appointed as LDC w.e.f. 1.6.1980 on the date his aforesaid three juniors were appointed and the action of the respondents to appoint the applicant as LDC w.e.f. 1.9.1980 is arbitrary and contrary to the direction of this Tribunal dated 23.10.1991. Consequent upon the acceptance of Fifth Central Pay Commission's recommendation to remove the stagnation and to avoid the hardships of promotion in service career, the Government of India framed Assured Career Progression Scheme vide memorandum dated 8.9.1999 providing therewith that the incumbents of 12 years of regular service will be entitled to get first up-gradation in pay scale and the employees of 24 years regular service will be given financial up-gradation in next higher pay scale, subject to the fitness found by the D.P.C. (Annexure-A-IX). The case of the applicant is that he was

✓

entitled to get second financial up-gradation w.e.f. 6.5.2000 on the next higher scale of Rs.5000-8000/- but the respondents did not consider him. A representation dated 9.8.2000 was filed by the applicant, which was replied by the respondent No.3 that the applicant will be eligible for financial up-gradation under ACP-II on 1.9.2004.

4. Denying the pleas taken in the OA, the respondents filed their reply and submitted that two financial up-gradations under ACP Scheme shall be available only if no regular promotions during the prescribed period (12 and 24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial up-gradation only on completion of 24 years of regular service under the ACP Scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him. It is also submitted by the respondents that subsequently a clarification of DOP&T in connection with grant of ACP to the Checkers has been received through OFB, Kolkata vide letter dated 02.01.2003 wherein it is clarified that the movement from Checkers to LDCs in 1980 has to be treated as 'promotion' for the purpose of grant of ACP Scheme. As the applicant has already got three financial up-gradations/promotions, he is not entitled for further financial up-gradation under ACP Scheme. The issue of seniority is extremely time barred in view of the decision of Hon'ble Supreme Court rendered in the case of Malcom Lawrence Cecil D'Souza - AIR 1975 SC 1269. The applicant was appointed to the post of LDC w.e.f. 1.9.1980 i.e. the date when the post of Checker was abolished vide Factory Order

✓

dated 11.2.1992. If the applicant was not satisfied with the aforesaid order published by the respondent No.3 in compliance with the direction of this Tribunal, he should have challenged the same before the Tribunal at that time. He remained ~~complacent~~ for several years and has challenged the same after long delay. It is not permitted under the law.

5. In the Supplementary Counter Affidavit filed by the respondents, it is submitted that on the basis of seniority given by the respondents pursuant to the judgment and order dated 23.11.1991 of this Tribunal, the applicant was promoted to the post of UDC in the year. The applicant did not raise any dispute even in the year 1995 when ~~he~~ was promoted to the post of UDC. The instant OA is extremely time barred and deserves to be dismissed.

6. In the rejoinder affidavit filed by the applicant, it is submitted that the applicant has got only one promotion from LDC to UDC and the post held by him as Labour 'B'/Checker/LDC were neither up-gradation or promotion but were appointments by Court orders. The applicant did not hold the post of Checker and also did not move from Checker to LDC and as such O.F. Board's interpretation dated 2.1.2003 is not relevant.

7. We have heard Shri R.K. Shukla, counsel for the applicant and Shri S.K. Anwar, counsel for the respondents.

8. Learned counsel for the applicant vehemently argued that the applicant was up-graded to the post of UDC and this could be treated

