

(RESERVED ON 13.09.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

This is the 14th day of **NOVEMBER, 2018**.

ORIGINAL APPLICATION NO. 330/849/2017

HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J).
HON'BLE MR MOHD. JAMSHED, MEMBER (A).

1. Sanjay Kumar Srivastava, S/o Sri Yashwant Kumar Srivastava, R/o Q. No. 22. (T-ii), Colony No. 2, Opium Factory Colony, Mahuwabagh, Ghazipur.
2. Sushil Kumar Saroj, S/o Chhotey Lal Saroj, R/o Q. No. 11, (T-ii), Colony No. 2, Opium Factory Colony, Mahuwabagh, Ghazipur.
3. Rajeev Ranjan Sharan, S/o Chandra Vilas Sharan, R/o Q. No. 45, Colony No. 2, Opium Factory Colony, Mahuwabagh, Ghazipur.
4. Madan Mohan Dutta, S/o Nani Gopal Dutta, R/o Q. No. 45, (T-II), Colony No. 2, Opium Factory Colony, Mahuwabagh, Ghazipur.
5. Satish Kumar, S/o R.P. Singh, R/o Q. No. 16, (T-ii), Colony No. 2, Opium Factory Colony, Mahuwabagh, Ghazipur.
6. Sunil Kumar, S/o Phul Chandra, R/o Q. No. 09, (T-ii) Colony No. 2, Opium Factory Colony, Mahuwabagh, Ghazipur.

.....Applicants.

VERSUS

1. Union of India, through the Narcotics Commissioner, Central Bureau of Narcotics, Mall Road, Gwalior.
2. The Central Board of Excise and Customs, New Delhi

.....Respondents

ALONGWITH

ORIGINAL APPLICATION NO. 330/847/2017

1. Rabindra Nath Viswas, S/o Late Haran Chandra Vishwas, working as Upper Division Clerk in the office of Government Opium and Alkaloid Works, Ghazipur.
2. Shyamlal Ravidas, S/o Late Ram Saran Ram, working as Upper Division Clerk in the office of Government Opium and Alkaloid Works, Ghazipur.
3. Mahesh Kumar Bhartiya, S/o Ram Prasad, working as Upper Division Clerk in the office of Government Opium and Alkaloid Works, Ghazipur.

.....Applicants.

VERSUS

1. Union of India, through the Narcotics Commissioner, Central Bureau of Narcotics, Mall Road, Gwalior.
2. The Central Board of Excise and Customs, New Delhi

.....Respondents

Advocates for the Applicant : Shri M.K. Upadhyay
Shri Anil Kumar Singh

Advocate for the Respondents : Shri L P Tiwari

O R D E R**(Delivered by Hon'ble Mr. Mohd. Jamshed, Member-A)**

Since in both the OAs the prayers are identical with common issues, cause of action and same respondents, these were clubbed together vide order dated 20.08.2018 and are decided by this common order, with OA No. 849/2017 being the leading OA.

2. The instant Original Applications have been filed by the applicants against the order dated 27.09.2016 (Annexure No. A-1 to the OA) by which the respondent no. 1 has rejected the representations of the applicants.

3. The facts of the present case as mentioned in the OA are that the applicants joined as LDC in the department in the year 2000. In terms of recruitment rules, those LDCs who had completed two years of service were eligible to appear in the departmental examination for promotion to the post of UDC against merit quota after completion of five years of service. The applicants had joined the department in the year 2000 and completed two years in 2003 and were eligible for appearing in the merit quota examination to be held in between January 2003 to December, 2005. Normally, this examination is conducted twice a year. The respondents held the examination between 29.01.2003 to 31.01.2003 in which many eligible LDCs appeared. The result of this examination was published on 17/18.06.2003 (Annexure No. A-4 to the OA) indicating the name of one Shri Raj Kumar Day, LDC having qualified the same. Many employees, including the applicants did not appear in the aforesaid examination.

4. The next examination was scheduled to be held from 23rd to 25.07.2003 and the applicants gave their willingness to appear in this departmental examination for promotion from LDC to UDC on merit quota

basis. However, vide letter no. 17.07.2003 (Annexure No. A-6 to the OA), the said examination was cancelled and the respondents conveyed that all the LDCs having been re-designated as Tax-Assistant, no examination will be conducted for promotion from LDC to UDC. The applicants submitted their representation dated 17.03.2004 to the respondents for holding the examination.

