

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 9th day of April, 2010

Original Application No.345/2007

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. B.L.KHATRI, MEMBER (ADMINISTRATIVE)

Abdul Rafiq
s/o Shri Khuda Bux Khan,
r/o Q.No.48, Narcotic Colony,
Kota, presently working on the post of
Sepoy in the office of the
Deputy Narcotic Commissioner,
Kota.

.. Applicant

(By Advocate: Mr. Dharmendra Jain)

Versus

1. Union of India,
through Central Bureau of Narcotics,
19, the Mall, Morar,
Gwalior (MP)
2. The Deputy Narcotic Commissioner,
Mahaveer Nagar-I, Jhalawar Road,
Kota.
3. Kamal Kishore Mahaur,
working under the Asstt. Narcotic
Commissioner (Hqrs.)
19, The Mall, Morar,
Gwalior.
4. Ghisa Lal Chabriya,
working under the Assistant Narcotic
Commissioner (Hqrs.),
19, the Mall, Morar,
Gwalior.

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5. Mohan Lal, Ojha,
working under the Assistant Narcotic
Commissioner (Hqrs.),
19, The Mall Morar,
Gwalior.

... Respondents

(By Advocate: Mr. Hemant Mathur)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- (i) by an appropriate order or direction the impugned order dated 09.08.2006 (Annex.1) may be quashed and set aside and persons junior to the applicant may be denied promotion and the applicant be considered for promotion on the post of Sub-Inspector Narcotic; and
- (ii) by an appropriate order or direction the applicant be allowed the fruits of promotion to the post of Sub-Inspector from the year from which his promotion is due.

Any other appropriate order of direction which this Hon'ble Tribunal may consider just and proper in the facts and circumstances of the case may also kindly be passed in favour of the humble applicant.

Cost of this Original Application may also kindly be awarded in favour of the applicant.

2. Briefly stated, facts of the case are that the applicant is working as Sepoy in the office of Deputy Narcotic Commissioner, Kota. The grievance of the applicant is regarding the order No. 9/2006 dated 9th August, 2006 whereby person named therein were promoted to the post of Sub-Inspector on the basis of the recommendations of the DPC against vacancy for the year 1998-99, 1999-2000 and 2001-2002. It is not in dispute that as per provisions

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contained in the recruitment and promotion rules, 25% of the posts were meant to be filled in by promotion from amongst Sepoy and Hawaldar fulfilling the following conditions:-

- I. Persons are below 45 years of age, and
- II. Persons have rendered at least 8 years of regular service as Sepoy or as Hawaldar taken together,
- III. Persons have passed at least Matriculation examination or equivalent and
- IV. Persons possess such physical standards and passed such physical test as are prescribed in the note under col. 8 of the requirement rules.
- V. Persons who qualify in the departmental competitive examination as laid down by the Central Board of Excise and Customs from time to time, and
- VI. Persons who are selected by the DPC on the basis of record of service and interview.

Thus, as per the eligibility criteria stipulated in the recruitment and promotion rules, one of the conditions is that person should qualify the departmental competitive examination as laid down by the Central Board of Excise and Customs from time to time. It is case of the applicant that he has qualified the departmental examination for the post of Sub-Inspector in the year 1989, as such, It was not obligatory on his part to again qualify the selection test when the selection was held by the respondents for vacancies of the year 1998-99, 1999-2000 and 2001-2002.

3. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, the respondents have stated that examination for selection to the post of Sub-Inspector against the vacancies arising in the year 1998-99 and 1999-2000 was held in December, 2001. It is further stated that OA No.684/2000 and OA No.641/2001 was filed on behalf of Narcotics Department Gorup-D (Sepoy) Association before the CAT-Lucknow Bench in

