

(A1)

Annexure - A
CAT - 82

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

INDEX-SHEET

Review application No. 9/006)

CAUSE TITLE Reg. T.A. 628 OF 1987.

Name of the Parties Radhey Krishna

Versus

Govt of India & others

Part A, B & C

| S.No. | DESCRIPTION OF DOCUMENTS | PAGE |
|----------|---|------|
| A1 | General Index - - - - | 1 |
| A2 | Judgment dated 6.10.01- | 2 |
| A3 | { Review application along with annexure - - - - } | 15 |
| B1 | Valabatnama - (Power) - - (A+B) | 1 |
| Read out | | |

Certified that no further action is required to be taken and that the
same is sent to the record room (D)

Radhey Krishna
m

Chopra
30-12-01
B/C destroyed on 09-5-12

CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH,

23-A, Thornhill Road, Allahabad-211001

Registration No. 1123 of 1986


APPLICANT (s) R. A. Torpathi

RESPONDENT(s) Union of India through Under Secretary Govt of

India Min. of Health & Family Welfare (Dept of Health)
Nirman Bhawan New Delhi & 2 others -

| Particulars to be examined | Endorsement as to result of Examination |
|---|---|
| 1. Is the appeal competent ? | Yes |
| 2. (a) Is the application in the prescribed form ? | Yes |
| (b) Is the application in paper book form ? | Yes |
| (c) Have six complete sets of the application been filed ? | Yes, 8 sets filed. |
| 3. (a) Is the appeal in time ? | Yes |
| (b) If not, by how many days it is beyond time ? | — |
| (c) Has sufficient case for not making the application in time, been filed ? | — |
| 4. Has the document of authorisation, Vakalat-nama been filed ? | Yes |
| 5. <input checked="" type="checkbox"/> The application accompanied by B. D./Postal-Order for Rs. 50/- | Yes |
| 6. Has the certified copy/copies of the order (s) against which the application is made been filed ? | Yes |
| 7. (a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ? | Yes |
| (b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ? | Attested but not numbered. |

Particulars to be ExaminedEndorsement as to result of Examination

- (c) Are the documents referred to in (a) above neatly typed in double space ?
8. Has the index of documents been filed and paging done properly ?
9. Have the chronological details of representation made and the outcome of such representations been indicated in the application ?
10. Is the matter raised in the application pending before any Court of law or any other Bench of Tribunal ?
11. Are the application/duplicate copy/spare copies signed ?
12. Are extra copies of the application with Annexures filed ?
- (a) Identical with the original ?
- (b) Defective ?
- (c) Wanting in Annexures
- Nos...../Pages Nos.. ..?
13. Have file size envelopes bearing full addresses, of the respondents been filed ?
14. Are the given addresses, the registered addresses ?
15. Do the names of the parties stated in the copies tally with those indicated in the application ?
16. Are the translations certified to be true or supported by an Affidavit affirming that they are true ?
17.  the facts of the case mentioned in item No. 6 of the application ?
- (a) Concise ?
- (b) Under distinct heads ?
- (c) Numbered consecutively ?
- (d) Typed in double space on one side of the paper ?
18. Have the particulars for interim order prayed for indicated with reasons ?

Yes, Photo Copies filed.

Yes.

Yes, but no representation made after issue of impugned order dated 12.8.06

No.

Yes

Yes

Yes

No

—

Yes, Three envelopes with stamps for Rs. 5-75 on each filed

Yes

Yes

N.A.

Yes

No

No

Yes

Yes

19. Whether all the remedies have been exhausted.

The applicant ~~has~~ declares that he has availed all the remedies available to him.

Submitted by

Chandra
19.08.06

D. R.

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IN

Radhey Krishna Applicant.

Union of India & others Respondents.

(Delivered by Hon. K.S. Puttaswamy, V.C.)

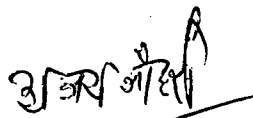
2. In his transferred applications the applicant had challenged his reversion on diversion grounds. On an examination of the contentions urged by both the sides the Division Bench had disposed of these applications considering the contentions that were then urged for the applicant.

3. Sri Sundaran P., learned counsel for the applicant contends that the case of the applicant was not properly prosecuted by the learned counsel, who appeared for the applicant ~~on the same to justify~~ *to him and the same justify* review under Section 22(3)(f)/read with Order 47 Rule 1 of the Code of Civil Procedure. In support of his contentions Sri Sundaran strongly relies on the ruling of the Hon'ble Supreme Court in the case reported in AIR 1981 S.C. 1400.

-: 2 :-

4. We have perused the order of the Tribunal. We are of the view that every one of the grounds urged by the learned counsel for the applicant do not constitute a patent error to justify a review under Section 22(3)(f) of the Act read with Order 47 Rule 1, C.P.C. We are also of the view that the rulling of the Hon'ble Supreme Court (supra) does not really bear on the point and assist the applicant.

5. On any view of the matter this application has no merit and is liable to be rejected. We, therefore, reject this application at the admission stage without issuing notices to the respondents.