5. The respondents vide letter dated 09.11.2005 conducted the examination on 14.12.2005 and the applicants appeared in this examination. The result of the examination for promotion from LDC to the grade of UDC held on 14.12.2005 was received in the office of ADG, NACEN, Faridabad on 07.04.2006 and the same was declared on 02.01.2007. The names of the applicants were not considered in the DPC for the year 2006-07 and one Shri Raj Kumar Day, who was junior to the applicants and had passed the examination in the year 2003 was considered by the DPC and promoted on 17.08.2006. The applicants claim that they were also entitled for promotion to the post of UDC w.e.f., 17.08.2006 and due to the delay of the respondents in declaring result, the applicants could not be empanelled by DPC and promoted to the post of UDC in the year 2006-07 or 2007-08. It is also stated that in the past two DPCs were held, one in 2005 and another in 2006 for promotion to the post of UDC.

6. Applicants further state that in view of change in recruitment rules and certain clarifications on the sanctioned strength of the department in the year 2011, a DPC was held on 11.03.2011 and the applicants were promoted to the post UDC on 17.04.2011. The applicants demand that although the DPC was conducted in the year 2011 but the seniority of the applicants may be fixed as per the DPC of 2006-07.

7. Further, it is stated that in the year 2015, new Recruitment Rules were introduced by the Department and according to these rules the UDC who has completed 10 years of regular service is eligible to get promotion in the cadre of DOS/Inspector. The applicants plead that in case their seniority is not fixed from the year 2006-07, the applicant will not be eligible for promotions and that due to the injustice done by the Department due to which so many years have taken for their promotion to the post of UDC, they have been denied their due promotions. The applicants furnished various representations to the department, however, no reply came on their representations from the department and the applicants filed OA No. 771 of 2016 – Sanjay Kumar Srivastava & Ors Vs Union of India & Ors - before this Tribunal on 01.06.2016. This Tribunal disposed of the said OA vide order dated 12.07.2016 (Annexure No. A-14 to the OA) with the following observations:-

"3. Counsel for the applicants states that though this letter was written on 22nd June 2015 but till date no consideration has been given by the respondents and in this regard the applicants herein have preferred respective representations. The counsel for the applicants states that he will be happy and satisfied at this stage if a direction is given by this Court to decide the representations of the applicants preferred in the light of the letter dated 27.01.2015 written by the Chief Controller, to the Commissioner Narcotics and also the pleas taken by the applicants. Accordingly, respondent No. 1 is directed to consider the representations dt. 05.01.2015, 26.12.2014, 26.12.2014, 26.12.2014, 26.12.2014, 26.12.2014, respectively preferred by the applicants within two months from the date of receipt of certified copy of this order."

8. The aforesaid orders of this Tribunal were conveyed to the respondents and in response, the respondents passed order dated 27.09.2016 (Annexure No. A-1 to the OA) disposing of the representation of the applicants and rejecting their claim. The respondents have also quoted judgments of the Apex Court in support of their decision.

9. However, not being satisfied with the decision of the respondents, the applicants have filed the present OA seeking the following reliefs:-

- "(i) Issue a writ order or direction in the nature of certiorari quashing the order dated 27.09.2016.
- (ii) Issue a writ order or direction in the nature of mandamus direction the respondents to hold the review DPC w.e.f., 17.08.2006 in which the similarly situated person namely Shri Raj Kumar Day (who is junior to some of the applicants) are considered by the DPC for promotion on the post of UDC. If review DPC is not possible, the seniority of applicants no.02, 03 and 05 may be fixed before Sri Raj Kumar Day who is junior to the above applicants with all financial benefits w.e.f., 2006-07 and also promote the applicants on the post of UDC w.e.f, 2007.
- (iii) To pass any order which this Hon'ble Tribunal deems fit under the circumstances of the case.
- (iv) To award cost in favour of the applicants."