which one^{2 of 2} the challenge was that since they have cleared the departmental examination, as such, they should not be asked to appear again and pass the departmental examination. It is further stated that the CAT-Lucknow Bench passed an interim order dated 13.12.2001 to the effect that departmental examination, if any, shall be subject to the outcome of the OAs. This OA was finally disposed of vide order dated 12.10.2004 thereby holding that Sepoy who are eligible will have to clear the departmental examination in order to get promotion to the post of Sub-Inspector as per existing rules. It is stated that thereafter result of the departmental examination for the post of Sub-Inspector was declared on 4.3.2005 and persons who qualified the department examination held on 8-9/12.2001 were considered for promotion to the grade of Sub-Inspector by the DPC held on 2-3/8/2006 and as per findings of the aforesaid DPC promotion order dated 9.8.2006 was issued. The respondents have stated that no doubt the applicant has passed the departmental examination held in July, 1989 hence he was duly considered for promotion to the post of Sub-Inspector by the Review DPC held in September, 1994 which review DPC was held in terms of the original DPC of the year 1990 but the applicant could not secure the prescribed minimum marks in the interview. Therefore, he was declared fail and could not be promoted. The respondents have further stated that the applicant did not appear in the competitive examination held in December, 2001, therefore, he was not consideration for promotion to the grade of Sub-Inspector by the DPCs for the year 1998-1999, 1999-2000 and 2001-2002. The

respondents have also placed on record a letter dated 21st May, 1990 (Ann.R/4) whereby clarification has been issued by the Government regarding promotion to the post of Sub-Inspector in Narcotics Department against 25% promotion quota in the grade of Sub-Inspector from Sepoy/Hawaladar. At this stage, it will be useful to quote clarification as sought vide item No.IV and the clarification so issued by the department, which thus reads:-

"Point raised

(iv) Whether once Sepoys and Havalendars who have qualified the departmental examination will be required to appear again in the said examination or not.

Clarification

The departmental examination is a competitive examination. Therefore, the examination may be conducted every time when promotions are to be made. This will also afford to candidates chances to improve their prospects for promotion from time to time.

Thus, as can be seen from the clarification so issued by the competent authority in respect of eligibility criteria in the rules, it is evident that departmental examination is competitive examination and as such this examination has to be conducted every time when promotions are to be made. Thus, according to the respondents, the applicant has got no case whatsoever.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

5. We are of the firm view that the applicant has not made out a case for grant of relief. Admittedly, one of the conditions stipulated

in the recruitment and promotion rules for promotion to the post of Sub-Inspector, as already reproduced above, is that the person must qualify the departmental competitive examination as laid down by the Central Board of Excise and Customs. The competent authority has also issued clarification to the effect that such departmental competitive examination has to be held every time when promotions are to be made. Thus, the contention raised by the applicant that once he has qualified the departmental examination, he is not required to pass the same again when the respondents conduct the fresh selection, cannot be accepted.

6. That apart, as per the stand taken by the respondents, the issue regarding eligibility and passing of the departmental examination every time when selection is held also stood settled by the Lucknow Bench in the OAs filed by the Association. Thus, in view of what has been stated above, the applicant is not entitled to any relief. It may be stated here that the applicant passed the departmental examination in the year 1989 and his case for promotion was considered by the Review DPC in the year 1994 in the light of the DPC held in the year 1990, but he could not obtain the prescribed minimum marks in the interview and as such, he was declared fail. Since the said selection is neither under challenge nor the applicant has prayed any relief on the basis of such selection, as such, we need not to give any finding on this aspect. The applicant has challenged the selection which was conducted by the department in the year 2001. Admittedly, the applicant did not appear in the said examination held for vacancies of the year 1998-

99, 1999-2000 and 2001-2002, result of which was declared in 2005 (Ann.R/6). The DPC was held on 2-3/8.2006 and consequently the persons mentioned therein were promoted vide order dated 9th August, 2006. Once the OA against the selection held in the year 2001 which was subject matter of challenge before the Lucknow Bench in the aforesaid OAs was dismissed in October, 2004, it was not permissible for the applicant, who is also member of the association, to file fresh OA for the same cause of action, more particularly, when the applicant has not participated in the selection held in the year 2001. Thus, according to us, the applicant has no locus-standi to file present OA and challenge selection of a candidate who has appeared in the selection conducted in 2001 and has been promoted vide impugned order dated 9th August, 2006. Thus, the present OA is required to be dismissed on this ground also.

7. For the foregoing reasons, the OA is dismissed with no order as to costs.

8. In view of the disposal of the OA, no order is required to be passed in MA No.74/08, which shall stand disposed of accordingly.


(B.L. KHATRI)
Admv. Member


(M.L. CHAUHAN)
Judl. Member

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