

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 361 of 2010

Reserved on 11.11.2014

Pronounced on 4th December, 2014

Hon'ble Mr. Navneet Kumar, Member-J

Hon'ble Ms. Jayati Chandra, Member-A

1. B.S. Rana, aged about 38 years, S/o Sri Ram Bharosey, R/o Residential campus, Passport Office, Vipin Khand, Gomti Nagar, Lucknow.
2. Sunil Kumar, aged about 41 years, S/o Sri Maiku Lal, R/o M-235 Sector 'G', LDA Colony, Kanpur Road, Lucknow.
(both working as Assistants in the office of Regional Passport office, Government of India, Ministry of External Affairs, New Delhi.)

.....Applicant

By Advocate : Sri P.K. Singh

Versus.

1. Union of India through Secretary, Ministry of External Affairs, South Block, New Delhi.
2. Chief Passport Officer-cum-Joint Secretary, Govt. of India, Ministry of External Affairs (CPV Division), Patiala House Annexe, Tilak Marg, New Delhi.
3. Passport Officer, Regional Government of India, Ministry of External Affairs, Lucknow.

.....Respondents.

By Advocate : Sri Rajendra Singh

ORDER

Per Ms. Jayati Chandra, Member (A)

The applicants have filed this O.A. under Section 19 of Administrative Tribunals Act, 1985 seeking following relief(s):-

- “(a) issuing/passing of an order or direction to the respondents setting aside the impugned seniority list of Assistant (Group 'B') issued vide letter dated 22.1.2010 (as contained in Annexure no. A-1 to this application), after summoning the original records.*
- (b) issuing/passing of an order or direction to the respondents to revise the seniority list of Upper Division Clerks (Grade VI) issued vide letter dated 26.3.2004*

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and give the benefit of reservation in the matter of seniority to the applicants in terms of Article 16 (4-A) of the Constitution of India, consequent upon revision of seniority list of Lower Division Clerks (Gr. VII) vide order dated 26.11.2009 and to issue the revised seniority list of Upper Division Clerks (Gr. VI) within a specified period of one month.

- (c) issuing/passing of an order or direction to the respondents to revise the seniority list of Assistant (Group -B) after the revision of seniority list of Upper Division Clerks by granting the benefit of reservation to the applicants in the matter of seniority consequent upon their promotion to the said post of Assistant Group B within a period of two months.*
- (d) issuing/passing of any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*
- (e) allowing this Original Application with costs.*

2. The facts of the case are that the applicant were initially appointed on the posts of Lower Division Clerk (in short LDC) and posted at Passport Office, Lucknow where they joined on 8.6.1993 and 4.6.1993 respectively. In the seniority list of LDC Gr. VII on All India basis issued on 20.9.2001 the names of the applicants have been shown at sl. Nos. 314 and 315 respectively. The said seniority list was challenged by various officials before Ahmedabad Bench of the Tribunal in O.A. nos. 124 of 2007 and 198 of 2007 and before Lucknow Bench of the Tribunal in O.A. no. 421 of 2008. As per the judgments and orders of this Tribunal as well as Ahmedabad Bench of the Tribunal in the aforementioned Original Applications, the seniority list of LDC was revised by order dated 26.11.2009 in which the names of the applicants figured at sl. Nos. 80 and 85 respectively. In the meanwhile, the applicants were promoted to the post of Upper Division Clerks (in short UDC). The seniority position of the applicants in the seniority list of UDC as on 1.3.2004 were 436 and 437 respectively (Annexure no.4). It is also averred that the seniority of the applicants have not been fixed by giving them the benefit of reservation in the matter of seniority consequent upon their promotion to the post of UDC Gr. VI as contemplated in Article 16 (4-A) of the Constitution of India. The applicants were further promoted to the post of Assistant Group 'B' w.e.f. 31.10.2008 vide order dated 9.1.2009.

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3. The present grievance of the applicants arises from the fact that the respondents have failed to revise the seniority list of UDC as well as Assistant consequent upon revision of seniority list of LDC vide letter dated 26.11.2009.

4. Although Counter Reply was asked from the respondents, but no Counter Reply has been filed even after imposition of a cost to the tune of Rs. 6000/-. Thereafter by order dated 26.4.2012 the right to file Counter Reply was closed. There was no prayer to recall the order and accept the Counter Reply despite giving several dates and as such we have no other option but to proceed to decide this O.A.

5. In absence of Counter Reply, the applicant's counsel was heard. The learned counsel for the respondents has also made oral submissions denying the contentions of the applicant. We have also perused the pleadings on record.

6. The basic grievance of the applicants arises from failure of the respondents to amend the seniority list of UDC and Assistants consequent upon revision of seniority list of LDC by order dated 26.11.2009. A perusal of the order dated 26.11.2009 shows that the said revision of seniority list of LDC was done in compliance of judgments and order of this Tribunal rendered in O.A. nos. 124 of 2007 & 198 of 2007 (Ahmedabad Bench) and in O.A. no. 421 of 2008 (Lucknow Bench) where the basic issue the wrong fixation of seniority between the candidates who were promoted through Limited Departmental Competitive Examination and direct recruits selected through Staff Selection Commission (in short SSC). In the said order, it has been clearly provided that after revision of seniority on the basis of rank obtained in the SCC 1991 and 1993 examinations, the date of promotion of affected persons as UDC has been changed to 19.10.2001 when juniors to them were promoted to the post of UDC. Similarly in the grade of Assistant, the applicants were promoted through LDE w.e.f. 12.12.2008 and their juniors got promotion through DPC w.e.f. 31.10.2008 and due to revision of their seniority, the applicants and other similarly situated persons have been promoted to the post of UDC notionally w.e.f. 19.10.2001 and to the post of Assistant w.e.f. 31.10.2008, the dates from which their juniors

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were promoted. The applicants, in the instant case, have failed to demonstrate how in view of that order what is the revised position in the seniority list of UDC and Assistants which they are claiming. In the seniority list of Assistant Group 'B' dated 22.1.2010 (impugned order Annexure-1) it has been provided that the officials concerned may bring any error in the said seniority list to the notice of concerned authorities within 15 days from the date of receipt of the said O.M. The applicants have no-where demonstrated that they have submitted any objection/representation against the aforesaid seniority list of Assistant based on the revised list of LDCs brought out by order dated 26.11.2009 before the authorities concerned.

7. Section 20 of Administrative Tribunals Act, 1985 provides as under:-

“20. Application not to be admitted unless other remedies exhausted

(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial.

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From the perusal of O.A. it is crystal clear that the applicants have not exhausted the departmental remedies available to them before approaching this Tribunal.

8. It is also noticed that the applicants have also not impleaded any person who may be affected adversely by the relief sought in the present O.A. Since the applicants have not impleaded any person so affected nor given any declaration that no-one will be affected and further they have failed to exhaust the departmental remedies available to them before approaching this Tribunal, the present O.A. is liable to be dismissed.

9. In view of the above, the O.A. fails and is accordingly dismissed. No cost.

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(Ms. Jayati Chandra)
Member-A

Navneet Kumar
(Navneet Kumar)
Member-J

Girish/-