

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW**

Original Application No. 87 of 2011

Reserved on 29.03.2016.

Pronounced on 7th April, 2016

Hon'ble Mr. Navneet Kumar, Member - J

Hon'ble Ms. Jayati Chandra, Member - A

Smt. Usha Rajni (MES-454928) aged about 60 years W/o Shri Gulshan Kumar R/o 565/195, Puran Nagar, Alambagh, Lucknow (working as Office Superintendent in the O/o Chief Engineer, HQ, Central Command, Lucknow - 226002.

..... Applicant

By Advocate: Sri Prashant Kumar Singh

VERSUS

1. Union of India through its Secretary, Ministry of Defence, New Delhi - 110001.
2. Engineer-in-Chief, Integrated Headquarters of Ministry of Defence (Army), Kashmir House, DHQ PO, New Delhi - 110011.
3. Director General (Pers), Military Engineer Services, Engineer-in-Chief, Integrated Headquarters of Ministry of Defence (Army), Kashmir House, DHQ PO, New Delhi - 110011.
4. Chief Engineer, Headquarters Chief Engineer, Headquarters Central Command, Lucknow - 226002.
5. MES - 310949 Sri Janam Singh serving under Chief Engineer, Headquarters Northern Command, Udhampur (J&K).

..... Respondents

By Advocate: (None)

O R D E R

Delivered by: **Hon'ble Ms. Jayati Chandra, Member - A**

By means of this O.A filed under Section 19 of the Administrative Tribunals Act, the applicant has prayed for the following reliefs:

- (i) Issuing/ passing of an order or direction to correct the impugned seniority list circulated by the respondent No. 3 under letter dated 03.08.2009 as per rules and Government instructions, include the name of all the officials,

J. Chandra

including the respondent No. 5, holding the post of Upper Divisional Clerks up to 1998 and place the name of the applicant above the names of the respondent No. 5 within a specified period of two months, after summoning the original records and consider the case of the applicant for promotion to higher posts from the date respondent No. 5 has been granted the promotions with all consequential benefits.

(ii) Issuing/ passing any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(iii) Allowing the original application with cost.

2. The case was heard on 29.03.2016 under Rule 16 of CAT (Procedure) Rules 1987 in the absence of the counsel for the respondents.

3. The facts of the case as averred by the applicant are that the applicant joined as LDC in the Military Engineering Services (MES) on 05.02.1972. Though the appointing authority for the LDC is the Engineer-in-Chief (E-in-C), Integrated Headquarters of Ministry of Defence but no All India seniority list of LDC was prepared, only command wise list of LDC was prepared. The applicant was promoted as UDC within her Command w.e.f. 14.11.1995. Respondent No. 5 who was appointed as LDC in Northern Command, Udhampur was promoted as UDC w.e.f. 01.04.1982. This anomaly in different dates of promotion to the UDC was on account of non adherence to All India seniority list of LDC and UDC. It is clarified that the promotion to UDC is made on the basis of seniority subject to rejection of unfit upto 75% of the vacancies and promotion through limited competitive examination upto 25% of the vacancies. A meeting was held by All India Clerical cadre and Group 'D' Employees Association with Director General (Pers), Military Engineer Services on 07.11.2003 in which all kinds of discrepancies in fixing seniority list for LDC and preparation of All India Seniority list of UDC and subsequent promotion panel for UDC to Assistant was pointed out. As a result of such a meeting instructions were issued for correct fixation

J. Chaudhary

and revision of seniority after due notice to the likely affected persons vide letter No. B/20101/R POS/EIC(1) dated 18.11.2003 (Annexure A-2).

