

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~NEW DELHI~~

O.A. No.

125 OF

1988

~~TA No~~DATE OF DECISION 30.7.1991

Mr. Ishwar Gar Ramgar Goswami Petitioner

Mr. B. B. Gogia

Advocate for the Petitioner(s)

Versus

Union of India and Others Respondent

Mr. P. M. Raval &

Advocate for the Respondent(s)

Mr. J. J. Yajnik

CORAM :

The Hon'ble Mr. M. M. Singh

: Administrative Member

The Hon'ble Mr. S. Santhana Krishnan

: Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Yes*

(6)

Mr. Ishwar Gar Rangar Goswami,
Lower Division Clerk,
C/o. Mr. B.B. Oza, Advocate,
11/B, Manav Flats,
Behind HL Commerce College,
Navrangpura,
Ahmedabad - 380 009.

...Applicant.

(Advocate : Mr. B.B. Oza)

Versus

1. Union of India,
(notice to be served through
the Development Commissioner),
Kandla Free Trade Zone,
Gandhidham,
Dist. Kutch - 370 230.

2. The Administrative Officer,
Kandla Free Trade Zone,
Gandhidham,
Dist. Kutch.

3. Shri K.D. Dund,
Lower Division Clerk,
Office of the Development Commissioner,
Kandla Free Trade Zone,
Gandhidham,
Dist. Kutch.

...Respondents.

(Advocate : Mr. P.M. Raval and
Mr. J.J. Yajnik)

J U D G M E N T

O.A.No. 125 OF 1988

Date : 30/7/91

Per : Hon'ble Mr. S. Santhana Krishnan : Judicial Member

In this application under Section 19 of
the Administrative Tribunals Act, 1985, the applicant
claims benefits of the regular LDC and also allotment
of Type-II, vacant quarters.

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2. The averments in the application is to the effect that the applicant was appointed as a Peon under the respondents in KFTZ, on 1.10.1966 and then he was promoted as Security Guard on 4.10.1973. As the work was not found suitable by him, at his request he was sent back to his original post on 14.4.1977. He was again promoted as Jamadar, on 9.2.1982, and that he was working continuously as LDC for more than three years (i.e.), from 16.1.1984. He ought to have been regularised as regular clerk and he ought to have been given consequential benefits including the Type-II, quarters. As per the seniority list dated 1.5.1987, he has been shown at Sl.No.5, in the post of Jamadar. But in the list dated 16.6.1987, for Group-B, Non-Gazetted, and Group-C, Officers, the third respondent's name has been shown at Sl.No.1, as LDC. The applicant's name does not appear in this list. Though he applied for Type-II, quarters on 13.6.1987, the same was not considered. The third respondent joined as Sepoy only on 17.1.1973, whereas the applicant joined as Peon on 1.10.1966. Both the applicant and the third respondent were appointed as LDC on 16.1.1984. Further, the applicant was appointed on a higher footing from the post of Jamadar, which is higher than the post of Sepoy which the third respondent was holding at that time. Hence, he is entitled to the reliefs claimed in the application.

3. In the reply the respondents averred that the applicant joined as a Peon on 1.10.1966, and that he was promoted as Security Guard on 4.10.1973. According to the Recruitment Rules, the post of Peon is the

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feeder, for promotion like a post of Jamadar, Daftary, and Security Guard. Regarding the filling of LDC post, 90% of the posts are to be filled by direct recruitment, while 10% are to be filled from among the Group-D, grade employees borne on a regular establishment of KFTZ under certain conditions. On 15.4.1977, the applicant working as Security Guard, was appointed back as Peon on his request with the condition that he would not be considered for the post of Security Guard in future. On 8.2.1982, he was appointed as Jamadar on temporary basis. By the end of December, 1983, the total strength of LDC was 10. As per the Rule 10% of the vacancies arising in a year could be filled up by promotion from among Group 'D', employees, who fulfill the prescribed qualifications. A departmental examination was held on 11.1.1984, for the appointment of one post of LDC and the third respondent stood first and hence he was appointed in a regular vacancy. One Mr.K.V.Dhela, who appeared in the examination was kept in the panel for one year to meet any exigencies of vacancy of LDC. There is a leave vacancy in the mean while and the applicant was appointed to officiate against this leave vacancy on adhoc basis. He gave a representation to regularise the appointment on 31.12.1986, as LDC and the same was rejected on the ground that the 10 % quota for Group-D, departmental staff had already been fulfilled. The third respondent was working as a Sepoy and the post of Jamadar and Sepoy are in different cadres and there are separate seniority and there are separate pay scales.



Hence it cannot be said that the applicant was senior to the third respondent. When the applicant passed the typing test on 30th January, 1985, he was allowed to draw annual increment. But the question of reservation for promotion under the departmental rules cannot be considered. Regarding the quarters, Type-II, quarters was given to the persons who were drawing Rs.950-1400, scale. As the promotion to the applicant to the post of LDC has been purely adhoc and the requisition for three more candidates for the post of LDCs had been made to the Staff Selection Commission, his chances of further continuation in the post were remote. Further on 10.12.1987, when the applicant ^{sent} an application for allotment of quarters Type-II, they are having only one Type-II, quarters and that was allotted to Shri Y.B.Trivedi, who is drawing more pay than the applicant. The case of the applicant will be taken up under consideration, immediately when a vacancy of quarter arises provided there is no claim from other members drawing higher pay and who are eligible for allotment of quarters. Hence the applicant is not entitled to claim for any relief.

