

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINIPAL BENCH**

OA No.243/2012

New Delhi this the 27th day of November, 2015

Hon'ble Mr. A.K.Bhardwaj, Member (J)
Hon'ble Mr. V.N.Gaur, Member (A)

Virender Singh
S/o Mansukh,
R/o Vill. Dadhota, Teh. Palwal,
Dist. Palwal (Haryana)

... Applicant

(By Advocate Shri Rana Ranjit Singh)

VERSUS

1. Union of India
Through Secretary,
Ministry of Agriculture,
Department of Agriculture and Cooperation,
Krishi Bhawan, New Delhi.
2. Agricultural Marketing Advisor,
Directorate of Marketing & Inspection,
Ministry of Agriculture,
Department of Agricultural and Cooperation,
Head Office, NH-IV,
Faridabad (Haryana)
3. Joint Agricultural Marketing Advisor,
Through Ministry of Agriculture,
Department of Agricultural and Cooperation,
Govt. of India, Directorate of Marketing &
Inspection Branch Head Office,
New Secretariat Building, Nagpur,
Maharashtra.
4. Mr. M.T.Wasnik (SC) LDC
Ministry of Agriculture,
Department of Agricultural and Cooperation,
Govt. of India, Directorate of Marketing &
Inspection Branch Head Office,
New Secretariat Building, Nagpur,
Maharashtra.
5. Mr. K.P.Syria, LDC
Ministry of Agriculture,
Department of Agricultural and Cooperation,
Govt. of India, Directorate of Marketing &

Inspection Branch Head Office,
New Secretariat Building, Nagpur,
Maharashtra.

6. Mr.G.B.Bhagwatkar
Ministry of Agriculture,
Department of Agricultural and Cooperation,
Govt. of India, Directorate of Marketing &
Inspection Branch Head Office,
New Secretariat Building, Nagpur,
Maharashtra.

... Respondents

(By Advocate Shri Rajeev Kumar)

O R D E R (ORAL)

Hon'ble Mr. A.K.Bhardwaj, Member (J):

The applicant herein, was employed in respondent department as Grading Attendant (General Central Service Group 'D') in the pay scale of Rs.196-232, purely on ad-hoc basis w.e.f. 21.06.1980. He was given ad-hoc promotion as LDC w.e.f. 20.10.1981. His appointment as Grading Attendant was regularised w.e.f 21.10.1986. The post of Grading Attendant was re-designated as Messenger vide Office Order dated 06.11.1990 w.e.f. 22.07.1988. The applicant approached this Tribunal by way of OA No.100/1990 seeking issuance of direction to respondents to restore his regularisation as Grading Attendant and to allow him to work as LDC on ad-hoc basis.

The OA was disposed of with the following directions:-

“8. Keeping in view the principles laid down in the case of Jethanand & Others Vs. Union of India & Others (1989 (2) ATJ 364) it is directed that subject to the condition that no direct recruit regularly recommended by SSC is awaiting appointment, the respondents should allow the applicant to join back as LDC on expiry of leave on any vacancy of LDC. If at all available, against direct recruit quota and give the applicant a further chance to qualify in the SSC examination and be considered by SSC along with others, and by condonation of his age, if at the time of

initial appointment as LDC on ad hoc basis he was within age and of he fulfils other eligibility conditions. On completion of 5 years of regular service, the applicant is also eligible for consideration against promotion quota and he should be considered in turn against this quota.

With the above observations the case is disposed of, with no order as to costs.”

Thereafter the applicant again approached this Tribunal by way of OA No.2742/2009, which was disposed of in terms of order dated 21.07.2011, operative portion of which read thus:-

“6. In view of what has been stated above and without going into the merits of the matter, the OA is disposed of as withdrawn only on the limited prayer contained in relief 8 (C) of the OA and it will be permissible for the respondents to raise all the permissible objections in the OA to be filed by the Applicant. We also wish to clarify that the time during which this present OA was pending before this Tribunal shall constitute a sufficient cause for the purpose of condonation of delay to that extent.”

