

Central Administrative Tribunal Lucknow Bench Lucknow

O.A. No. 30/2006

Lucknow, this the ^{25th} September, 2008

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

Harish Chandra Awasthi,
Aged about 62 years,
Son of Late Sri Ram Avatar Awasthi,
Resident o H. No. 5/15-D,
Geeta Palli, Alambagh, Lucknow.

Applicant.

By Advocate Sri Bhupendra Singh.

Versus

1. Union of India through
Secretary, Defence Ministry,
New Delhi.
2. Engineer-in-Chief's Branch,
Army Head Quarter, Kashmit House,
New Delhi.
3. Chief Engineer, Head Quarter, Central Command, Lucknow.
4. CME, Pune.

Respondents.


By Advocate Sri A. P. Usmani.

Order

By Hon'ble Dr. A. K. Mishra, Member(A):

The prayer has been made in this application for issue of a direction to the respondents to declare the result of Trade Test conducted in January 1973 and if, on th basis of such results, the applicant is found suitable, extend all consequential benefits to him including re-fixation of his pension.

2. The applicant joined as Lower Division Clerk (LDC) under Garrison Engineer, Allahabad on 11.05.1963. He appeared in the first paper of trade test meant for selection to the post of UDC on 5.2.1970 and was declared successful. He appeared in the second paper of the Trade Test during January 1973, but the results were not declared on the ground of a change in the policy of the Government for filling up all the posts of UDC on seniority-cum-fitness basis. The applicant was promoted to UDC only on 30.6.1984 when his turn came. The



applicant was again promoted to Assistant on 24.4.2002 and superannuated on that post on 30.9.2004.

3. As per the recruitment rules, the promotion to the post of UDC is to be made in two parts:-

- (i) 75% on the basis of seniority cum fitness,
- (ii) 25% on the basis of limited departmental promotion examination (LDPE).

The LDPE was last held during 1972. Earlier 25% of the posts used to be filled up by candidates qualifying in such examination and as per the relative merit list. But from 1973 onwards, a decision was taken that all the posts will be filled up 100% on the basis of seniority cum fitness. But such an administrative decision could not be taken in supercession of the provisions of recruitment rules which provided for 25% of the vacancies to be filled up by limited departmental promotion examination. Things would have continued without much resentment had it not been for the letter dated 31.8.2001 of the Ministry of Defence. The mistake was detected in this letter in which direction was issued for holding of regular limited departmental promotion examination in future. On this strength of such reversal of policy, LDPEs were once again held regularly from 2002 onwards. This gave rise to a number of representations from similarly placed employees who lost the opportunity of taking part in LDPE from 1973 onwards. The applicant was one of such employees who nurtured a grievance and represented many times to the respondent without result. Hence this application.

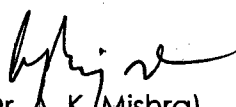
4. It is the grievance of the applicant that the respondents are indulging in dilatory tactics and deliberately avoiding to declare the results of the examination, which was held in 1973. He had also referred to the representation made by All India MES Clerical Cadre Group B Employees Association, Central, Command Branch. The association had taken up this issue in their letter dated 19.12.2005 (Annexure A-9) with the authorities. In spite of such efforts by all concerned there has not been any positive response from the respondents.




5. The respondents in their written arguments, have submitted that the results of the examination held in 1973 could not be declared now after such a long lapse of time, as the answer books have been destroyed long back in 1989. It was further submitted that the results were not declared by CME on the advice of Engineer in Chief's Branch, Army Head Quarter, as revision of recruitment rules of the clerical cadre were under contemplation the Government of India during 1973. The applicant should have raised this dispute at that point of time in order to get any relief. No relief can be given now in view of the fact that the records relating to the result are no longer available with CME, the agency engaged for conducting the examination.

6. The respondents have also taken the preliminary objection that this application is barred by limitation as the issue relates to 1973 and could not be considered now by the Tribunal after such a long delay. The counsel for the applicant has tried to repel this objection on the ground that limitation will not apply to him as his present pension is affected by the unjustifiable action of the respondents in denying him his rightful promotion. And it should be deemed to be a case of continuous cause of action

7. The fact remains that the claim of the applicant for promotion to the UDC w.e.f. 1973 cannot be considered now in the absence of any finding about the results of 1973 examination. It has been admitted by the respondents that the records relating to that examination are no longer available. Under the circumstances no direction could be issued for publishing the result. It is nevertheless, a quirk of fate that the applicant and other employees similarly placed had to face denial of opportunity because of application of a wrong policy. When the rules had not been amended, it was incorrect to withhold the result of 1973 examination. But, in the absence of records, nothing can be done at this stage. As a result, this application is dismissed as infructuous.


(Dr. A. K. Mishra)
Member (A)


(M. Kanthaiiah)
Member (J)
26.9.08