

CENTRAL ADMINISTRATIVE TRIBUNAL ::  
GUWAHATI BENCH.

O.A./XXX. No. . . . 264 . . . . of 1998

DATE OF DECISION 25.1.2001 .....

Shri S.S. Purkayastha

PETITIONER(S)

Mr J.L. Sarkar, Mr M. Chanda and

Mrs N.D. Goswami

ADVOCATE FOR THE  
PETITIONER(S)

VERSUS -

The Union of India and others

RESPONDENT(S)

Mr A. Deb Roy, Sr. C.G.S.C.

ADVOCATE FOR THE  
RESPONDENTS

THE HON'BLE MR JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN

THE HON'BLE MR K.K. SHARMA, ADMINISTRATIVE MEMBER

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

Judgment delivered by Hon'ble Vice-Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL-  
GUWAHATI BENCH

Original Application No.264 of 1998

Date of decision: This the 25th day of January 2001

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman

The Hon'ble Mr K.K. Sharma, Administrative Member

Shri S.S. Purkayastha,  
Hathigaon, Guwahati.

.....Applicant

By Advocates Mr J.L. Sarkar, Mr M. Chanda and  
Mrs N.D. Goswami.

- versus -

The Union of India and others

.....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

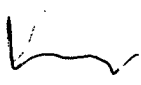
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O R D E R (ORAL)

CHOWDHURY.J. (V.C.)

This is an application under Section 19 of the Administrative Tribunals Act, 1985, seeking for a direction for refixation of seniority as well as a direction on the respondents to consider the case of the applicant for promotion with all consequential service benefits at least from the date of promotion of respondent No.5 in the following circumstances:

The applicant is a physically handicapped person and presently serving as Lower Division Clerk (LDC for short) under the respondent No.3 and posted at Guwahati. The Regional Staff Selection Commission, Guwahati, Government of India, conducted a Clerks Grade Examination in the month of November 1987 against the quota reserved for physically handicapped persons. The result of the written test of the said examination was declared by the Regional Staff Selection Commission (SSC for short) on 16.6.1988 in the Employment News and the applicant was declared successful in the written test conducted by the SSC. The SSC issued



call letter to the applicant for appearing in the type writing test for the Clerks Grade Examination, 1987. The applicant submitted a representation on 9.8.1988 questioning the said decision and claimed for exemption from appearing at the type writing test since he was a physically handicapped person and such persons were to be exempted from type writing test which was specifically mentioned in the Notification published for Clerks Grade Examination, 1987. The applicant further informed the respondents that in his original application for appearing in the Clerks Grade Examination also categorically claimed for exemption from type writing test since he was a physically handicapped person. The result of the Clerks Grade Examination, 1987 was declared on 15.10.1988 in the Employment News. The name of the applicant did not appear in the list of successful candidates. The applicant pursued the matter and finally the authority responded and nominated his name for the post of LDC and recommended the name of the applicant for appointment to the post of LDC in the Doordarshan Kendra, Guwahati vide letter dated 23.5.1990. The Doordarshan Kendra, Guwahati thereafter offered appointment to the applicant to the post of LDC on 15.2.1991 in terms of the communication dated 23.5.1990 sent by the SSC. The applicant joined the post of LDC on 25.2.1991 under the Station Director, Doordarshan Kendra, Guwahati. It may also be mentioned here that Clerks Grade Examination was also held in 1988 and 1989 and persons selected thereon were appointed following the recommendation of the SSC under the Station Director, Doordarshan Kendra, Guwahati. The applicant cited the names of the persons appointed under the 1989 selection whose date of joining ranged from 28.3.1989 to 8.12.1989. By order dated 5.9.1994 and also order dated 23.4.1994 five of his batch mates were promoted to the post of Upper Division Clerk (UDC for short). In his application the applicant also stated that persons appointed subsequent to the recruitment test of 1987, namely 1988 and 1989 were also promoted. A seniority list as on 1.1.1995 was published on 12.9.1995 for Head Clerk/Accountant/Sr. Storekeeper/Storekeeper/Upper Division Clerk/Lower Division Clerk etc. in the North Eastern Region of All India Radio/Doordarshan/CCW

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and in the seniority list the seniority of the applicant was shown at serial No.91 mentioning his date of entry into service as 25.2.1991, whereas persons who appeared in the selection test after the applicant were shown above the applicant in the seniority list. The applicant submitted a number of representations before the authority and by order dated 22/28.4.1998 the authority turned down his representations on the grounds reproduced below:

- 1) Even though he is a 1987 batch passed candidate the vacancy was notified to Staff Selection Commission, Guwahati only on 31.1.90.
- 2) Normally SSC initiate recruitment process only after getting requisitions from all Central Govt. offices against clear vacancies. From the representation of Shri Purkayastha, it is seen that SSC had nominated candidates from subsequent batches also before exhausting the 1987 batch which resulted in subsequent batch LDCs getting promotion earlier. Till 14.11.94 those who have completed 5 years regular service as LDCs were considered for promotion as UDC. As per the amended Recruitment Rules, only those who have completed 8 years regular service in the post/LDC are eligible for consideration for promotion as UDCs w.e.f. 14.11.94.
- 3) From the above, it is clear that Shri Purkayastha did not have the requisite years of regular service in the grade of LDC before or after the amendment of Recruitment Rules to consider his case for promotion as UDC.
- 4) Smt. Renu Singh Sharma, LDC, DDK, Guwahati was promoted after having a review DPC held in May'96 as per the Hon'ble CAT, Guwahati Bench order dated 25.7.94 as she was having the requisite years of service after counting the ad hoc service from 31.8.89. Hence Smt. Renu Singh Sharma's promotion cannot be compared with the case of Shri Purkayastha as he did not have 5 years regular service as LDC when the DPC was held on 28.5.95.
- 5) From the correspondence it is seen that SSC have unduly delayed the nomination of Shri Purkayastha being of 1987 panel before operating the subsequent panel for which AIR/DDR cannot take the responsibility. Further, it may be mentioned here that none of the provisions contained in DP & AR O.M. NO.9/23/77 E&A(p) dated 6th June'79 is applicable in the case of Shri Purkayastha. Moreover, the department cannot disturb the settled seniority and promotion already made as per the prevailing Recruitment Rules."

Hence the present application.

2. The respondents contested the claim of the applicant and submitted their written statement. According to the respondents the applicant's seniority was rightly fixed from the date of joining. The applicant, though he was a 1987 batch passed candidate, the vacancy was notified to the SSC by DDK, Guwahati only on 31.1.1990. The SSC had nominated candidates of subsequent batches also before exhausting

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the 1987 batch and since those persons completed five years regular service and the applicant did not, the aforementioned persons were promoted to the higher post as per the rules. At the relevant time the promotion to the post of UDC from amongst the Group 'D' employees of All India Radio/Doordarshan Kendra who were having five years regular service in Group 'D' post was subsequently amended and raised to eight years regular service in Group 'D' post. Since the applicant did not fulfil the condition his case was rightly rejected.

3. The real issue relates to the computation of the seniority of the applicant. Admittedly, the applicant joined in 1991, but his appointment was made on the basis of the 1987 selection. The recommendation of the SSC clearly indicated about his nomination on the strength of the selection test held in 1987. As per the rules of recruitment, the seniority of direct recruits and promotees are determined by the order of merit in which they are selected for such appointment on the recommendations of the UPSC or any other authority, the persons appointed as a result of an earlier selection being placed above those appointed as a result of the subsequent selection. The rules were further clarified by a communication sent by the SSC on 2.6.1997 to the Doordarshan Kendra, Guwahati in which the case of the applicant was dealt with. It also referred to an earlier communication sent to the Doordarshan Kendra and clarified the position and advised them to take necessary action as per law.

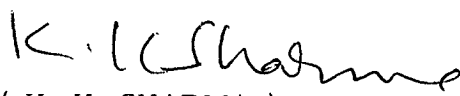
4. From the facts alluded above, it emerges that the applicant was a candidate recruited on the basis of the 1987 selection. Undoubtedly, there was delay in sending the nomination by the SSC so far the applicant was concerned, for which the applicant could not be <sup>blamed</sup> faulted. According <sup>to</sup> the respondents also the applicant did not have any hand in the delay. In the circumstances there was no justifiable reason for not giving the applicant the benefit of the rule as per the date of selection since the applicant is one of the nominee selected on the basis of the 1987 Select List. The respondents ought to have given him the benefit of seniority

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on the basis of the 1987 Select List and considered his case for promotion before considering the promotion of the subsequent batch and seniority was also to be refixed on the basis of the earlier selection.

5. For the foregoing reasons the impugned order dated 2.4.1998 is set aside and the respondents are directed to restore the seniority of the applicant as mentioned above and also consider the case of the applicant for promotion in the light of the observations made as from the date on which the respondent No.5 was promoted.

6. The application is allowed to the extent indicated. There shall, however, be no order as to costs.

  
( K. K. SHARMA )  
ADMINISTRATIVE MEMBER

  
( D. N. CHOWDHURY )  
VICE-CHAIRMAN