MEMBER (A).

Dated: October 6, 1988.

PG. 2


VICE CHAIRMAN. 6/10/88

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL: LUCKNOW

REVIEW APPLICATION NO. 9 OF 1988 (C)

in re

REGISTRATION no. 628 of 1987 (T)

(Writ Petition No. 6703 of 1983)

Radhey Krishna, aged about 49 years, son of late Sri
Murali Lal Srivastava, Resident of 41 Old Badshah Nagar,
Lucknow.

..... Applicant

versus

1. Union of India through its Secretary Ministry of
Health and Family Planning Nirman Bhawan, New Delhi.
2. The Director, Central Government Health Scheme,
Nirman Bhawan, New Delhi.
3. The Chief Medical Officer, Central Government Health
Scheme, 9-A Rana Pratap Marg, Lucknow.

..... Opp. Parties

REVIEW APPLICATION UNDER RULE 17 OF THE
C.A.T. (PROCEDURE) RULES 1937.

The applicant above named respectfully begs to submit as
under:-

1. That this review application is being filed against
an order passed by this Hon'ble Tribunal consisting of
Hon'ble Ajay Jaisi, Administrative Member and Hon'ble
G.S. Sharma, Judicial Member on 30/8/1983, which was
received by the applicant on 2/9/1988. This review
application is within time. (Copy of the order is enclosed).

2. That the applicant filed a suit before the court of Munsif South, Lucknow with a prayer for a direction to be issued to the defendants to promote him as upper division Clerk.

3. That the applicant thereafter filed a Writ Petition which was numbered as Writ Petition No. 6704 of 1985, which was later on transferred to the Central Administrative Tribunal and numbered as Registration No. 628 of 1987(T) with a prayer to quash the order dated 11.10.1985 by means of which the applicant's promotion converted into Ad-hoc basis from regular promotion.

4. That another application bearing no. 423/83, R.A. Tripathi versus Union of India was filed before this Hon'ble Tribunal with a prayer to regularise his services with effect from 10.12.1985.

5. That all the three applications were consolidated and decided by means of a common judgment dated 30.8.88 by Hon'ble Ajay Jauhari, Administrative Member and Hon'ble G.S. Sharma, Judicial Member.

6. That the respondents filed a Counter Affidavit in reply to the Registration No. ~~628~~ 628/87 in the month of September 1987, after a lapse of 4 years and a copy of the same for the applicant was served to the counsel Sri P.K. Khare but no rejoinder was filed on behalf of the applicant by the aforesaid counsel though the applicant was informed by the counsel that he had already filed the rejoinder.

7. That the counsel for the applicant argued the case without submitting the Rejoinder Affidavit and this

Richards

(173/3)

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Hon'ble Court was pleased to pass an order on 30.8.1988.

8. That on 2nd September 1988 the applicant received a copy of the judgment and on going through the same it was found that the points raised by the applicant in paragraph No. 3 and 9 of the petition was not considered by this Hon'ble Tribunal as no finding regarding the same are recorded as a result of which the whole purpose of filing of the petition has come to an end.

9. That the applicant approached to Sri P.K. Khare the Counsel for the applicant, and consulted him in relation to the points raised in paragraph no. 3 and 9 then he told the applicant that he failed to file a rejoinder-affidavit in this case as the Counter Affidavit filed by the respondents were missing from his file, therefore he could not raise the points and aggrieved against the same the applicant is filing this review application.

10. That in relation to the contents mention in paragraph No. 3 of the petition it is submitted that the applicant on receiving his transfer order made several requests by means of his representations dated 21-11-78 & 8/12/78 but he was relieved on 11.2.1979.

11. That this fact was accepted by the respondent no. 3 by means of letter dated 8.4.85 and further by means of this very letter, the respondent No. 3 wrote to the respondent No. 2 that "Sri Radhey Krishna was transferred with effect from 9.1.78 but he was relieved from Central Government Health Scheme Kanpur on 11.1.79 as a result of which two incumbents namely appointed Sri R.A. Tripathi and Sri G.K. Bhattacharya, who had joined on 14.12.1978 and 18.12.1978 at Central Government Health Scheme, Lucknow became senior to Sri Radhey Krishna and as per instructions

R. Krishna

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of Directorate they were promoted to the post of Upper Division Clerk on Ad-hoc basis. As this was not the fault of the incumbent because he was not relieved immediately by C.G.H.S. Kanpur. So there seems no justification to suffer on loss and losing promotional benefits at his new place of posting i.e. Central Government Health Scheme Lucknow. It is, therefore, requested that special case he may be given the benefits of his past services rendered at Central Government Health Scheme Kanpur from the date of issue of Director's order for his transfer and to the period of 2 months (i.e. 9.11.78 to 11.1.1979) spent by him at Central Government of Health Scheme, Kanpur may be considered for fixing his seniority in Lower Division Clerk Cadre at CHS Lucknow. So that by virtue of the seniority and having more than 6 3/4 years experience in Lower Division Clerk grade in both the offices he may be considered for regular promotion in Upper Division Clerk Grade." The above fact could not be brought by the applicant on account of the failure of his counsel.