In the wake, the applicant filed present OA, praying therein:-

- “(A). Set aside / quash the impugned memorandum/ office orders dt. 1-12-2006, 15-12-2008, 2-4-2009 and 20-5-2009 by which respondents No. 4 to 6 have been promoted and
- (B) Direct the respondents to promote permanently the applicant to the post of LDC from the date he is entitled for promotion as per the seniority list dt. of educationally qualified group D employees as on 1-2-1996 and
- (C) Direct the respondents to regularize the applicant as LDC as per the recruitment/appointment to the post of LDC in CSCS as per Rules 12 of CSCS rule and promotion quota of 5% fixed from seniority-cum-fitness list.
- (D) Direct the respondents to pay the consequential benefits and other reliefs as per the service rules and regulation and pass such other and further order as this Hon’ble Tribunal may deem fit and proper in the circumstances of the present case.”

As can be seen from the order dated 21.07.2011, the only grievance which the applicant could espouse in the present OA should be regarding his promotion to the post of LDC against 5% seniority-cum-fitness quota. According to learned counsel for applicant three of his juniors mentioned in the draft seniority list circulated vide OM No.F.A.23032/1/91-Adm-II dated 7/12 March, 1991 could be promoted as LDC on regular basis against 5% quota w.e.f. 1.12.2006 and 15. 12.2008, thus he should also be given such promotion. He could point out that in the said list the position of the applicant was at serial no. 15, while respondents no 4, 5 and 6 was at serial no. 17, 18 and 19. The date of regular appointment of the applicant, as well as respondent nos. 4 to 6 is same i.e. 21.10.1988. According to him in the subsequent seniority list circulated vide OM No.A-23018/4/93-Estt.II dated 19.04.1995, the respondent no 4, 5 and 6 could be shown in the category of Peon while the applicant could be shown in the separate list of Messengers. Having referred to said document, learned counsel argued that once the juniors of the applicant had already been promoted as LDC against 5% promotional quota, the applicant should also be considered for such promotion.

2. In the counter reply filed on behalf of respondents, it is explained that the applicant is too junior for being considered for promotion against the post of LDC in 5% seniority-cum-fitness. Para D of the reply read thus:-

“That as per CSCS rules and Hon’ble Tribunal’s directions in the OA 100/90, his promotion and regularisation on the post of LDC is subject to his turn on the basis of his seniority in common eligibility list of educationally

qualified Group 'D' for promotion to the post of LDC or his passing the Ltd. Departmental Competitive Examination (LDCE) conducted by SSC for eligible group 'D' employees. Presently, he is too junior for consideration against 5% seniority cum fitness quota. Also he was supposed to appear in the LDCE, as per the Hon'ble Tribunal's directions, this opportunity he did not avail of. However, three financial upgradation i.e. ACP/MACP have been granted to the applicant."

They have further explained the circumstances in which the respondent nos. 5 to 6 could be promoted ahead of him. Para 1 (i) to 1 (V) of the reply on merit given by the respondents read thus:-

- "1. (i) Allegations levelled in this para are wrong hence, denied. It is submitted that as per common eligibility list issued by the M/o Rural Development ANNEXURE R-1, no person junior to the applicant was promoted against the 5% quota earmarked for promotion on the basis of seniority cum fitness for educationally qualified group 'D'. Shri M.T.Wasnik, Respondent No.4, was working as Daftry in the Pay Scale of Rs.2610-4000/- whereas the Applicant was working as Grading Attendant (re-designated as Messenger w.e.f. 22.7.1988) in the pay scale of Rs.2550-3200/-. Shri Wasnik was promoted from the post of Peon to the post of Daftry on 14.12.1994. It is submitted that the Daftries are en-block senior to other group 'D' posts. The cadre of Peon and that of the Grading Attendant were different and promotion avenues were also different. Therefore, the answering respondents have not violated any rules established for promotions of eligible Group 'D' to the post of LDC in CSCS cadre.
- ii) In reply to this para it is reiterated that the Daftries are en-block senior to other group 'D' posts. Respondent No.5 & 6 were Daftries, being senior to the applicant they were promoted to the post of LDC against the 5% quota of promotion. The representation of the applicant was duly forwarded to the DOPT, which is the nodal department for all service matters. The DOPT did not approve the proposal as the same was not found conforming to the stipulated rules. This fact was conveyed to the applicant vide OM dated 20.5.2009 ANNEXURE R-II.

