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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
J O D H P U R

Date of order : 18.03.1998.

O.A.NO. 54/1998

1. Shri K.A.Ansari S/o Shri Hazi Mohammed, aged about 51 years, R/o Bai-Ji-Ka-Talsab, Near Masjid, Jodhpur.
 2. Shri B.L.Nayak S/o Shri Ramdev Ram, aged about 53 years, R/o Plot No. 9, Karamchari Colony, No. 8, Residency Road, Jodhpur.
 3. Shri Surendra Singh S/o Shri Inder Singh, aged about 36 years, R/o Plot No. 442, E.J.S. Colony, Sector Mohan Nagar-B, Jodhpur.
 4. Shri A.K.Chaudhary S/o Shri Daya Ram, aged about 38 years R/o P.No. 10, Madho Das Bhawan, 3rd Road, Sardar-pura, Jodhpur.
 5. Shri M.Mirchandani S/o Shri Hassa Ram Ji, aged about 32 years, R/o Udai Bhawan, Ghodon Ka Chowk, Jodhpur.
6. All are presently working on the post of L.D.C. in the office of the Ordinance Officer Civ (Admn), Personnel Officer (Civ), 6, FOD C/o 56 A.P.O.

... Applicants

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Director General Ordinance Services, Master General of Ordinance Branch, Army Headquarters, DHQ PO New Delhi.
3. AOC Records, Post Box No. 3, Trimulgherry PO, Secunderabad.
4. Commandant, No. 6 FOD C/o 56 APO.
5. Personnel Officer (Civ), 6 FOD C/o 56 APO.

... Respondents

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Mr. S.K.Malik, counsel for the Applicants.

Mr. Ram Narayan Brief Holder for Mr. P.P.Choudhary, counsel for the Respondents.

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CORAM :

HONOURABLE MR. A.K.MISRA,
JUDICIAL MEMBER

O R D E R

(By the Court)

The applicants who are presently working on the post of L.D.Cs in the office of the Ordnance Officer Civ (Admn) Personnel Officer (Civ) , 6 FOD, have filed this O.A. with the prayer that the impugned order dated 12.2.1998 (Annexure A-1) be quashed and the respondents be directed to continue the applicants on the posts of L.D.C. in their present unit i.e. 6 FOD.

2. Notice of this O.A. was given to the respondents who have filed their reply to which no rejoinder was filed by the applicants.

3. I have heard the learned counsel for the parties and have gone through the record.

4. The learned counsel for the applicant has argued that the transfer of the present applicants has been ordered by an officer who is not competent to pass transfer orders. Therefore, the transfer order is bad in law. He has also argued that the respondents have not followed the procedure of adjusting the surplus staff, therefore also, the transfer of the present applicants is bad. The learned counsel for the applicant has also argued that the cadre of U.D.Cs and cadre of L.D.Cs are different and therefore, if any U.D.C. has been found

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to be surplus then only U.D.C. can be transferred and not the applicants who are working as L.D.Cs. He, in support of his arguments, has cited (1988) 7 ATC 296, (ii) AIR 1988 S.C. 959 and (iii) 1988 (1) SIR 549 respectively.

5. On the other hand, the learned counsel for the respondents has argued that the applicants are the junior most persons presently posted with the respondents and, therefore, when six Clerks have been found surplus, then being junior most, the applicants have been posted vide order dated 19.2.1998 (Annexure A-1). He has argued that the procedure of disposal of surplus staff, as argued by the learned counsel for applicants, is not applicable in the instant case. As per the station seniority, the present applicants are the junior most persons in terms of their stay. Therefore, the transfer order is in accordance with the rules and has been passed by competent authority. The O.A. has no merits.

6. I have considered the rival arguments. There is no dispute that the applicants are working as L.D.Cs. There is also no dispute that presently 43 L.D.Cs and 67 U.D.Cs are working with the respondents No. 4 and 5. As per letter dated 9.10.1995 (Annexure A-5), the strength of Clerks has been shown as 109. In this letter no distinction has been made as regards U.D.Cs and L.D.Cs by indicating the strength of these Clerks separately. However, as per the Appendix 'A' to the letter dated 11.5.1996 (Annexure A-6), the strength of Clerks is 101 which has been further identified separately as regards U.D.Cs and L.D.Cs i.e. 51 and 50 respectively. On this

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basis, the learned counsel for the applicants has argued that the total number of U.D.Cs who are working, is more than the L.D.Cs and, therefore, the junior most U.D.Cs out of the list of 67 U.D.Cs, should be transferred on being found surplus. But I am afraid ^{I can not agree to} ~~of~~ this interpretation hence it cannot be accepted. Broadly speaking the U.D.Cs and L.D.Cs ^{fall} ~~are~~, in my opinion, only in one category. Initially a person is appointed as L.D.C. and in due course of time he is promoted as U.D.C. Therefore, in case the strength of total number of Clerks is reduced then the junior most of the lot i.e. junior most L.D.Cs shall have to go. If cadre of U.D.C. is reduced then the junior most U.D.C. would come-out as L.D.C. and again L.D.C. would make room for such incumbents U.D.Cs. In the instant case, the argument of the learned advocate for the applicants is that U.D.Cs should have been moved-out. But in my opinion, the Guidelines as given in Annexure A-2 which has also been submitted by the learned counsel for the respondents alongwith subsequent paragraphs will govern the present situation. For convenience these instructions are quoted below :-