10. In the short counter affidavit filed by the respondents, it is mentioned that the present OA seeks some reliefs as raised in the earlier OA No. 771 of 2016 which was disposed of by this Tribunal vide order dated 27.09.2016 directing the Narcotics Commissioner to pass a speaking order on the representations filed by the applicants. In compliance to the said direction, the Narcotics Commissioner vide order no. F. No. II(38)-3/Vig/Misc/2014-990 dated 27.09.2016 rejected the representations drawing strength from the two judgements of Hon'ble Supreme Court. Relevant extracts from the order dated 27.09.2016 issued by the Narcotics Commissioner are reproduced below:-

"5. From the reading of above quoted portion of Recruitment Rule it is clear that RR requires five year regular service in the grade of Upper Division Clerk and Stenographer (Gr. III) for promotion to the grade of Inspector and five years regular service in the grade and Stenographers (Ordinary gr.) with five years service as Steno (O.G.) and UDC for promotion to the grade of Dy. Office Supdt. L-II.

6. The applicants to the O.A want to include alleged period of delay in conduct of DPC for computation of regular service in the grade of UDC. There is no rule or authority cited in support of their contention. The wordings of Recruitment Rule are categorical and it prescribes regular service of 5 years which would logically start from the date applicants have been promoted to the grade of Upper Division Clerk on substantive basis.

7. I also observe that almost similar matter was decided by the Hon'ble Supreme Court in case reported as Union of India & Ors. Vs K.K. Vadera & Ors. 1989 Supp (2) SCC 625. The relevant observation of Hon'ble Supreme Court is reproduced below:-

5.....We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post. After a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post fall vacant. In the same way when additional posts are created, promotions to those posts can be granted only after the Assessment Board has met and made its recommendations for promotions being granted.

(ii) Further similar issue was decided by Hon'ble Supreme in case reported as Baij Nath Sharma Vs. Hon'ble Rajasthan High Court at Jodhpur & Anr. (1998) 7 SCC 44 wherein Hon'ble Supreme Court relying upon above quoted Supreme Court decision dismissed the writ petition filed by the employees. Similar view were expressed by the Hon'ble Supreme Court in case of State of Uttarakhand vs Dinesh Kumar Sharma (2007) 1 SCC 683.

11. The respondents in their short counter have once again relied on the judgements passed by the Hon'ble Supreme Court and stated that the promotion is always effective from date from which promotion is granted and not from any earlier date and therefore, this Tribunal may be pleased to dismiss the present original application as the applicants are not entitled to any relief.

12. In the rejoinder affidavit filed on behalf of the applicants, the applicants have drawn the attention of this Tribunal to the relief sought primarily in respect of their seniority to be placed above one Shri Raj Kumar Day, who is junior to the applicants. A few judgements of the Hon'ble Supreme Court have also been quoted in support of their arguments in the affidavit wherein certain relief have been granted by the Hon'ble Supreme Court in different situations.

13. Learned counsel for the applicants has argued that the relief that has been sought by the applicants is on specific grounds which are as under:-

(i) The applicant joined under the respondents on the post of LDC in the year of 2000, which is proved by the seniority list of LDC dated 16.01.2006. The names of applicants finds place at serial no. 38, 42, 44, 50, 53 and 54 in the seniority list dated 16.01.2006.

(ii) As per the existing Recruitment rule, the LDC (who completed 2 years of service) can appear in the departmental examination for promotion to the post of UDC against merit quota after completion of five years of service.

(iii) The applicants and the other batch mates had joined in the year 2000 and completed two years in 2000, hence the applicant are eligible for appearing in the merit quota examination from January, 2003 to December, 2005 (five year service from the date of joining), for which examination was conducted two terms in a year (i.e., January and July) by the department. As per rule the applicants have freedom to appear in any examination (but one chance) within January, 2003 to December, 2005 and the applicants have passed the examination in one attempt which get them eligible to promote from LDC to UDC after completing five year regular service.

(iv) As per the rule examination was conducted in the month of January 2003 and the similarly situated person of the applicants and junior of the some applicants namely Shri Raj Kumar Day, LDC who is at serial No. 46 of the seniority list) appeared in the examination. The result of the said examination was published on 17-18/06/2003 in which he has passed the examination and other have not appeared in the examination.

(v) On the aforesaid basis the next examination was scheduled to be conducted on 23 to 25-07.2003 and the applicants have given willingness to appear in the departmental examination for promotion of LDC to UDC on merit quota in the said exam. For which roll numbers was allotted to them for appearing in the examination.