4. All India seniority list of UDC showing seniority position upto 31.12.1996 was circulated in accordance with the earlier letter vide letter dated 25.02.2005 (Annexure A-3). *T. Chandre* It is ~~very~~ this seniority list that the applicant become aware of the discrepancies that have crept up in the All India seniority due to the faulty policy of All India seniority list of LDC and UDC. Such an action resulted in unfair advantage to the persons working in Western Command, Southern Command and Eastern Command. It was also learnt by the applicant during the year 2005 that respondent No. 5 who was appointed as LDC in Northern Command on 27.05.1972 i.e. subsequent to the appointment of the applicant as LDC in the Central Command was actually promoted as UDC much earlier on 01.04.1982 whereas she was promoted as UDC on 14.11.1995. This anomaly continued in the promotion of the UDC to Assistant and Office Superintendent in as much as applicant was promoted to the post of Assistant w.e.f. 25.11.2003 and to the post of Office Superintendent w.e.f. 01.01.2006. Respondent No. 5 was promoted as UDC w.e.f. 01.04.1982, Office Superintendent w.e.f. 28.02.2002 and Administrative Officer w.e.f. 31.01.2005. The applicant had given her representation dated 25.12.2005 pointing out the anomaly but without taking her grievance into consideration the respondents issue All India Seniority list of UDC vide their letter dated 24.06.2008.

5. Aggrieved by the faulty policy of the respondents and different practices adopted within different Commands, O.A No. 892 of 2003 was filed by some aggrieved persons before the Patna Bench of this Tribunal. The dispute to be resolved was identical to the present O.A. The case was decided by order dated 31.08.2005 (Annexure A-10). The operative portion of the order reads as follows:

T. Chandre

"5. The inter se seniority has to be decided after notice to all those who are likely to be affected. We find that only five individuals have been arrayed as respondents. Therefore, an exercise has to be undertaken by the controlling authority i.e. Engineer-in-Chief, Army Headquarters in accordance with the rules of recruitment, instructions issued by the Department of Personnel from time to time and our observations made above in the body of the judgement, after due notice to the applicants and all others who are likely to be affected. Personal hearing may also be granted. Thereafter a speaking order shall be passed. This exercise shall be completed within four months from the date of receipt of a copy of the judgement."

6. The order was challenged by means of W.P. No. 9012 of 2008 before the Hon'ble High Court at Patna which was decided by order dated 17.08.2010. The operative portion of the order reads as follows:

"6. In the facts of this case, we find substance in the aforesaid prayer of the petitioners. There shall be no obligation on the part of the petitioners to give notice to all others who are likely to be affected and to grant personal hearing to them. It may pass speaking order after giving notice and opportunity of hearing to the applicants and private respondents who shall be treated as parties in representative capacity also. The required order should be passed within the time indicated by the Tribunal but to be counted from today."

Despite the said direction an All India seniority list of UDC has still not been prepared.

7. The respondents filed the counter reply through which they have stated that cadre of LDC is a Command level cadre and as such the appointing authority of the LDCs is the Head of the respective Commands under the delegated powers of the E-in-Cs. The promotion to UDC is also made on the basis of Command-wise vacancies by the Competent Authority within Commands. Therefore, it is quite possible that the dates of promotion to UDC from the LDC may vary from Command to Command that LDCs of certain Command getting promotion earlier than the LDCs of other Commands. It is submitted by the respondents that the list of LDCs are maintained by the respective Commands with the Chief Engineers being incharge of those Commands and

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promotions to UDCs are made depending on number of vacancies existing in the respective concern Command which has nothing to do with other LDCs and UDCs of other Commands. They have further insisted that the seniority list issued is in view of the extant rules & policies and there is nothing wrong.

8. RA has been filed by the applicant reiterating the same points as in the O.A.

9. Heard counsel for the parties and perused the records on file. In a nutshell, the applicant is aggrieved by certain accelerated promotion from LDC to UDC and subsequently to Office Superintendent in certain Commands in comparison to her own and to the same tiers of promotions. She is comparing her date of promotion vis-a-vis others in different Commands. The respondents have stated that the appointing authority for the LDC is local Chief Engineer and that the appointments are made directly to the post of LDC by the respective Chief Engineers of different Commands without either of the parties producing an appointment order. Promotion to UDC is also carried out not on the basis of All India vacancies from an All India seniority list of LDC but on the basis of Command wise list of LDC and the availability of Command wise vacancies. This being the case we fail to understand how an All India seniority list of UDCs can at all be issued. Moreover in their letter dated 18.01.2003 (Annexure A-2) addressed to Chief Engineer, Western Command they had clearly expressed the fact that discrepancy has occurred in different Commands.