12. That in relation to paragraph no. 9, it is submitted that applicant could not submit the fact that in the departmental promotion committee the respondent No. 3 was the Chairman and he expressed his opinion by means of his letter dated 8.4.83 and correctly promoted the applicant on the post of Upper Division Clerk on regular basis. Thereafter what was the compelling circumstances by the same authority to modify its own order without giving the applicant any opportunity is best known to him. There was no mistake committed by the Departmental Promotion Committee and the Chairman had already expressed his view and correctly promoted the applicant and the applicant from the date of his promotion

R. K. Sharma

A3/5

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joined the service and started functioning without giving him any opportunity of hearing placed the applicant from Regular Upper Division Clerk to ad-hoc basis upper division clerk having no right to claim his seniority for regular or further promotion.

13. That the action of the respondents was against the provisions of Manual of Establishment and Administration for Central Govt. Officers as in Chapter 44 para XVI sub-para (1) provides decisions - instructions regarding powers of review DPC - which reads as under :-

" The circumstances under which the proceedings of a DPC can be reviewed have been laid down above. These are not exhaustive but only illustrative. It is therefore hereby clarified that the proceedings of any DPC can be reviewed only if the DPC has not taken all material facts appropriately into consideration or if such material facts have not been brought to the notice of the DPC or if there have been grave errors in procedure followed by the DPC. Review DPCs can be held accordingly only in such instances of facts or wrong procedure. Such review DPCs cannot in any case go into the merits of the assessment made by the DPC."

14. That further sub para (2) of the same para reads as under:-

" In accordance with the instructions contained in these orders, each DPC should decide its own method and procedure for objective assessment of the suitability of the candidates and it is entirely left to the DPC to make its own classification of the officers being considered by them for promotion to selection posts. This, however, does not mean that the recommendations of DPC are mandatory. As stated in para IX (1) the DPC is recommendatory body and the recommendations made by it are subject to approval by the appointing authority. The procedure to be followed when appointing authority does not agree with recommendations of the DPC has been laid down in detail in para IX. Once the recommendations of the DPC are accepted by the appointing authority, it shall be final. Thus if any question is to be raised or disagreement with regard to the merit of assessment by the DPC is to be expressed it should be done only before the recommendations of the DPC are accepted and acted upon.

15. That Chapter 44 Para IX, sub para 3(a) reads as under :-

" Where the appointing authority, being lower than the President of India, does not agree with the recommendations of the DPC such appointing

R. Vishnu

authority should indicate the reasons for disagreeing and refer entire matter to the DPC for reconsideration of its earlier recommendations. In case the DPC reiterates its earlier recommendations, giving also reasons in support thereof, it should be open to the appointing authority either to accept the recommendations, if the reasons adduced by the DPC are convincing or if that authority does not accept the recommendations of the DPC, it may submit the paper to the next higher authority with its own recommendations. The decision of the next higher authority should be taken as final.

16. That in this particular case the appointing authority, being the Chairman of Departmental Promotion Committee, after finalising the recommendations of the DPC, issued proper order and the same is implemented, modifying the order is against the provisions of Manual on Establishment and Administrations of the Central Government Offices.

17. That the above facts could not be brought on record on account of the mistake committed by the counsel of the applicant, for this mistake of a counsel the applicant should not be permitted to suffer.

18. That the impugned order of reverting the applicant from regular basis to ad-hoc basis without giving him any opportunity is a punishment for which the applicant ~~is~~ is entitled to get an opportunity, in not giving so, the respondents have not followed the principles of natural justice,

PRAYER

Under the above circumstances, it is respectfully prayed that this Hon'ble Tribunal may kindly be pleased to review its order dated 30.8.1988, otherwise the applicant would suffer irreparable loss and injury.

Dated: Lucknow

23/9/1988

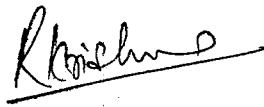

Applicant

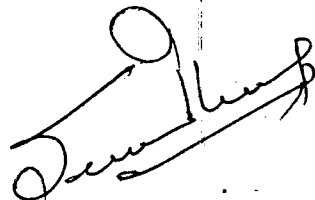
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VERIFICATION

I, the above named ~~applicant~~ applicant do hereby verify that the contents of paras 1 to 12, 17 and 18 are true to my knowledge and those of paras 13, 14, 15 and 16 are believed by me to be true on the basis of legal advice. Verified this application on _____ at the A.T. Compound at Lucknow.

Dated: Lucknow
23/9/1981


Applicant



Through : (SURENDRAN.P.)
Advocate
Counsel for the applicant.

To.

Sh. Radhey Krishna
Applied

RESERVED

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Q

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

(Circuit Bench at Lucknow)

Registration T.A.No.842 of 1906

Radhey Krishna
Radhey Plaintiff

Versus

Union of India & Others Defendants

Connected with

Registration T.A.No.620 of 1907

Radhey Krishna Petitioner

Versus

Union of India & Others Defendants

Connected with

Registration O.A.No.423 of 1906

R.A. Tripathi Applicant

Versus

Union of India & Others Respondents.

