

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

~~G.A. No.~~  
T. A. No. 215/87

198

DATE OF DECISION 28.6.1991

Vipin Kumar Bhatnagar Petitioner

None for the applicant Advocate for the Petitioner(s)

Versus

Union of India & Others. Respondent

Mr. S.V. Gole for Mr. S.V. Natu Advocate for the Respondent(s)

None for Respondent No. 3

No 142

## CORAM

The Hon'ble Mr. D. SURYA RAO, MEMBER (J)


The Hon'ble Mr. P.S. CHAUDHURI, MEMBER (A).

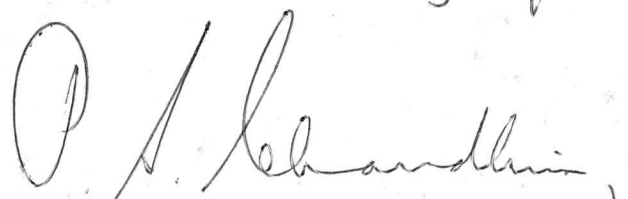
1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Yes

Yes

No

  
(D. SURYA RAO)  
Member (J)

  
(P.S. CHAUDHURI)  
M(A)

(12)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY.

CAMP AT NAGPUR

TR.APPLICATION 215/87

Vipin Kumar Bhatnagar,  
Department of Pre-investment  
Survey of Forest Resources,  
Central Zone, Seminary Hills,  
NAGPUR.

.. Applicant.

V/s.

1. Union of India,  
Ministry of Agriculture,  
Department of Agriculture and  
Cooperation, Krishi Bhavan,  
New Delhi, through its Secretary.
2. Chief Co-ordinator,  
Pre-investment Survey of Forest  
Resources, 25, Subhash Road,  
Dehradun.
3. Netaji Subind Paul,  
Pre-investment Survey of Forest  
Resources, Eastern Zone 97/1/B,  
IInd Floor, Hazra Road,  
CALCUTTA - 26.

.. Respondents.

Coram : Hon'ble Shri D. Surya Rao, Member (J).  
Hon'ble Shri P.S. Chaudhuri, Member (A).

Appearances :

None for the applicant.

Mr.S.V. Gole holding the  
brief of Mr.S.V. Natu, Advocate  
for the Respondents No. 1 and 2.

None for Respondent No. 3.

JUDGMENT

DATED: 28.6.1991

PER : Hon'ble Shri P.S. Chaudhuri, Member (A)

This application has come to the Tribunal by way  
of transfer from the Nagpur Bench of the Bombay High Court  
in terms of its order dtd. 12.9.1986 on Writ Petition No.  
640/81 which was filed before it on 17.2.1981. In it the

13

TR.215/87.

petitioner (applicant) who was working as Upper Division Clerk (for short, UDC) in the Pre-investment Survey of Forest Resources, Nagpur is challenging the results of the competitive test of Lower Division Clerks (for short, LDC ) for appointment as U.D.C.s in so far it relates to the 3rd respondent and connected and consequential reliefs.

2. The applicant was appointed to the post of LDC on 15.8.1974. The promotional avenue for LDCs is to the post of UDCs. Such promotions are regulated by the Pre-investment Survey of Forest Resources (Class III and Class IV) Recruitment Rules, 1975 made by the President under the powers conferred by the proviso to Article 309 of the Constitution. These Rules came into force w.e.f. 21.11.1975 and stipulate that such promotion will be made " 75% on the basis of seniority subject to the rejection of the unfit from the LDCs possessing a minimum of 5 years service in the grade and 25% on the results of competitive examinations limited to all LDCs with a minimum of 3 years service in the grade" (emphasis supplied). By notice dated 10/14-3-1977 applications were invited from "all LDCs who have already completed or will be completing 3 years service by the end of August, 1977 in the grade" for appearing in such a limited competitive examination proposed to be held in early September, 1977. In response to this notice the names of 7 LDCs were intimated for appearing in the proposed competitive examination of whom 6 had already completed or would be completing 3 years service in the grade of LDC by the end of August, 1977. As far as the 7th LDC, who is the third respondent in this case, is concerned, his name was forwarded

YR.215/87.

