

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 181 of 1988.

198

~~T.A. No.~~

DATE OF DECISION 18.4.90

Sunil Tukaram Gaonkar Petitioner

Shri M.A.Mahalle,

Advocate for the Petitioner(s)

Versus

The Chief Commissioner of Respondent  
Income-tax (Admn-I) Bombay and others

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. B.Sreedharan Nair, Vice Chairman.

The Hon'ble Mr. M.Y.Priolkar, Member(Admn).

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 ? ☒

( G.Sreedharan Nair)  
Vice Chairman.

S.P.Singh/

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : NEW BOMBAY BENCH  
NEW BOMBAY.

O.A. 181 of 1988.

Sunil Tukaram Gaonkar ... Applicant.  
-versus-  
The Chief Commissioner of  
Income-tax, (Admn-I), Bombay  
and others ... Respondents.

P R E S E N T :

The Hon'ble Shri G.Sreedharan Nair, Vice Chairman.

The Hon'ble Shri M.Y.Priolkar, Member (Admn).

For the applicant- Shri M.A.Mahalle, Advocate.

For the respondents-

Date of hearing and Judgment- 18.4.90.

JUDGMENT & ORDER :

G.Sreedharan Nair, Vice Chairman :

On 16.9.87 an application was filed by the applicant before the first respondent, the Chief Commissioner of Income-tax, Bombay, for promoting him to the position of Lower Division Clerk (L.D.C.). The present application has been filed before this Tribunal " against the refusal of the Chief Commissioner to act on the said application". (vide para 3 of the application). It is stated in the application that on 21.7.1978, the applicant was appointed as LDC by the 5th respondent with the approval of the Commissioner of Income-tax, Bombay City. It is admitted that no orders of appointments were issued, but he was paid wages @ Rs. 6/- per day. According to the applicant, on repeated requests made by him he was appointed as a Class-IV employee in the cadre of Peon on 28.9.1981, but despite that the work of an LDC is being taken from him. It is stated that he has passed the Departmental Examination against 5% quota in the cadre of LDC reserved for educationally qualified Group 'D' staff in the year 1987. It is prayed that the respondents No.1 and 3 be directed to appoint the applicant in the post of LDC and he be awarded seniority in the cadre with effect from 21.7.1978.

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2. In the reply filed on behalf of the respondents, the allegation that the applicant was appointed as LDC is specifically denied. It is pointed out that the Deputy Commissioner (Administration), Income-tax Department, Bombay, is the only competent authority to employ workers on daily wages in the Income-tax Department. It is stated that the applicant was employed on daily wages as a Farash in the year 1978 and was regularised as Peon with effect from 28.9.1981 and that till date he is working as Peon. It is admitted that he has passed the Departmental Examination for promotion to the cadre <sup>st</sup> LDC held in the year 1987, but he has not been appointed in that cadre since there are his seniors awaiting appointment. The receipt of the representation dated 16-9-87 is admitted, but it is stated that no reply was given since the applicant is not working as L.D.C.

3. At the time of hearing, the counsel of the respondents made available the service record relating to the applicant from which it is clear that the initial appointment of the applicant was as Farash, and with effect from 28.9.1981 he was appointed as Peon on regular <sup>only</sup> basis. That he has been holding <sup>the</sup> post of a Peon thereafter is clear from the various undertakings and options given by the applicant himself wherein he has ~~not~~ styled himself as a Peon. No material has been placed before us by the applicant to substantiate his allegation that on 21.7.1978 <sup>1978</sup> ~~1987~~ he was appointed as an L.D.C. The counsel of the applicant placed reliance on <sup>(16)</sup> ~~8~~ certificates exhibited as Exhibit-A/1 series issued by the Income-tax Officer. These certificates do not disclose that the

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applicant was appointed as a clerk. Of course, it is stated therein that the applicant was given ~~/~~ clerical work, but the fact that he was working in the department as a Peon has been categorically stated in most of these certificates. Hence, even if some clerical work was also being done by him occasionally, that will not confer on him the status of an LDC.

4. From the educationally qualified Group - 'D' staff, there is a 5% quota for appointment to the cadre of LDC to be filled up on the result of a Departmental Examination. Admittedly, the applicant has taken the examination held in the year 1987 and has come out successful. Indeed, in the representation submitted by him to the Chief Commissioner of Income-tax on 16.9.1987 what has been ~~so~~ sought for by the applicant is only that he may be provided " with the necessary promotion to the position of Lower Division Clerk for which I am found suitable after having passed the Departmental Exam." The respondents have admitted in the reply filed by them that the applicant has passed the examination and as such he would be considered for promotion to the post of L.D.C. as per the Rules. We record the aforesaid statement and direct the respondents to do so as and when the turn of the applicant arises on the basis of his ranking in the examination.

5. The prayer of the applicant for awarding him seniority in the LDC on such <sup>appointment</sup> ~~turn~~ with effect from 21.7.1978 has to be repelled as the applicant was never appointed as LDC with effect from 21.7.1978.

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6. The application is disposed of as above.

*18.4.90*  
( M.Y.Priolkar )  
Member (Admn)

*18.4.90*  
( G.Sreedharan Nair )  
Vice Chairman.

Singh/  
18.4.90.

Judgment order  
dt. 18.4.90 send  
to parties on  
27.6.90.  
dkboul.

Judged dt 18.4.90  
served on R No. 1 & 5  
on dt. 3.7.90

18.4.90

order dt. 18.4.90 send  
on R.No. 2 & 3  
on dt. Nil

16.7.90