4. When the case is called up for final hearing neither the applicant nor his counsel present. Heard the respondents' counsel and perused the records.

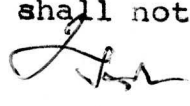
5. The applicant in this application requires this Tribunal to give him the benefit of regular LDC and also to direct the respondents to allot him Type-II, quarters. There is no dispute that the applicant was appointed as a Peon on 1.10.1966, and thereafter



promoted as Security Guard on 4.10.1973. He was thereafter promoted to the post of Jamadar on 9.2.1982. The respondents averred in their reply that as per the recruitment rules the post of the Peon is the Feeder for the promotion to the post of Jamadar, Daftary, and Security Guard. They further claim that the applicant was appointed as Jamadar purely on temporary basis.

6. The applicant's main grievance as we see from the averments of the application is that the third respondent who joined as Sepoy on 17.1.1973, is now given the permanent post of LDC. Whereas though, he joined the service on 1.10.1966, he was not given regular LDC post. The applicant takes it for granted that the post of LDC is a promotion post from the post of Jamadar.

7. On the other hand the respondents point out in their reply that the post of LDC is a selection post and further 90% of the post are to be filled up by direct recruitment and 10% are to be filled from among the Group-D, employees borne on a regular establishment, KFTZ. Further the selection shall be made through a departmental examination confined to such a group-D employees, who fulfill the minimum qualification, namely, Matriculation or equivalent. The maximum age shall be 45 years and also 5 years service in Group-D. The maximum number of candidates appointed by this method shall be limited to 10% of the vacancies in the cadre of LDC accruing in the year and unfilled vacancies shall not be carried forward.



8. They also point out in the reply that the post of Jamadar and the post of Sepoy are in different cadres and they are separate services and there are separate pay scales. The applicant was working only as a Jamadar and the third respondent was working as a Sepoy. The applicant cannot complain that because he joined earlier he ought to have been promoted as LDC. The fact that the post of LDC is a selection post and that they should be filled up by the Rules enunciated by the respondents in their reply, is not disputed by the applicant by filing any rejoinder. The fact that the post of Jamadar and Sepoy are in different cadres is also not disputed.

9. It is seen from the reply that the respondents conducted a departmental examination on 11.1.1984. By the end of December, 1983, the total strength of LDC was 10. As per the Rules only one has to be promoted from Group-D, employees namely, 10% of the vacancies arising in a year. In the examination the fact that the third respondent obtained maximum number of marks in the written test as well as he got more speed in typing test than the applicant is not disputed by the applicant. As there was only one post available from the promotion post from among Group-D, employees and as the third respondent stood first in the examination, the respondents have no option but to select him for the permanent LDC Post. The applicant was posted as LDC only on a leave vacancy. Annexure-A-1, the appointment order of the applicant clearly show that the appointment is on adhoc basis, and

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this will not confer him any right on him to claim the post of LDC, on regular basis. When the applicant thereafter, passed the typing test, he was allowed to draw the increment as per the condition specified in the order. As the applicant as well as the third respondent, are working in two different cadres Annexure-A-2, the seniority list as well as the Annexure-A/4, another seniority list produced by the applicant are not of any help to him. Annexure-A/5, is the seniority list dated 16.6.1987, rightly shown the third respondent as having been selected for LDC post as he has passed the departmental examination. Hence the applicant cannot have any grievance over the same.

10. The applicant also failed to produce any Rule whereby if the applicant worked more than three years without any break, he should be given all the benefits as a permanent L.D.C. Hence the applicant failed to establish that he is entitled to be given benefits of a regular LDC. The appointment of third respondent as LDC do not offend Article 14 of the Constitution.


11. Regarding the relief of Type-II, quarters, the respondents point out in their reply that the same was given taking into consideration, seniority in a particular grade and actual pay drawn in the post where a person is regularly appointed. The applicant was posted as L.D.C. only on ad hoc basis. They also claim that they have sent a requisition for three more candidates for the post of L.D.C.s, to the Staff Selection Commission. Hence, the chances of the

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applicant's further continuation in the post were remote. Further one Mr.Y.B.Trivedi, (on deputation from Customs and Central Excise), who is drawing more than the applicant, was allotted Type-II, quarters and they further aver that the case of the applicant for consideration, will be taken when a vacancy of quarter arises provided there is no claim from other members drawing higher pay. The applicant has not chosen to file any rejoinder and shown either there are more than one Type-II, quarters or that Mr.Y.B. Trivedi, is drawing pay less than the applicant. Hence the applicant is not entitled to the relief of allotment of quarters as claimed.

12. In view of the above discussion the applicant is not entitled to claim any relief in this application and accordingly the application is dismissed. No order as to costs.


(S. Santhana Krishnan)
Judicial Member

30/7/1947

M. M. Singh
30/7/47
(M.M.Singh)
Administrative Member