

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

ORGINAL APPLICATION NO. 11 OF 2013

Jabalpur, this Thursday, the 17th day of May, 2018

**HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER**

Arvind Kumar Gupta, S/o late Shri S.C.Gupta,
Date of birth 1.6.1965, Head Clerk/Assistant
Doordarshan Kendra, Bhopal, R/o 10A First Floor,
Kamlanagar, Bhopal (MP)-462003

- APPLICANT

(By Advocate – Shri Vijay Tripathi)

Versus

1. Union of India through its Secretary Ministry of Information & Broadcasting, Shashtri Bhawan, New Delhi-110001

2. Chief Executive Officer, Prasad Bharti, PTI Building, Parliament Street, New Delhi-110001

3. The Director General, All India Radio. Akashwani Bhawan, Parliament Street, New Delhi-110 001.

4. The Director, Staff Training Institute (P) All India Radio, Radio Colony, Kingsway Camp, New Delhi-110009.

5. The Station Director, All India Radio, Shyamla Hills, Bhopal-462013.

6. S.Kujur, Head Clerk/Assistant, O/o Ex Engineer, CCW All India Radio, Doordarshan Complex, Bhopal-462013

7. Smt.Remu P Arjunan, Head Clerk/Assistant, O/o Station Director, All India Radio, Ambikapur (MP)-497001- **RESPONDENTS**

(By Advocate – Shri D.S.Baghel)

(Date of reserving the order:06.12.2017)

ORDER**By Navin Tandon, AM-**

The applicant is aggrieved by rejection of his claim for grant of seniority on the post of Assistant/Head Clerk. He claims that seniority should be granted to him on occurrence of vacancy and not from the date of promotion. Hence, this Original Application has been filed.

2. The brief facts of the case are that the applicant was working as Upper Division Clerk (for short 'UDC') in Doordarshan Kendra Bhopal. He was eligible for promotion as Head Clerk/Assistant for the years 2000-01, 2001-02, 2002-03 and 2003-04 against 20% quota meant for Limited Departmental Competitive Examination (for brevity 'LDCE'). The LDCE was held for the above mentioned recruitment years on 19.03.2006, 20.03.2006, 21.03.2006 and 22.03.2006 respectively and vide order dated 28.6.2011 (Annexure A-5) the applicant was notionally promoted as Head Clerk/ Assistant with effect from 14.11.2006. The applicant claims that a vacancy for the post of Head Clerk/Assistant arose in the year 2000/2001, but the respondents failed to hold any DPC as per model calendar suggested vide Office Memorandum dated 08.09.1988 (Annexure A-10) of Department of Personnel and Training (for brevity 'DOPT'). He further claims that vacancy under 20% quota meant for LDCE fell vacant on 18.05.2000, whereas vacancy under the

departmental promotion quota, on the basis of seniority-cum-fitness, fell vacant on 01.07.2011. However, the vacancy which arose subsequently in the year 2001 was filled up first and the vacancy which arose on 18.05.2000 was filled up later on. As such the applicant became junior and has been deprived of his legitimate right for further promotional channel to the post of Administrative Officer for which at least seven years of services as Assistant is required.

3. The applicant has claimed following reliefs in this Original Application:

“8(i) Summon the entire relevant record from the respondents for its kind perusal.

(ii) Set aside the order dt.16.11.2012 Annexure A/1 and the seniority list dated 1.3.2011 showing the position as on 01.01.2001 Annexure A/2.

(iii) Direct the respondents to recast the seniority list dated 1.3.2011, showing the position as on 1.1.2011 and place the applicant above his next junior Shri Ashok Kumar Rawat with all consequential benefit including arrears of pay & allowances as the delay is solely attributed to the respondent No.5.

(iv) Direct the respondents to recast the eligibility list dated 15.9.2011 Annexure A/11 for promotion to the post of Administrative Officer prepared by respondent No.3.

(vii)(sic - v) Award cost of litigation to the Applicant”.

4. The learned counsel for the applicant has vehemently argued that the respondent No.5 was bias and deliberately held DPCs for departmental promotion quota of seniority-cum-fitness, ignoring the fact

that vacancy of departmental exam quota are yet to be filled which has been occurred earlier. He further submits that as per instructions and guidelines circulated by DOPT vide their OM dated 08.09.1998 read with OM dated 14.12.2000 the vacancy occurred in a year must be filled within prescribed time limit and the select list should be kept ready eight months before the vacancy has occurred.