10. Moreover the entire issue of recruitment (on All India basis or Unit basis) maintenance of seniority list separately/on an All India basis with clear norms for fixation of seniority taking into account the length of service was adjudicated upon by the Patna Bench of this Tribunal in O.A No. 892/2003 (in which Central Command at Lucknow was a party) and subsequently by the Hon'ble High Court at Patna in W.P. No. 9012 of 2008. The issue being the same

T. Chandre

and the direction given to the respondents involves all persons affected on an All India basis. It is relevant to refer to the facts of the case as put before the Patna Bench, ^{of CAT. T.L.} The following extract will establish the sameness of the grievance and the response of the respondents:

“2. The facts of the case are that there are five commands – East, West, Central, North and South each headed by the Chief Engineer. The controlling authority of five commands is Engineer-in-Chief, Army Headquarter, New Delhi i.e. the Respondent No. 1. The applicants alleged that LDCs were appointed by the controlling authority and allotted to different commands. Therefore, promotions were made to UDC or Assistant by different commands. The contention of the applicants is that relative seniority in the lower grade has been disturbed without any reason, therefore, they seek quashing of seniority list of UDC as contained in Annexure-3 and seniority list of Assistant as contained in Annexure-4. They have also sought a direction to declare a seniority list on all India basis keeping in view the relative seniority in the feeder cadre.

3. The respondents have mixed inconsistent pleas in their reply. They alleged in Para 2 that the seniority list/ panel have been drawn in accordance with law and the applicants have no legal right to challenge the same. In para 5, they alleged that the practice of maintaining seniority list and holding of DPC for promotion from LDC to UDC at each command level was going on for several years and thus, it is fait accompli. In para 6, it is stated Engineer-in-Chief Branch interpolate seniority for preparing all India seniority list. In para 16, they have alleged that no anomaly exists as a result of issue of seniority list of UDC and Assistants. In Para 19, it has been alleged that considering the anomaly (as pointed out in various representations), all Chief Engineers were requested to rectify seniority on the basis of the panel

J. Chandrasekharan

dates and forward the same to the Engineer-in-Chief to conduct the review DPC."

11. The following extract from the order dated 17.08.2010 passed in W.P. No. 9012 of 2008 is also remarkable in its similarity to the pleadings made in the present instant O.A.:

"3. On behalf of the petitioners, an attempt was made to show that the issue of appointing authority is not in dispute. On the basis of the averments made in paragraph 8 of the writ petition, it was submitted that prior to 07.01.1974 the Engineer-in-Chief was the appointing authority but actual appointment was made by the Chief Engineer Command and post 07.01.1974, the power of appointment of LDCs has been vested in Chief Engineer command vide letter dated 07.01.1974. On that basis, it was submitted that the recruitment to the post of LDC is made on command basis and hence their seniority is also maintained command wise.

4. From the order of the learned Tribunal, it is evident that the Tribunal was not satisfied with the inconsistent plea taken by the respondents to meet the grievance of the applicants that the basis of the seniority after promotion from LDC to UDC at each command - 3 - level are arbitrary and defective because it disturbs the seniority determined on all India basis at the time of entry into level of LDC. It is admitted that while promotion from LDC to UDC is made at command level, subsequent promotion from UDC to the post of Assistant is made on All India basis. Such promotion is according to seniority and fitness. Because of inconsistent and unsatisfactory reply of the respondents, the Tribunal could not come to a definite conclusion and did not give any finding of its own but in order to give further opportunity to the authorities who were respondents before the Tribunal, the directions contained in paragraph 5 as noticed above were issued. Now it is for

J. Chandra

the authorities to pass a speaking order justifying their action so as to meet the grievance of the applicants."

12. As issue and pleadings in the present O.A are identical, we have no reason to differ from the orders of the Patna Bench passed in O.A No. 892 of 2003 as modified by the Hon'ble High Court at Patna in its order dated 17.08.2010 passed in W.P. No. 9012 of 2008 quoted in Para 5 and 6 above. The O.A is thus disposed of with a direction to the respondents to decide the case of the applicant in the light of the order dated 17.08.2010. No costs.

J. Chandra.
(Ms. Jayati Chandra)
Member (A)

Navneet Kumar
(Navneet Kumar)
Member (J)

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