Hon. Ajay Johri, A.R.

Hon. G.S. Sharma, J.R.

(By Hon. Ajay Johri, A.R.)

Chop

This suit has been received on transfer from the Court of District South Lucknow. The plaintiff in this suit was absorbed against the Division Clerk in Central Government given the grade of Rs.330. This was the scale he was paid earlier from the

A3/C

In June, 1976. He was later transferred ^{on request} to Lucknow in January, 1979 where he is working now. There being one vacancy of Upper Division Clerk he applied for the same in July, 1982. The eligibility condition for filling up the post of Upper Division Clerk was a service of 5 years as L.D.C. The plaintiff was not considered eligible for the post because the defendants did not count his previous service as L.D.C. at Kanpur, hence he has filed this application praying for a direction to be issued to the defendants to promote him as U.D.C.

2. There is another registration No.620 of 1987(T) Radhey Krishna Varnan Union of India, a Writ Petition No.6704 of 1983 received on transfer from the Lucknow Bench of the Allahabad High Court. The petitioner in this Writ Petition was similarly absorbed at Kanpur ^{No.330 - 500} in the grade/in the C.G.H.S. and came on transfer to Lucknow in January, 1979, on his own request. He was considered and recommended for the post of U.D.C. by the Departmental Promotion Committee and a promotion order was issued in August, 1983 but in October, 1983 he received a letter making his appointment Adhoc on the ground that he had not completed 5 years service as L.D.C. He has challenged this order praying for quashing the order of October, 1983.

3. The above two applications have been received under Section 20 of the Administrative Tribunal Act XIII of 1903.

13/5

423

4. There is yet another application D.A.No. 25-
of 1983 C.A. Vaipathi Versus Union of India & Others
^{& filed} under Section 19 of the ^{& Administrative} ~~Administrative~~ Tribunal
Act XIII of 1985 where the applicant was appointed
as L.D.C. in December, 1978 and was promoted as U.D.C.
in January, 1983 whose promotion was made Adhoc because
he was not considered as having completed 5 years as
L.D.C. which was an essential condition for regular
promotion as U.D.C. He completed 5 years service in
December, 1983. He has claimed that he is the senior
most L.D.C. at Lucknow. He was selected against the
promoted quota on seniority-cum-fitness basis but
as one post of U.D.C. was reserved for Scheduled
Caste candidate a reversion had to be made but since
a junior person, the petitioner ^{& Emer in} ~~in~~ writ petition
No.6704 of 1983 obtained a stay order in his favour,
the applicant has been threatened to be reverted and
has not been regularized. He has prayed for regulariza-
tion u.o.p. 18.12.83.

Quash

5. Out of these three applications the first
two are on the same point of law i.e. how should the
period of 5 years of service be counted for considering
promotion to the grade of U.D.C. The third petition
has been connected because the order in the first two
will affect the applicant in the third application.
Hence all the three applications are being dealt with
together. The orders in this ^{& claim petition} ~~exit~~ will equally apply

A3/11

to the Writ Petition 6704 of 1983 and the application 423 of 1986 will be disposed of as a consequence of these orders.

5. The facts of the case in the suit are not in dispute. The plaintiff had come on transfer to Lucknow as L.D.C. on his own request. He was thus allotted bottom seniority in L.D.C. cadre at Lucknow. When the question came for filling up of three posts of U.D.C., one was to be filled by competitive Examination and the other two by promotion on seniority-cum-fitness basis, the plaintiff's case was not considered by the Departmental Promotion Committee. He was however later promoted u.o.f. 24.8.83. His claim is that he should have been promoted u.o.f. 17.8.82 or if it is not possible u.o.f. 29.8.82 when vacancy arose. He has also challenged the modification of the order of 24.8.83 on 11.10.83, on the ground that it is in contravention to the Recruitment Rules.

Quads

7. We have heard the learned counsel for both parties. The main contention of the learned counsel for the applicant was that by coming on transfer on request the seniority can be changed but a person cannot be made to lose his previous service which he had rendered in the previous station. This was opposed by the learned counsel for the defendant on

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the ground that a person can only be considered for promotion according to seniority and the period of service has to be counted from the date the employee reports on transfer to the new Unit. We have perused the case file too.

0. The rules for promotion to the post of U.D.C. are not ambiguous. For promotion on seniority-cum-fitness basis the length of service as L.D.C. is required to be 5 years and for promotion on the basis of competitive examination it has to be 3 years as L.D.C. The primary criterion is of course seniority. When the plaintiff came on transfer to Lucknow on his own request what he lost was seniority. He could not be made to lose his span of service already rendered as a L.D.C. at the previous station. His eligibility has to be determined after weighing both the factors giving seniority the greater weightage. So if he comes within the eligibility list the next point to be seen is his service in the grade of L.D.C. His candidature cannot be rejected merely on the ground that he has not rendered the required service of 5 or 3 years at the new Unit to which he has come on transfer. So if his seniors have been promoted and his turn for promotion has come he cannot be held back or given Adhoc promotion ^{or} on the ground that he has not done 5 years as L.D.C. The plaintiff cannot

Quod

Quod

A3/P3

however, claim that since he has done 5 years service he should be promoted and seniors in the new Unit where he has come on transfer be ignored. No, as already indicated above, takes his place below all confirmed and temporary staff in the relevant grade in the promotion group of the new Unit notwithstanding his date of confirmation or length of service.

