

711

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH: JODHPUR

Original Application No. 299/99

Mohd. Molla
S/o Shri Abdul Rehman
E.S.I Colony
Panchdeep Bhawan
E.S.I. Coporation
Tegore Nagar
Hiran Magri
Sec. 4
Udaipur

: Applicant.

rep. by Mr.Kamal Dave : Counsel for the applicant

-verses-

1. The Union of India
through:
the Secretary,
Ministry of Labour
Government of India
New Delhi.

2. The Director
Employees State Insurance
Corporation, Panchdeep Bhawan
Bhawani Singh Marg,
Jaipur. 1

3. The Deputy Director (Administration)
Employees State Insurance Corporation
Panchdeep Bhawan
Bhawani Singh Marg
Jaipur.

: Respondents

rep. by Mr. Harish Purohit : Counsel for the respondents.

CORAM: The Hon'ble Mr. Justice G.D.Gupta, Vice Chairman
The Hon'ble Mr. Gopal Singh, Administrative Member.

Date of the order: 12.09.02

Per Mr. Justice G.L.Gupta

ORDER

The applicant has claimed the following



reliefs in this O.A.

- a) by calling the record pertaining to vacancies of L.D.C.'s the respondents may kindly be directed to fill up the vacancies after determining year wise 10% promotion quota of secondary qualified group 'D' employee.
- b) the respondents may be restrained from filling the 10% quota without ascertaining the genuineness of the qualification
- c) the respondents may kindly be directed to consider applicant's regularisation in view of his continuous holding of post of LDC.
- d) any other appropriate order or direction which may be considered just and proper in the light of above, may kindly be issued in favour of the applicant.
- e) costs of the application may kindly be awarded in favour of the applicant. "

2. The applicant was initially appointed as Peon vide order dated 5.11.82 and he joined duties on the same date. His services were made regular with effect from 1.4.88. The next avenue of promotion from Group 'D' is to the post of Lower Division Clerk (LDC for short) in Group 'C', wherein 10% quota is reserved to be filled in from class IV employees having qualification upto 10th standard.

The case for the applicant is that he passed the Secondary Examination in the year 1989



7/12

I/13

and became eligible to be considered for promotion to the post of LDC, but he has not been given regular promotion as yet, though he was given promotion on adhoc basis in the year 1990 itself. The further case for the applicant is that in the year 1998-99 39 vacancies of LDCs were filled up whereas only 2 persons were promoted under the 10% quota.

It is averred that as per the seniority list of Record Sorter, the applicant's name stood at Sl. No.33 and at Sl. No. 7 among the Secondary qualified Record Sorters, and the respondents were under obligation to determine the vacancies of LDC and to convene Departmental Promotion Committees regularly to fill up the vacancies year-wise, but steps were not taken in that direction. When the applicant made representation against the promotion of two employees, the same was rejected vide communication dated 23.12.98

3. In the reply, the respondents' case is that 25% of LDC vacancies are to be filled by way of promotion and out of 25% vacancies 10% vacancies are to be filled from Group 'D' employees who possess the Secondary qualification on the basis of seniority cum-fitness and the remaining 15% are required to be filled from qualified Group 'D'/non-qualified Group 'D' who have rendered not less than 2/5 years respectively on the basis of Departmental Competitive Examination and that the applicant was not eligible to be considered against 15% quota since he did not qualify



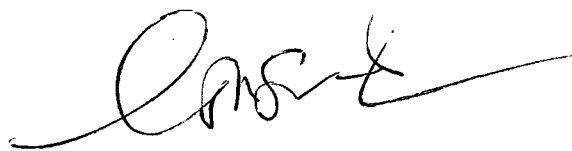
AM

in the Departmental Competitive Examination. It is further stated that on the basis of the said Departmental Competitive Examination 2 persons viz. S/Shri Shiv Pratap Sharma and Keshar Lal Yadav were promoted as LDCs. It is the further case for the respondents that in the year 1998-99 when 39 vacancies were filled by direct recruitment, two officials S/Shri G.L. Mandawaria and Hanuman Singh, who were seniors to the applicant were given promotion and there was no other vacancy in that year and one vacancy arose due to the reversion of an employee which was filled in the year 1999. It is further stated that the assessment of vacancies under 10% quota was done and position was explained in the minutes of the DPC convened during the years 1993, 1996, 1998 and 1999.

4. We have heard the learned counsel for the parties and perused the documents placed on record.

5. During the course of arguments, it was not disputed that the 2 employees Shri G.L. Mandawaria and Hanuman Singh, against whom the applicant had made representation, were senior to the applicant in the seniority list of Class IV employees. Therefore the applicant has no legal right to question the promotions of those two employees before his promotion.

6. It is not stated in the O.A that any person junior to the applicant in the seniority list



7/15

has been given promotion. What was contended by the learned counsel for the applicant was that had the applicant's case been considered in the years 1989, 1990 and 1991, he would have got regular promotion to the post of LDC as he was the only eligible candidate available at that point of time.

7. It may be pointed out that in the O.A it is nowhere stated that regular vacancy under 10% quota was available during the years 1989, 1990 and 1991. What is averred at para 4.6 is that the respondent department had an obligation to convene DPCs regularly. When it is not stated that vacancies were available in the preceding years, it cannot be said that there was malafides on the part of the respondents, when the DPCs for promotion was not convened. The applicant cannot succeed on the basis of the averments made at para 4.6.

8. The reply indicates that DPC was convened right from 1993 onwards. It is not borne out from the record that the applicant was the only eligible candidate available during the years 1993 to 1996 and vacancies were also available under 10% quota at that time. That being so, the applicant is not entitled to succeed in this O.A. Needless to state that the applicant cannot claim promotion against the 15% vacancies which are to be filled by the Departmental Competitive Examination. The promotion to S/Shri Shiv Pratap Sharma and Keshar Lal Yadav



A16

was given on the basis of the result in the Departmental Competitive Examination.

9. In the O.A it has been prayed that the respondents be restrained from filling up 10% quota without ascertaining the genuineness of the qualifications. No direction can be given to the respondents in this regard without any foundation. It is not averred with definite particulars that the respondents at any point of time considered promotion of some of the persons without ascertaining the genuineness of the qualification.

10. The further prayer made in the O.A is that the respondents be directed to consider the case of the applicant for regularisation as he is holding the post of LDC continuously on adhoc basis. No such direction can be given in this regard. No rule provides that if a person holds a post continuously on adhoc basis for some years he has to be regularised. The applicant should be satisfied that he has been given promotion on adhoc basis as LDC and he is continuing on the post. He can claim regular promotion on his turn and not before that.


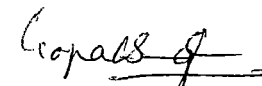
11. In the O.A it is also prayed that the respondents be directed to fill up the vacancies under 10% quota year wise from the Secondary qualified Class IV employees. It is not averred that at any point of time the respondents have violated the procedure in this regard. No such direction can be given.




File

12. Having considered the entire material on record and the discussion made above, we do not find any merit in this O.A.

13. Consequently, the O.A. being devoid of merit is dismissed. No order as to costs.



(Gopal Singh)
Administrative Member


(G.L. Gupta)
Vice Chairman

jsv.