(vi) The said examination was cancelled and it has been conveyed that all the LDCs are re-designated as Tax Assistant and no exam will be conducted or promotion from LDC to UDC. The post of LDC in CBN was not re-designated as Tax Assistant. The applicants have submitted first representation on 17-03-2004 for conducting fresh examination and the second representation was given by the applicants for the same on 10.08.2004.

(vii) In continuation of above order, after a gap of one year vide order dated 09-11-2005 department has conducted the examination on 14-12-2005 and the applicants are giving their willingness to appear in the examination. Department has allotted roll numbers to the applicants for appearing in the examination.

(viii) The result of the above departmental examination was received in CBN in April, 2006. However, the result was not declared that time. The applicants represented for declaring the examination results on 18-08-2006, so that the candidature of the applicants may be considered for the DPC 2006-07.

(ix) Due to fault of the respondents, the result of the applicants was not declared in the month of April 2006, while this result was communicated by NASCEH in April 2006 to the

department and the result of the said examination was declared on 02.01.2007 (Annexure No. A-9) while it should have been declared in the month of April/May, 2006 which was arbitrarily and illegally not declared by the department due to that reason the applicants were not considered in the DPC year 2006-07 which was conducted on 17.08.2006 in which a junior i.e., Shri Raj Kumar Day was considered for promotion to the post of UDC.

14. Learned counsel for the applicants has argued that in response to the order dated 12.07.2016 passed by this Tribunal in OA No. 771 of 2016, the respondents have passed the order dated 27.09.2016 wherein all the twelve points have been mentioned in the order of the respondents, but have not been properly considered and the claim of the applicants have been rejected on the basis of judgement of the Hon'ble Supreme Court wherein it was held that employees should not claim promotion from the date of vacancy but from the date the promotion is granted. It has been argued that the case of the applicants have different facts and that it is entirely due to the fault of the respondents that they were not granted promotion.

15. In support of his argument, learned counsel for the applicants has relied on the judgement of Hon'ble Supreme Court in the case of **Union of India & Anr vs Hemraj Singh Chauhan & Ors (2010) 4 SCC 290**.

Relevant portion of the judgement is quoted below:-

"49. Therefore, this Court accepts the arguments of the learned counsel for the appellants that Rule 4 (2) cannot be construed to have any retrospective operation and it will operate prospectively. But in the facts and circumstances of the case, the Court can, especially having regard to its power under Article 142 of the Constitution, give suitable directions in order to mitigate the hardship and denial of legitimate rights of the employees. The Court is satisfied that in this case for the delayed exercise of statutory function the Government has not offered any plausible explanation. The respondents cannot be made in any way responsible for the delay. In such a situation, as in the instant case, the directions given by the High Court cannot be said to be unreasonable. In any event this Court reiterates those very directions in exercise of its power under Article 142 of the Constitution of India subject to the only rider that in normal cases the provision of Rule 4 (2) of the said Cadre Rules cannot be construed retrospectively."

16. Learned counsel for the applicants has also cited the judgment passed by the Hon'ble Supreme Court in the case of **S. Ramanathan vs Union of India & Ors (2001) SCC (L&S) 340**. The relevant portion of the judgment is quoted below:-

"..... This indicates that the Court has been insisting performance of duty upon the authority under the statute quite meticulously and on the admitted position that the process of determining the cadre strength was initiated in the year 1989 and it was finalized in the year 1991, there is no rhyme and reason why the respondents will not be directed to reconsider the question the basis of the altered strength of the cadre, as if it was so altered in the year 1989 when the process of determination of cadre strength was initiated. We, accordingly, set aside the impugned orders of the Tribunal and directed the Union Government as well as the State Government to reconsider the question of promotion of the State Cadre Officers to the Indian Police Service on the basis of the re-determined strength of the cadre, treating the same to be in the year 1989 and if on such a re-consideration relief would be available to any of the appellants for promotion to the IPS on the basis of the quota available to them in the cadre, the same may be given to them. This exercise may be done within a period of six months from the date of receipt of this order. These appeals and the writ petition are disposed of accordingly."