9. Thus seniority position in such cases is different and quite separate and independent of the service rendered by the employee. It cannot be said that he starts service anew in the new Unit. So if an open competitive examination is arranged where only condition is years of service in the lower grade, the transferee ^{who came} on request, would, if he has done the requisite service, be entitled to appear in the examination. Thus for the one post that has been filled on the basis of Departmental Examination, the denial to the applicant of the permission to appear was incorrect. He should have been permitted to appear.

10. In conclusion we dispose of this application with the following directions to

- 1) Seniority in the new Unit will determine the position in regard to promotion which of course will be subject to fitness.

121) In the case of Departmental Examinations where employees with a certain minimum years of service are considered eligible and the promotion is subject to the result of the examination the service rendered in the previous Unit by an employee who has come on transfer on request cannot be ignored for ^{considering} ~~eligibility~~ ^{to be eligible} him to take part in the competitive examination.

Quap
- par
tribunal
B
Lucy

(b) In Registration No. 628 of 1987 (r) (Unit
Petition No. 6703 of 1983) the petitioner's promotion
was made ^{by a subsequent order.} adhoc. The prayer made is for quashing of

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the order making the promotion Adhoc. This petition gets disposed of in terms of our directions given above. We make no orders as to costs in this petition.

(1) In regard to O.A. No.423 of 1986 which is the application filed before this Tribunal under Section 19 of the Administrative Tribunal Act, 1985 the applicant's case will be considered for regularization in view of the final orders having been given in Unit Petition No.6704 of 1983. His case for regularization now will be considered from the due date. In this application also we make no orders as to costs.

Sd-
J.P.N.

Sd-
A.N.

Dated the 30th Aug., 1988.

RNN

Recd.
2/9/88

Chand Lal
29.88
Secretary
Central Administrative Tribunal
New Delhi,
Uttarakhand

Before the Central Administrative
Tribunal

15/16

बअदालत श्रीमान

महोदय

Registration No. 628 of 1987 (T)

वादी (मुद्दी)

प्रतिवादी (मुद्दालेह)

का वकालतनामा

1/1

Rodney Venkuma

वादी (मुद्दी)

वनाम

Union of Indira

प्रतिवादी (मुद्दालेह)

नं० मुकद्दमा सन १६ पेशी की ता० १६ ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री

SURENDRA N. P. एडवोकेट

Adv.

महोदय

वकील

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूँ और लिखे देता हूँ इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाबदेही व उत्तर करें या अन्य कोई कागज दाखिल करें या लौटावे या हमारी ओर से डिगरी जारी करावें और रुपया वसूल करें या सुलहनामा या इकबाल दावा तथा अपील व निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तस्दीक करें या मुकद्दमा उठावें या कोई रुपया जमा करें या हमारी या विपक्ष (फरीकसानी) का दाखिल किया रुपया अपने या हमारे हस्ताक्षर-युक्त (दस्तखर्त) रसीद से लेवे या पंच नियुक्त करें। वकील महोदय द्वारा की गई वह कार्यवाही हमको सर्वथा स्वीकार है और होगी मैं यह भी स्वीकार करता हूँ कि मैं हर पेशी स्वयं या किसी अपने परोकार को भेजता रहूंगा अगर मुकद्दमा अदम पैरवी में एक तरफा मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर न होगी। इसलिए यह वकालतनामा लिख दिया कि प्रमाण रहे और समय पर काम आवे।

हस्ताक्षर

Rodney Venkuma

साक्षी (गवाह).....साक्षी गवाह.....

दिनांक.....2.3.

महीना.....7...../1988

नाम अदालत
नं० मुकद्दमा
नाम फरीकन

accepted
SURENDRA N. P.
Adv.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL: LUCKNOW

REVIEW APPLICATION NO. 9 OF 1963 (C)

in re

REGISTRATION no. 628 of 1967 (T)

(Writ Petition No. 6763 of 1963)

Radhay Krishna, aged about 60 years, son of late Sri
Bansi Lal Srivastava, Resident of 41 old Badshah Bagh,
Lucknow.

..... Applicant

versus

1. Union of India through its Secretary Ministry of
Health and Family Planning, New Delhi.
2. The Director, Central Government Health Scheme,
New Delhi.
3. The Chief Medical Officer, Central Government Health
Scheme, 9-A Raja Pratap Marg, Lucknow.

..... Opp. Parties

REVIEW APPLICATION UNDER RULE 17 OF THE
C.A.T. (PROCEDURE) RULES 1957.