"Posting to adjust surpluses and deficiencies :

18. The junior most employees in a particular category will be declared surplus in a unit. As far as possible the surplus staff will be adjusted in the same group of stations. If it is not feasible to adjust all surplus employees within same group of stations then the station seniority of only the surplus staff will be taken into consideration. The station senior will be absorbed in the vacancy existing in the same group of station and the station junior will be absorbed by posting out to other units

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19. Cases regarding considering the seniority of junior most employees for posting out of the station, while declaring surplus due to reduction of PE, the personnel having less service taking into the account of their appointment in the station will be considered as junior most employees for posting out purposes.

Reckoning of station/depot/unit seniority :

20. Station seniority of individuals will reckon from the date they are taken on the strength of the unit irrespective of the rank, grade, group of appointment held from time to time. As such, service rendered as Group 'D' employee in that station will also be counted for station seniority.

21. If an individual has served continuously in more than one unit in a station/group of stations as mentioned in para 14 above, combined and continuous service rendered in such unit will be taken into consideration for the purpose of calculating the tenure of stay."

7. From the foregoing instructions, it would be evidently cleared that the seniority would be calculated as per the stay at a particular station and the person who is having lesser stay, shall be treated as junior most for being posted out. As has been narrated above, a person is appointed as L.D.C. first and then he is promoted to the next higher rank of U.D.C. Naturally, the L.D.C. would always be junior to the U.D.C. in terms of stay at the station unless, some of the U.D.Cs have been brought from out side at that particular station. The applicant has not been able to show me as to any of the junior most U.D.C. in the list of 67 U.D.Cs (Annexure A-4), has lesser period of stay at the station than the present applicants. Therefore, it cannot be ~~vaguely~~ argued that U.D.Cs having been found surplus, should be asked to move out and not the L.D.Cs.

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8. The learned counsel for the applicants has shown me Chaudri's Civil Service Regulations, Volume-IV (Appendix VI) 1986 Edition to support his arguments in respect of disposal of surplus staff. I have gone through the relevant provisions. In my opinion, the scheme of disposal of personnel resulting surplus, as described, is not applicable in the instant case, because in the instant case, the surplus staff is not being surrendered to the Central Pool. On the contrary, the department itself is adjusting the so called surplus staff members in their own organisation but at different stations. The scheme is meant for surplus staff which is to be placed at the disposal of Central Pool for purposes of adjustment and postings. This is clearly not the case in hand. Therefore, the Scheme cited by the learned counsel for the applicants, is of no help to the applicants

9. The rules propounded in the rulings cited by the learned counsel for the applicants can also not be made applicable in the instant case because of the difference of facts and circumstances. Hence, the rulings too are of no help to the applicants. In my opinion, I do not find any infirmity in transferring the present applicants who are the junior most and rendered surplus due to revised calculation of strength.


10. I have also considered the arguments relating to transfer order having been passed by an officer not competent to pass. The transfer order which is under challenge is Annex.A.1. The cadre controlling authority of Civilian Clerks is AOC (Records). The AOC (Records) had found the six Civilian Clerks as

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surplus and those six Civilian Clerks were posted to Shakur Basti. The record relating to each individual in respect of their appointment and stay at a particular station, is maintained by the respondents No. 4 and 5. Therefore, if the present applicants have been identified as junior most five candidates for being posted to Shakur Basti as per the direction, it cannot be said that the order of transfer is without jurisdiction or has been passed by an officer not competent to pass it. There is nothing on record to show that any person in the category of Clerks is more junior than the six Clerks mentioned in the order Annex.A-1 in terms of their stay at the Headquarter. Therefore, it cannot be said that the applicants have been wrongly identified by the respondents No. 4 and 5 as junior most Clerks. At the cost of repetition, I may say that Clerk is one category and U.D.C. and L.D.C. are two classes among one category, therefore, when the word 'category' has been used in the instructions and in the letters then it can only mean Clerk and not U.D.C. as one category and L.D.C. as ^{another} ~~one~~ category. Therefore, the efforts of the learned counsel for the applicants to distinguish between the two cannot lead to a beneficial conclusion in favour of the applicants.

11. In view of the above discussion, I am of the view that the Application has no merit and deserves to be dismissed. The Original Application is, therefore, dismissed at the stage of admission.

12. The parties are left to bear their own costs.


(A.K. MISRA)
Judicial Member

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Part II and III destroyed
in my presence on 8-11-2004
under the supervision of
Section 44 as per
order d. no. 22/12/2003.

Section officer (Record)