✓

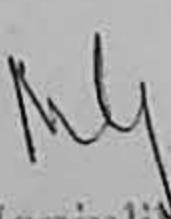
as promotion. Learned counsel further contended that the denial of the benefit under ACP Scheme on the score that the applicant had already earned two promotions in his career and without any basis. The method of recruitment of LDC is by way of Direct Recruitment i.e. 90% and by promotion of Checkers with three years of regular service in the grade. Thus it could be seen that a major departure was made in filling up the up-graded posts of Checkers as LDC. Thus, it is conclusively proved beyond doubt that at the time of abolition of the posts of Checkers and on creation of certain number of LDC, no rules were followed as provided for normal promotion. Therefore, it stands to reason to hold that the applicant was accommodated in the upgraded post of LDC and, therefore, this be termed as neither financial up-gradation nor a case of promotion, but is one of Accommodation/Absorption/Direct Recruitment. Learned counsel for the applicant placed reliance on the decision of Hyderabad Bench of this Tribunal in the case of G. Madhava Rao and others Vs. Union of India & ors. reported in 2003(2) ATJ 532. In order to buttress contention that the appointment of the applicant on the post of LDC was neither up-graded nor promotion and the applicant is entitled to second financial up-gradation under ACP Scheme from the date by which he would be completed 24 years of service. It is seen from the record that the applicant was appointed to the post of Checker w.e.f. 30.8.1976 notionally in pursuance of the judgment and order dated 23.10.1991 of this Tribunal in T.A. No. 1134/86. Since the post of Checker was abolished. The respondents filed a Misc Application seeking direction for reinstating the applicant on the post of LDC, was filed by the respondents in the said T.A., which was allowed by the Tribunal vide order dated 22.1.1992. Accordingly, the applicant

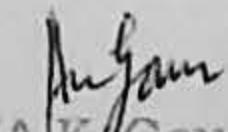
was appointed to the post of LDC w.e.f. 1.9.1980 i.e. the date when the post of Checker was finally abolished. It is surprising, if the applicant was not satisfied with the above order published by respondent No.3 in compliance with the order of this Tribunal, he should have challenged the same before the Tribunal at that time. Besides, the applicant did not even raise any dispute on the issue of seniority based on which he was promoted to the post of UDC in 1995. Raising the issue of seniority at such a belated stage is not at all permissible in law. The decision rendered by Hon'ble Supreme Court in Malcom Lawrence Cecil D'Souza's case reported in AIR 1975 SC 1269 is fully applicable to the fact of the present case. The Hon'ble Supreme Court has held that "it is essential that anyone who feels aggrieved with an administrative decision affecting one's seniority should act with due diligence and promptitude and not sleep over the matter. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matter should be given a quietus after lapse of some time." We may also observe that if the applicant was not satisfied with the decision of respondent No.3 appointing the applicant to the post of LDC w.e.f. 1.9.1980, he should have challenged the same at that time. The applicant did not raise any dispute even in the year 1995 when he was promoted to the post of UDC w.e.f. 4.10.1995. In our considered view raising dispute on the issue of his appointment to the post of LDC after a lapse of 11 years from the date of publication of office order dated 11.2.1992 and after more than 07 years from the date of his promotion to the post of UDC w.e.f. 4.10.1995 is grossly

✓

time barred and deserves to be dismissed. Respondents have rightly rejected the claim of applicant for grant of IInd A.C.P. w.e.f. 6.5.2000 and rightly decided that the applicant would be entitled to get the benefit of IInd A.C.P. w.e.f. 1.9.2004, treating his appointment as LDC w.e.f. 1.9.1980. It has also been argued by the learned counsel for the respondents that this OA is liable to be dismissed on the ground of claiming plural reliefs in as much as that the benefit of ACP is personal to the employee and has nothing to do with the seniority. We are not inclined to go into this point. Moreover, this OA has been filed by the applicant claiming seniority without application for condonation of delay and the same deserves to be dismissed on the Principle of delay and latches in view of Hon'ble Supreme Court decision rendered in 2000 SCC (L&S) 53- Ramesh Chandra Sharma Vs. Udhamp Singh Kamal.

9. Having given our thoughtful consideration to the pleas advance by the parties counsel, we are fully convinced that the applicant has utterly failed to make out any case warranting interference with the impugned orders. We find no merit in this case. Accordingly, this OA is dismissed. No order as to costs.


(Manjulika Gautam)
Member (A)


(A.K. Gaur)
Member (J)

RKM/