The applicant above named respectfully begs to submit as
under:-

1. That this review application is being filed against
an order passed by this Hon'ble Tribunal consisting of
Hon'ble Ajay Joshi, Administrative Member and Hon'ble
G.S. Sharma, Judicial Member on 20/8/1963, which was
received by the applicant on 2/9/1963. This review
application is within time. (Copy of the order is enclosed).

2. That the applicant filed a suit before the court of District South, Lucknow with a prayer for a direction to be issued to the defendants to promote him as upper division Clerk.

3. That the applicant thereafter filed a writ petition which was numbered as Writ Petition No. 6904 of 1935, which was later on transferred to the Central Administrative Tribunal and numbered as Registration No. 623 of 1937(2) with a prayer to quash the order dated 11.10.1933 by means of which the applicant's promotion converted into Ad-hoc basis from regular promotion.

4. That another application bearing no. 625/33, R.A. Tripathi versus Union of India was filed before this Hon'ble Tribunal with a prayer to regularise his services with effect from 10.12.1933.

5. That all the three applications were consolidated and decided by means of a common judgment dated 30.8.63 by Hon'ble Ajoy Jankar, Administrative Member and Hon'ble G.S. Sharma, Judicial Member.

6. That the respondents filed a Counter Affidavit in reply to the Registration No. ~~623~~ 623/37 in the month of September 1937, after a lapse of 4 years and a copy of the same for the applicant was served to the counsel Sri P.K. Khare but no rejoinder was filed on behalf of the applicant by the aforesaid counsel though the applicant was informed by the counsel that he had already filed the rejoinder.

7. That the counsel for the applicant argued the case without submitting the Rejoinder Affidavit and this

R. B. Chandra

of Directorate they were promoted to the post of Upper Division Clerk on Ad-hoc basis. As this was not the fault of the incumbent because he was not selected immediately by G.O.H.S.ampur. So there seems no justification to suffer on loss and losing promotional benefits at his new place of posting i.e. Central Government Health Scheme Lucknow. It is, therefore, requested that special case be made to give the benefits of his past services rendered at Central Government Health Schemeampur from the date of issue of Director's order for his transfer and to the period of 2 months (i.e. 9.11.78 to 11.1.1979) spent by him at Central Government of Health Scheme,ampur may be considered for fixing his seniority in Lower Division Clerk grade at GHS Lucknow. So that by virtue of the seniority and having more than 6 5/4 years experience in Lower Division Clerk grade in both the offices he may be considered for regular promotion in Upper Division Clerk Grade. The above fact could not be brought by the applicant on account of the failure of his counsel.

12. That in relation to paragraph no. 9, it is submitted that applicant could not submit the fact that in the departmental promotion committee the respondent No. 3 was the Chairman and he expressed his opinion by means of his letter dated 8.4.83 and correctly promoted the applicant on the post of Upper Division Clerk on regular basis. Thereafter what was the compelling circumstances by the same authority to modify its own order without giving the applicant any opportunity is best known to him. There was no mistake committed by the Departmental Promotion Committee and the Chairman had already expressed his view and correctly promoted the applicant and the applicant from the date of his promotion

R. Kishore

joined the service and started functioning without giving him any opportunity of hearing placed the applicant from Regular Upper Division Clerk to ad-hoc basis upper division clerk having no right to claim his seniority for Regular or further promotion.

13. That the action of the respondents was against the provisions of Manual on Establishment and Administration for Central Govt. Officers as in Chapter 44 para XVI sub-para (1) provides directions - instructions regarding powers of review DPC - which reads as under :-

" The circumstances under which the proceedings of a DPC can be reviewed have been laid down above. These are not exhaustive but only illustrative. It is therefore hereby clarified that the proceedings of any DPC can be reviewed only if the DPC has not taken all material facts appropriately into consideration or if such material facts have not been brought to the notice of the DPC or if there have been grave errors in procedure followed by the DPC. Review DPCs can be held accordingly only in such instances of facts or wrong procedure. Such review DPCs cannot in any case go into the merits of the assessment made by the DPC."

14. That further as in para (2) of the said para reads as under:-

" In accordance with the instructions contained in these orders, each DPC should decide its own method and procedure for objective assessment of the suitability of the candidates and it is entirely left to the DPC to make its own classification of the officers being considered by them for promotion to selection posts. This, however, does not mean that the recommendations of DPC are mandatory. As stated in para 13 (1) the DPC is recommendatory body and the recommendations made by it are subject to approval by the appointing authority. The procedure to be followed by the appointing authority does not agree with recommendations of the DPC has been laid down in detail in para 12. Once the recommendations of the DPC are accepted by the appointing authority, it shall be final. Thus if any question is to be raised or disagreement with regard to the merit of assessment by the DPC is to be expressed it should be done only before the recommendations of the DPC are accepted and acted upon.