17. Learned counsel for the respondents has argued that recruitment rules for the post of Inspector clearly mentions that five years of regular service is required in the grade of UDC and Stenographer for promotion to the grade of Inspector and that the applicants in present OA want to include the alleged period of delay in conduct of DPC for computation of regular service in the grade of UDC. He also argued that no ruling has been cited by the applicants in support of their contention and that wordings of Recruitment Rule are categorical and it prescribes regular service of 5 years which would logically start from the date of applicants have been promoted to the grade of Upper Division Clerk on substantive basis. He further argued that the applicants did not appear in the departmental examination for promotion held on 20.09.2003 in which one Shri Raj Kumar Day appeared and qualified and therefore, the applicants who did not appear in the examination are seeking parity with someone

who has qualified written examination before them and was promoted to UDC earlier than them. The applicants passed the written examination in terms of result declared on 02.01.2007 and therefore, no promotion with retrospective effect in the matter of selection based on written examination can be granted to them.

18. Learned counsel for the respondents also drew attention of this Tribunal to the cases decided by the Hon'ble Apex Court in similar matters i.e., **Union of India & Ors. Vs K.K. Vadera & Ors. 1989 Sup (2) SCC 625, Baij Nath Sharma Vs. Hon'ble Rajasthan High Court at Jodhpur & Anr.(1998) 7 SCC 44 and State of Uttaranchal vs Dinesh Kumar Sharma (2007) 1 SCC 683.**

19. In his concluding argument, learned counsel for the respondents has mentioned that the order dated 27.09.2016 passed by respondent no. 1 in terms of order passed by this Tribunal has decided the representation by a reasoned and speaking order quoting various relevant Apex Court judgments.

20. We have heard the learned counsels for both the parties and perused the records as well as the judgments quoted by both the parties and their applicability to this case.

21. From the facts of the case, it is obvious that the applicants did not appear in the promotion examination held in January, 2003 and one Shri Raj Kumar Day reportedly junior to them appeared and qualified. Thereafter, the written examination was not held by the department and in the subsequent promotion examination which was held in 2005, the applicants appeared and qualified and were granted promotion after their selection through the DPC in the year 2011. However, the applicants are seeking parity with a person who had appeared in the written examination

and qualified and was promoted through DPC held in 2006-2007 being eligible. The applicants are seeking parity with him requesting that their promotion should be counted from 2007 instead of actual date of promotion in 2011. The Hon'ble Apex Court's judgments quoted by the learned counsel for the applicants primarily refer to re-structuring exercise to be undertaken by the departments on regular basis and that these cadre re-structuring exercises should not impact the promotion prospects.

22. Learned counsel for the respondents have quoted the judgements of the Hon'ble Apex Court which primarily indicated that promotion cannot be effective from the date of creation of any promotional post but from the date from which promotion is granted.

23. In the OA, the applicants who had not appeared in the promotion examination are seeking parity vis-à-vis someone who has appeared and qualified in the promotion examination earlier to them. Had the applicants also appeared in the examination held in 2003 and qualified, they would have also got parity with him and would have been eligible for their promotion through DPC in the year 2006-07.

24. This Tribunal in the earlier OA filed by the applicants on same subject had very clearly passed the orders that representations preferred by the applicants in the light of letter dated 27.01.2015 written by the Chief Controller, to the Commissioner Narcotics and also pleas taken by the applicants be considered within two months. These representations are primarily the basis of the present OA and the same have been addressed in detail in the reasoned and speaking order by the respondent no. 1 vide order dated 27.09.2016 passed in compliance of the orders of this Tribunal.

25. We find that the orders passed by the respondent no. 1 dated 27.09.2016 is quite comprehensive and has considered all the points raised by the applicants. As far as the holding of review DPC is concerned as per the extant rules, the review DPC is held only if the DPC has not taken all material facts into consideration to rectify certain unintentional mistakes, for example, eligible persons were omitted for consideration and ineligible person were considered by mistake. However, in this case eligibility for going through the DPC is not in question as the DPC of 2006-07 considered eligible persons including one Shri Raj Kumar Day who had already qualified the written examination for promotion in 2003 and therefore, the request of the applicant for holding review DPC has no grounds.

26. In view of the above mentioned, we do not find any reason to grant any relief as sought by the applicants and accordingly, both the OAs are dismissed. No order as to costs.

27. Let a copy of this order be placed in OA No. 847 of 2017.

(MOHD JAMSHED)
MEMBER-A

(RAKESH SAGAR JAIN)
MEMBER-J

Arun..