

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 354/2005

This the 29th day of January, 2009

Hon'ble Mr. M. Kanthaiah, Member (J)
Hon'ble Dr. A. K. Mishra, Member (A)

1. Vimal Pradhan aged about 43 years son of Sri B.N. Pradhan, resident of 1/506, Ruchi Khand-2, Sharda Nagar, Lucknow-226002.
2. Parmanand Yadav, aged about 43 years son of late Rajdhari Yadav, resident of Mohari Bagh, Kharika Telibagh, Lucknow-226002.

Applicants

By Advocate: Sri Subhash Vidyarthi.

Versus

1. Union of India through the Secretary, Ministry of Defence, Sena Bhawan, New Delhi.
2. The Inspector of Records (MP-8), Army Head Quartes, DHQ, P.O., New Delhi-110011.
3. The Officer-in-charge ,Army Medical Corps Records Office, Lucknow.
4. Sri Pradeep Kumar Chopra, UDC, presently posted in Records, The Mahar Regiment, Saugar (M.P.), 470001.
5. Sri Thomas N. Pawar, UDC, Presently posted in Records, The Mechanised Infantry Regiment,Ahmadnagar, Maharashtra-44110.
6. Sri Narayanan M.K. , UDC, presently posted in Defence Security Corps Records, Mill Road,Cannanore-670013.
7. Smt. Srammanian, UDC, presently posted in 39, Gorkha Regiment Records, Varanasi (U.P.)

Respondents

By Advocate: Sri S. P. Singh

ORDER

HON'BLE DR. A.K. MISHRA, MEMBER (A)

This application has been made against the order dated 11th March, 2005 passed by Dy. Director in the office of Addl. Directorate General, Army Headquarters, rejecting the claim of the applicants for refixation of seniority. The applicants have prayed for a direction for counting his seniority from the date of their initial appointments as Temporary Lower Division Clerk (in lieu of combatants) and for



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fixation of their seniority both in the grades of Lower Division Clerk (LDC) as well as Upper Division Clerk (UDC) and also for grant of all consequential benefits, including grant of enhancement of salary under Assured Career Progression(ACP) Scheme.

2. The case of the applicants in brief is that they were appointed as temporary LDCs in lieu of combatants in the pay scale of Rs. 260-400. Since the time of their appointments, they have been working as Govt. employees enjoying all the benefits including promotion. Their original appointment in lieu of combatants was valid only for one year but they were transferred to the offices where regular vacancies were available and have been given seniority from the dates they joined against regular vacancies. The period of their services when they worked as temporary employees in lieu of combatants have not been taken into account while fixing their seniority originally as LDC and subsequently, as UDC after promotion.

3. The case of the respondents , in brief, is that the employees were appointed against purely temporary vacancy caused due to temporary absence of combatant clerks and in their appointment orders, it was made clear that on joining of the regular employees, their services would be dispensed with. However, the respondents have taken a humane view in the matter and instead of dispensing with their services on joining of the regular incumbents, located regular vacancies and adjusted them against such vacancies. Therefore, their seniority could be counted only from the dates they were appointed against regular vacancies. The period in which they were engaged in lieu of combatants could not be counted for their seniority as it was a purely stop gap arrangement as seen from the appointment letter itself (CR-3). There was no security of their service during this period. However, the position underwent a change

from the date they were posted against regular vacancies; there was no such uncertainty any more. The respondents have cited the instructions of General Headquarters as well as Ministry of Defence to the effect that such service could not be counted towards seniority. Therefore, the representations made by the applicants from time to time were considered by the competent authorities and rejected. Further, the respondents have also taken the ground of limitation, challenging the maintainability of this application.

4. It is seen from the application that the applicant No.1 has been agitating this issue since 1996 and his representations made in this regard have been rejected from time to time.

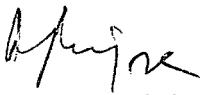
5. From their own averments, both the applicants were promoted to the post of UDC in Feb., 2003 on the basis of their seniority in the grade of LDC. If they had any grievance against such promotion and the seniority granted to them in UDC grade, the cause of action arose in Feb., 2003. However, as far as applicant No.1 is concerned, from his own admission, he has been representing since 10.10.1996. In other words, he was aware about this seniority granted to him as early as 1996. He is one of the applicant parties here. Therefore, the cause of action should be taken as 10.10.1996. In that view of the matter, the application which was filed on 29.4.2005, is hopelessly barred by limitation as there is long delay in filing the application. Both the applicants have acquiesced in the position and never challenged legally in their placement in the cadre of LDC in the appropriate court of law. In the case Bhoop Singh Vs. Union of India and Others reported at 1992 (21) ATC 675 the Hon'ble Supreme Court made the following observations:

"xxxx Inordinate and unexplained delay or latches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in

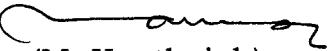
claiming that relief. Others are then justified in acting on that belief."

6. In the present case, the applicants cannot be permitted to agitate their seniority in the LDC cadre after lapse of such a long time. Their appointment against regular vacancies took place in the year 1985. Their seniority in LDC cadre has been given from the year 1985. The subsequent promotion to UDC cadre was based on their relative seniority in LDC cadre fixed based on their appointments in LDC cadre in 1985 and is consequential in nature.

7. Clearly this application suffers from long delay in challenging their seniority in the LDC cadre which was fixed long ago. In the result, we do not find this application as maintainable, hence dismissed as barred by limitation.


(DR. A. K. Mishra)

Member (J)


(M. Kanthaiah)

Member (A)

24-01-09

HLS/-