15. That Chapter 44 Para 12, sub para 3(a) reads as under :-

" When the appointing authority, being lower than the President of India, does not agree with the recommendations of the DPC such appointing

Rishu

authority should indicate the reasons for disagreeing and refer entire matter to the DPG for reconsideration of its earlier recommendations. In case the DPG reiterates its earlier recommendations, giving also reasons in support thereof, it should be open to the appointing authority either to accept the recommendations, if the reasons adduced by the DPG are convincing or if that authority does not accept the recommendations of the DPG, it may submit the paper to the next higher authority with its own recommendations. The decision of the next higher authority should be taken as final.

16. That in this particular case the appointing authority, being the Chairman of Departmental Promotion Committee, after finalising the recommendations of the DPG, issued proper order and the same is implemented, modifying the order is against the provisions of Manual on Establishment and Administration of the Central Government Offices.

17. That the above facts could not be brought on record on account of the mistake committed by the counsel of the applicant, for this mistake of a counsel the applicant should not be permitted to suffer.

18. That the impugned order of reverting the applicant from regular basis to ad-hoc basis without giving him any opportunity is a punishment for which the applicant ~~is~~ is entitled to get an opportunity, in not giving so, the respondents have not followed the principles of natural justice,

PRAYER

Under the above circumstances, it is respectfully prayed that this Hon'ble Tribunal may kindly be pleased to review its order dated 30.8.1983, otherwise the applicant would suffer irreparable loss and injury.


Applicant

Dated: Lucknow

23/9 1983

VERIFICATION

I, the above named ~~applicant~~ applicant do hereby verify that the contents of paras 1 to 12, 17 and 18 are true to my knowledge and those of paras 13, 14, 15 and 16 are believed by me to be true on the basis of legal advice. Verified this application on _____ at the A.P. Compound at Lucknow.

Dated: Lucknow
23/9 1931

Roshun
Applicant

Surendra P.

Through : (SURENDRA P.)
Advocate
Council for the applicant.

To. *Sh. Radhey Krishna*
Applied

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
(Circuit Bench at Lucknow)

Registration T.A.No.842 of 1986

Radhey Krishna
Radhey ~~Krishna~~ Plaintiff

Versus

Union of India & Others Defendants

Connected with

Registration T.A.No.628 of 1987

Radhey Krishna Petitioner

Versus

Union of India & Others Defendants

Connected with

Registration O.A.No.423 of 1986

R.A. Tripathi Applicant

Versus

Union of India & Others Respondents.

Hon. Ajay Johri, A.F.

Hon. G.S. Sharma, J.F.

(By Hon. Ajay Johri, A.F.)

This suit has been received on transfer from the Court of Munsif South Lucknow. The plaintiff in this suit was absorbed against the post of Lower Division Clerk in Central Govt. Health Scheme and given the grade of Rs.330 - ⁵⁶⁰500 as personal to him. This was the scale he was drawing on some technical post earlier from where he came to the clerical cadre

Radhey

in June, 1976. He was later transferred ^{on} request to Lucknow in January, 1979 where he is working now. There being one vacancy of Upper Division Clerk he applied for the same in July, 1982. The eligibility condition for filling up the post of Upper Division Clerk was a service of 5 years as L.D.C. The plaintiff was not considered eligible for the post because the defendants did not count his previous service as L.D.C. at Kanpur, hence he has filed this application praying for a direction to be issued to the defendants to promote him as U.D.C.

2. There is another registration No.620 of 1987 (T Radhey Krishna Varma Union of India, a Writ Petition No.6704 of 1983 received on transfer from the Lucknow Bench of the Allahabad High Court. The petitioner in this Writ Petition was similarly absorbed at Kanpur ^{Re. 330 - 560} in the grade/in the C.G.H.S. and came on transfer to Lucknow in January, 1979, on his own request. He was considered and recommended for the post of U.D.C. by the Departmental Promotion Committee and a promotion order was issued in August, 1983 but in October, 1983 he received a letter making his appointment Adhoc on the ground that he had not completed 5 years service as L.D.C. He has challenged this order praying for quashing the order of October, 1983.

3. The above two applications have been received under Section 29 of the Administrative Tribunals Act XIII of 1985.

R. K. Sharma

4. There is yet another application O.A.No. ^{2/423} 323 of 1986 R.A. Tripathi Versus Union of India & Others ^{filed &} under Section 19 of the ^{& Administrative &} Administrative Tribunals Act XIII of 1985 where the applicant was appointed as L.D.C. in December, 1978 and was promoted as U.D.C. in January, 1983 whose promotion was made Adhoc because he was not considered as having completed 5 years as L.D.C. which was an essential condition for regular promotion as U.D.C. He completed 5 years service in December, 1983. He has claimed that he is the senior most L.D.C. at Lucknow. He was objected against the promotion quota on seniority-seniority basis but as one post of U.D.C. was reserved for Scheduled Caste candidate a reservation had to be made but since a junior person, the petitioner ^{Emergency &} in writ petition No.6704 of 1983 obtained a stay order in his favour, the applicant has been threatened to be reverted and has not been regularized. He has prayed for regularization w.e.f. 18.12.83.