under letter dated 24.3.1977 in which it was pointed out that he would be completing 3 years service on 9.9.1977 and it was requested that he be allowed to appear at the examination if otherwise found suitable. By letter dated 1.9.1977, the dates of examination were fixed and notified as being 20 and 21.9.1977. By letter dated 5.9.1977, the third respondent was allotted a roll number for appearing in the said examination. 4 persons, including the applicant and respondent No.3, out of the 7 who were allowed to appear passed the competitive examination. Of these 4 persons, the applicant obtained merit position No.3 whereas the third respondent obtained merit position No.2. By letter dated 18.8.1978 the results of the examination were declared. In these results the 3rd respondent was shown above the applicant. In the meantime the applicant had submitted a representation dtd.9.1.1978 pointing out that the 3rd respondent had not completed 3 years of service in the grade of LDC on the crucial date, viz. 31.8.1977, and hence the 3rd respondent's result should not be declared. By reply dtd. 16.1.1978 the applicant was informed that the Chief Co-ordinator had decided to hold the competitive test in the second fortnight of September, 1977 and as the 3rd respondent was then eligible to appear he had been allowed to appear. Being dis-satisfied with this reply the applicant made further representation on 17.1.1978 and 27.1.1978. He then addressed a representation dated 18.3.1978 to the first respondent. Eventually by letter dated 20.10.1978 first respondent replied as under:-

"I am directed to say that unless the rules prescribed 31st August as the crucial date or

this date was being generally followed in the past, it cannot be said in the circumstances of this case that grant of permission to Shri N.G. Paul to sit in the Examination was irregular. In view of this the question of cancellation of his candidature at this stage does not arise, though we are not happy with the decision to alter the date of eligibility after it had been notified. Such arbitrariness is undesirable and should be avoided as it will be construed as amounting to favouritism.

Shri V.K. Bhatnagar, L.D.C. may be informed of this decision."

Being dis-satisfied with this reply, the applicant continued making representations. By order dated 3.8.1979 the applicant was promoted as officiating UDC with effect from 25.7.1979. Consequent upon the winding up of the Bhutan Project of the respondents' organisation, by order dated 29.1.1981 certain staff working in Bhutan were transferred and posted to various offices. The list of such staff included 3 UDCs posted to Nagpur. Apprehending that he might be reverted, the applicant filed this Writ Petition on 17.2.1981 challenging the results of the competitive test. In the Writ Petition he sought an interim injunction against his reversion. This stay was granted by order dated 26.2.1981 when the matter was before the High Court and this order continues in force.

3. The respondents have opposed the Writ Petition by filing their affidavit. When this case was called out for hearing, none appeared for the applicant even though he was represented by Counsel when the date for hearing was fixed. Mr.S.V. Gole, holding the brief of Mr.S.V. Natu, learned Counsel appeared for respondents/and produced the complete record for our perusal. [None appeared for respondent No.3] As the facts are not

TR.215/87.

in dispute and as no legal point is involved, we have proceeded to hear the case and decide it on merits.

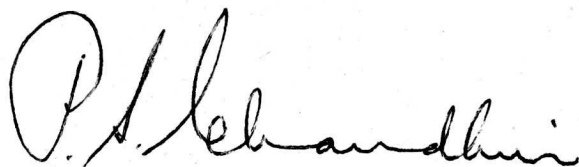
4. This case hinges on a short point, namely when in the notification that was issued for the limited departmental examination the cut-off date for eligibility to appear was fixed at 3 years service as LDC on 31.8.1987, was the respondents' action in changing this cut off date to 3 years service as on the date of the examination correct ? We do not find a direct answer to this question in the recruitment rules. These rules only say that minimum of 3 years service in the grade is required. As the rules are silent on how the period of 3 years is to be reckoned, it is open to the authorities to supplement the rules by any reasonable and legitimate method selected by them. For example this period of 3 years could be on the date of actual promotion or could be on the date of declaration of the panel for promotion or could be on the date of examination or could on the some administratively convenient date prior to the examination. When issuing the notification dtd. 10/14.3.1977 the respondents appear to have opted for the last option, namely an administratively convenient date prior to the examination. There is nothing in the rules preventing them from changing this option as right from the very beginning they could, just as easily, have reckoned the 3 years qualifying service on the basis of the intended date of the examination. We attempted to find out whether prejudice might have been caused to some other candidates who might not have applied to appear in the competitive examination because they had not completed the 3 years qualifying service on the stipulated date but would have

TR.215/87.

completed it by the subsequent cut off date of 20.9.1977. We find this thought had occurred to the respondents too and they had satisfied themselves that no such prejudice had been caused as only the 7 LDCs mentioned earlier had completed 3 years service by 20.9.1977. In other words, no LDC eligible upto 20.9.1977<sup>was</sup> ignored. We also do not find any mala fide in the decision to adopt the intended date of the examination as the bench mark for assessing the 3 years qualifying service requirement. Against this background we do not see anything wrong with the respondents' letter dtd. 20.10.1978 that we have quoted at length.

5. In this view of the matter, we see no merit in this application and are of the opinion that it deserves to be dismissed.

6. We ~~are~~ accordingly dismiss this application. All interim orders passed earlier are hereby vacated. In the circumstances of the case there will be no order as to costs.



( P.S. CHAUDHURI )  
MEMBER (A).



( D. SURYA RAO )  
MEMBER (J).

28-6-1991