- iii) The Office Memorandum dated 02.4.2009 issued by the respondents was in conformity to the established rules in the matter and is self explanatory. The said OM is annexed herewith as ANNEXURE-R-III.
- iv) The representation of the applicant was rightly rejected in conformity to the established rules in the matter. However, the applicant is still working as adhoc LDC in the Respondent Department.
- v) The allegations in this para are baseless and misleading. The promotion matter of the applicant was duly addressed by the Respondents on his turn in his cadre of Messenger. The D.P.C. meeting was held on 24.6.2009 and recommended the name of Shri Virender Singh, Messenger to the post of Daftry (ANNEXURE R-IV). The post of Daftry was vacant at Branch Head Office, Nagpur. The applicant was offered that post which he did not accept (ANNEXURE R-V) thus he was debarred from consideration of promotion for a period of one year as per existing rules (Annexure R-VI)."

3. We heard counsel for parties and perused the record. Might be in the seniority list issued on 07/12.03.1991, the applicant herein was shown senior to respondent no 17 to 19, but the said list had no existence in the eyes of law, for the simple reason, that it was only a draft list and had not yet been finalized. In the final seniority list circulated in terms of OM No.A21018/1/2012-Estt/438 dated 19.04.1995, the respondent no 4, 5 and 6 were shown in the separate list i.e. in the seniority list of Peon while the applicant was shown in the seniority list of Messengers. His date of regular appointment as messenger shown in the list is 22.07.1988. Thus, the cause of action regarding fixation of his seniority in Group 'D' category as well as assignment of proper category, if any, had arisen to applicant either on 22.07.1988, when his category was changed to Messenger or on

19.04.1995 when the seniority list in which the applicant and respondents No 4 to 6 were shown in the separate category. At this stage, the claim of the applicant that he is senior to respondents no. 4 to 6 is hopelessly time barred. As has been ruled by Hon'ble Supreme Court in **B. S. Bajwa and Another Vs. State of Punjab and Others** (JT 1998(1) SC 57), the issue of seniority and promotion cannot be reopened after along delay. Relevant excerpt of the judgment read thus:-

“7. Having heard both sides we are satisfied that the writ petition was wrongly entertained and allowed by the single Judge and, therefore, the Judgments of the single Judge and the Division Bench have both to be set aside. The undisputed facts appearing from the record are alone sufficient to dismiss the writ petition on the ground of laches because the grievance made by B. S. Bajwa and B. D. Kapoor only in 1984 which was long after they had entered the department in 1971-72. During this entire period of more than a decade they were all along treated as junior to the other aforesaid persons and the rights inter se had crystallised which ought not to have been reopened after the lapse of such a long period. At every stage the others were promoted before B. S. Bajwa and B. D. Kapoor and this position was known to B. S. Bajwa and B. D. Kapoor right from the beginning as found by the Division Bench itself. It is well settled that in service matters the question of seniority should not be re-opened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This alone was sufficient to decline interference under Article 226 and to reject the writ petition.

At this stage, the applicant can seek promotion to the post of LDC against 5% quota only with reference to his seniority position in the final seniority list of Multi Tasking Staff (MTS) wherein he has been placed at serial no. 9. In the reply filed by the respondents, it has been explained that his turn for such promotion has not yet reached. In

the circumstances, the relief sought in the OA cannot be granted and the same is accordingly dismissed. We are sanguine that the respondents would consider the applicant for his promotion to the post of LDC if he is eligible for such promotion in accordance with the relevant rules and instructions in his turn in due course. With these observations, the OA is dismissed.

(V.N.Gaur)
Member (A)

(A.K.Bhardwaj)
Member (J)

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