5. Out of these three applications the first two are on the same point of law i.e. how should the period of 5 years of service be counted for considering promotion to the grade of U.D.C. The third petition has been connected because the order in the first two will effect the applicant in the third application. Hence all the three applications are being dealt with together. The orders in this ^{& claim petition &} suit will equally apply

Rashmi

to the Writ Petition 6704 of 1983 and the application 423 of 1986 will be disposed of as a consequence of these orders.

6. The facts of the case in the suit are not in dispute. The plaintiff had come on transfer to Lucknow as L.D.C. on his own request. He was then allotted bottom seniority in L.D.C. cadre at Lucknow. When the question came for filling up of three posts of U.D.C., one was to be filled by competitive Examination and the other two by promotion on seniority-and-fitness basis, the plaintiff's case was not considered by the Departmental Promotion Committee. He was however later promoted w.o.p. 24.8.83. His claim is that he should have been promoted w.e.f. 17.8.82 or if it is not possible w.e.f. 29.8.82 when vacancy arose. He has also challenged the modification of the order of 24.8.83 on 11.10.83, on the ground that it is in contravention to the Recruitment Rules.

7. We have heard the learned counsel for both parties. The main contention of the learned counsel for the applicant was that by coming on transfer on request the seniority can be changed but a person cannot be made to lose his previous service which he had rendered in the previous station. This was opposed by the learned counsel for the defendant on

Quoted
R. K. Singh

the ground that a person can only be considered for promotion according to seniority and the period of service has to be counted from the date the employee reports on transfer to the new Unit. We have perused the case file too.

8. The rules for promotion to the post of U.D.C. are not ambiguous. For promotion on seniority-cum-fitness basis the length of service as L.D.C. is required to be 5 years and for promotion on the basis of competitive examination it has to be 3 years as L.D.C. The primary criteria is of course seniority. When the plaintiff came on transfer to Lucknow on his own request what he lost was seniority. He could not be made to lose his span of service already rendered as an L.D.C. at the previous station. His eligibility has to be determined after weighing both the factors ^{E.g. Seniority & length of service} giving seniority the greater weightage. So if he comes within the eligibility list the next point to be seen is his service in the grade of L.D.C. His candidature cannot be rejected merely on the ground that he has not rendered the required service of 5 or 3 years at the new Unit to which he has come on transfer. So if his seniors have been promoted and his turn for promotion has come he cannot be held back or given Adhoc promotion ^{E.g.} only on the ground that he has not done 5 years as L.D.C. The plaintiff cannot

Ramesh

however, claim that since he has done 5 years service he should be promoted and seniors in the new Unit where he has come on transfer be ignored. No, as already indicated above, takes his place below all confirmed and temporary staff in the relevant grade in the promotion group of the new Unit notwithstanding his date of confirmation or length of service.

9. Thus seniority position in such cases is different and quite separate and independent of the service rendered by the employee. It cannot be said that he starts service anew in the new Unit. So if an open competitive examination is arranged where only condition is years of service in the lower grade, the transferee ^{who came} on request, would, if he has done the requisite service, be entitled to appear in the examination. Thus for the one post that has been filled on the basis of Departmental Examination, the denial to the applicant of the permission to appear was incorrect. He should have been permitted to appear.

10. In conclusion we dispose of this application with the following directions :-

- 1) Seniority in the new Unit will determine the position in regard to promotion which of course will be subject to fitness.

R. B. Choudhary

- ii) The status of the junior person i.e. whether the promotion is Adhoc or regular will be governed by the status of the senior and availability of vacancy. In other words, if a senior is promoted on Adhoc basis because he has not completed the requisite service in the lower grade the junior cannot be considered for regular promotion because his service at the previous station has been taken into consideration.
- iii) In the case of Departmental Examinations where employees with a certain minimum years of service are considered eligible and the promotion is subject to the result of the examination the service rendered in the previous Unit by an employee who has come on transfer on request cannot be ignored for ^{considering him to be eligible} allowing him to take part in the competitive examination.

11. (a) In view of our direction above, the prayer made in Suit No. 134 of 1983 for a direction to be issued to the defendants to promote the plaintiff fails. The Suit is accordingly dismissed with costs on parties.

(b) In Registration No.628 of 1987 (T)(Writ Petition No.6703 of 1983) the petitioner's promotion was made Adhoc ^{by a subsequent order}. The prayer made is for quashing of

R. Krishna

the order making the promotion Adhoc. This petition gets disposed of in terms of our directions given above. We make no orders as to costs in this petition.

(2) In regard to O.A. No.423 of 1986 which is the application filed before this Tribunal under Section 19 of the Administrative Tribunal Act, 1985 the applicant's case will be considered for regularization in view of the final orders having been given in Writ Petition No.6704 of 1983. His case for regularization now will be considered from the due date. In this application also we make no orders as to costs.

Sd-
J.A.

Sd-
A.M.

Dated the 30th Aug., 1988.

RKA

Qud.
2/9/88

Qud. L.L.
2.9.88
for Secretary
Central Administrative Tribunal
Lucknow Bench,
Lucknow

R.K. Sharma