

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH, LUCKNOW

This the 9th Day of April, 2014

Hon'ble Mr. Navneet Kumar-JM
Hon'ble Mr. Shashi Prakash- AM

Original Application No. 214 of 2006
(U/S 19, Administrative Tribunal Act, 1985)

Pyare Lal, aged about 61 years, S/o Late Dukhi Ram, R/o Village –
Nilmatha (Behind Baba Ki Kuti), P.O. Nilmatha, P.S. Cantt,
Lucknow.

.....Applicant

V E R S U S

1. Union of India, through the Secretary, Ministry of Defence,
New Delhi.
2. The Director General of Medical Services (Army), Adjutant
General's Branch, D.G.M.S -3 (B) 'L' Block, Army Head
Quarter, D.H.Q, P.O, New Delhi - 110001.
3. Commandant, A.M.C Centre & School, Lucknow.
4. Administrative Officer, A.M.C Centre & School, Lucknow.
5. Accounts Officer, A.M.C Centre & School, Lucknow

.....Respondents

Advocates for the applicant:- **Shri Praveen Kumar**

Advocate for the Respondents:-**Shri K.K. Shukla**

ORDER

DELIVERED BY:-

HON'BLE MR. SHASHI PRAKASH, (MEMBER-A)

The present original application has been filed for quashing of
impugned order dated 03.03.2006 canceling the 2nd financial up-

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gradation under ACP Scheme granted to the applicant / Annexure A-1 as well as Order dated 14.03.2006 / Annexure A-2 coupled with prayer for a direction to the respondents to consider the case of the applicant for grant of benefit of second financial up-gradation under A.C.P Scheme w.e.f. 09.08.1999 and give him all consequential benefits and re-fix his pension accordingly.

2. Briefly; the facts of the case are that the applicant was appointed as Peon on 24.02.1964 at Record Office, A.M.C Centre & School, Lucknow as a Peon on 07.04.1963. It is stated in the O.A that HQ , A.M.C Centre & School, Lucknow notified vacancies for the post of clerks in the year 1969-70 and for this examination, the name of the applicant was sponsored by the Employment Exchange alongwith other candidates. The applicant has averred that he appeared in the examination held in March 1970 and being successful he was appointed as L.D.C at HQ, A.M.C Centre & School, Lucknow by letter dated 28.04.1970 as direct recruit. He was promoted to the post of U.D.C on 09.02.1990 in pay scale of Rs. 4000-100-6000, which amounted to his first promotion / up-gradation. On account of the fact of his being a direct recruit L.D.C, as claimed by the applicant, he became eligible for second up-gradation on completion of 24 years of service. To this effect the respondent no. 2 approved the case of the applicant for second up-

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gradation, as observed from the letter dated 01.01.2001, w.e.f. 09.09.1999. Thereafter, as stated in the O.A, quite surprisingly the respondent no. 3 issued impugned letter dated 15.02.2001 whereby intimating to the respondent no. 2 that all group 'D' staff who were given promotion in group 'C' on the basis of departmental examination were to be treated having being given one promotion. Accordingly, upon promotion to the U.D.C the applicant alongwith other persons was not found eligible for grant of up-gradation under ACP. It has been further stated that while the applicant had been denied the benefit of second up-gradation, similarly situated persons Shri Samual Benjamine, who is also his junior, has been extended this benefit. The applicant submitted representation dated 31.12.2005 through his counsel submitted by the applicant in this regard. Consequently the respondents passed order dated 14.03.2006 /Annexure A-2 whereby rejecting the claim of the applicant. Aggrieved by the action of the respondents the applicant has filed the instant original application.

3. The respondents have contested the claim of the applicant and filed C.A. It is contended by the respondents that the applicant was appointed as a Peon in Records, A.M.C and was promoted in group 'C' as L.D.C through departmental examination. Thereafter he was promoted as U.D.C. Accordingly, the applicant has already

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received the benefit of first up-gradation by virtue of his promotion from the post of Peon to that of L.D.C through departmental examination and thereafter as U.D.C in 1990. The respondents have strongly contended that the applicant had been appointed as L.D.C based upon an open examination rendered as a departmental examination. In the circumstances the applicant has no legal right to claim second up-gradation, as claimed in the instant O.A.

4. Learned counsel for the applicant on the other hand has reiterated the fact contained in the O.A that the applicant was a direct recruit L.D.C inasmuch as he was selected as L.D.C through open examination held by the respondent no. 2. In such a situation the appointment of the applicant as L.D.C on the basis of direct recruitment cannot be treated as promotion from the post of Peon. Learned counsel for the applicant further stated that while the applicant was appointed in the year 1970 and completed 24 years of service, he was awarded with only one promotion to the post of U.D.C w.e.f. 09.02.1990 and therefore, eligible for second financial up-gradation w.e.f. 09.08.1999. Learned counsel for the applicant also cited the case of similarly situated person being given such benefit. On account of depriving of second financial up-gradation to the applicant he had been incurring recurring loss during the serving period as well as in his pensionary benefits.

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5. Shri K.K. Shukla, learned counsel for respondents reiterated the arguments contained in C.A and strongly denied that the applicant was selected on the basis of an open examination to the post of L.D.C conducted by the respondent no. 2. He argued that the applicant was working as Peon and was promoted to the post of L.D.C only after appearing and clearing the departmental examination. As the initial appointment of the applicant was to that of Peon, he was granted two financial up-gradation by way of departmental examination in L.D.C as well as subsequently by way of promotion as U.D.C in the year 1990. In the back ground of this fact the claim of the applicant is totally untenable.

6. Heard learned counsel for both the parties and perused the pleadings. It is observed that the main issue to be adjudicated in the present case is on the question of dispute of fact regarding whether the appointment of the applicant as L.D.C was on the basis of direct recruitment or departmental examination.

7. A glance at the documents submitted by the applicant shows that nowhere he has filed any document to prove that his name had been sponsored by the Employment Exchange for appearing in an open examination conducted by the respondent no. 2 and was directly recruited as a L.D.C. In absence of any concrete proof to

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this effect it is difficult to accept the contention of the applicant in this respect. The concept of "Onus Probandi" (burden of proof) envisages that it is upon the person claiming benefit who has to produce evidence in support of his entitlement. In Black's Law Dictionary the term "Onus Probandi" (burden of proof) has been defined as "if no evidence is adduced by the party on whom the burden is caused, the issue must be found against him". The Stroud's Judicial Dictionary also states that burden of proof lies on the party who substantially asserts the affirmative of issue". Stroud has further gone to elaborate the concept as under: -

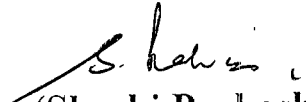
"The best tests for ascertaining on whom the burden of proof lies are, to consider first which party would succeed if no evidence were given on either side; and, secondly, what would be the effect of striking out of the record the allegation to be proved. The onus lies on whichever party would fail, if either of these steps were pursued..."


8. In the present case, it is clear that the applicant had singularly failed to adduce any evidence in support of his claim that he was a direct recruit L.D.C. In regard to the argument of learned counsel for the applicant that similarly situated persons have been extended the benefit of second financial up-gradation, as claimed by him, baring the fact that he has named one person Shri Samual

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Benjamine, he has not produced any documentary evidence in this regard. Therefore, to make any comparison on this aspect is not possible.

9. Given the circumstances above, we do not find any ground to interfere with the impugned orders appended at Annexure A-1 and A-2. Accordingly, the O.A is dismissed. No costs.


(Shashi Prakash)
Member-A


(Navneet Kumar)
Member-J

Anand...