4.1. The learned counsel for the applicant further contended that vide order dated 28.06.2011 (Annexure A-5) the applicant was promoted applicant to the post of Assistant/Head Clerk against the vacancy under LDCE itself for the recruitment year 2000-01. However, he has not been given retrospective seniority despite the fact that the exam for the vacancy of year 2000-01 was held in the year 2006 i.e. much after a period of six years and the applicant was promoted in the year 2011.

4.2. The learned counsel for the applicant has placed reliance on following decisions-

(i) **Union of India and others Vs. N.R.Banerjee and others,** (1997) 9 SCC 287.

(ii) **G.S.Bedi Vs. Union of India and others,** OA No.1376 of 2009 decided on 12.03.2011 by CAT/Principal Bench, New Delhi

5. On the other hand learned counsel for the respondents submitted that the effect of model calendar for DPC vide DOPT's OM dated

08.09.1998 is applicable only for DPCs normally held for vacancies arise on year to year basis and are filled purely by considering the Annual Confidential Reports of the employees. Whereas in the present case the promotion of the applicant was through the channel of LDCE for which the model calendar for DPC is not applicable and, therefore, reliance placed by the learned counsel for the applicants on the aforementioned decisions are not applicable in the present case. He further submits that the DOPT's instructions dated 07.02.1986 and 03.07.1986 on seniority clearly indicates that the inter-se seniority between the promotees and direct recruit in a particular year shall be determined only to such direct recruits as are available for rotation that is as have joined the service or post. The principle and practice of assigning seniority to the direct recruits with reference to the vacancy year was done away with by these OMs and thus the seniority to direct recruit is to be assigned with reference to the year of joining and not with reference to the year of vacancy. The respondents have further stated that it is absolutely wrong to surmise definite conclusion to the effect that had the LDCE been held in the year 2000-2001, the applicant would have come out meritorious for promotion to the post of Assistant. In fact had the LDCE held in the year 2000-2001, those Assistants who were promoted from the year 2000 to 2006 including Shri Ashok Kumar Rawat would have been able to appear in the LDCE along with the applicant. Since the LDCE was conducted in

the year 2006, those Assistants who were promoted between 2000 to 2006 were not given the opportunity to appear in the LDCE including Shri Ashok Kumar Rawat. Only on the basis of assumption or stretch of imagination a claim cannot be made out. The process of conducting LDCE is time consuming and these examinations are held as per the Scheme/guidelines framed by the Administrative Ministry/Department.

6. Heard the learned counsel of both sides and carefully perused the pleadings of the respective parties and the documents placed on record.

7. The learned counsel for the applicant contends that the respondents should have convened a review DPC in the year 2011 and promoted the applicant to the post of Assistant against the vacancy under LDCE itself for the recruitment year 2000-01. However, he has not been given retrospective seniority. We observe that the LDCE for the vacancy of year 2000-01 was held in the year 2006 i.e. much after a period of six years and the applicant was promoted in the year 2011 and granted notional seniority as a special case with effect from the date of declaration of the result of the examination held during March 2006 and his pay was to be fixed notionally vide order dated 10.02.2010 (Annexure R-1). Therefore, his contention that the applicant should be granted seniority from the date of occurrence of vacancy cannot be accepted, as

the respondents have correctly stated that the DOPT's instructions dated 07.02.1986 and 03.07.1986 on seniority clearly indicates that the principle and practice of assigning seniority to direct recruits with reference to the vacancy year was done away and thus the seniority to direct recruit is to be assigned with reference to the year of joining and not with reference to the year of vacancy.

8. As regards the contention of the learned counsel for the applicant that since the respondents have failed to fill up vacancies earmarked under 20% LDCE quota on their occurrence, the applicant is at least entitled to notional seniority from the date of occurrence of vacancy, we may observe that the respondents have rightly stated that the applicant was promoted through the 20% quota meant for LDCE, for conducting of which there is no specific calendar or time frame. The DOPT's instructions dated 07.02.1986 and 03.07.1986 on seniority clearly indicate that the inter-se seniority between the promotees and direct recruit in a particular year shall be determined only to such direct recruits as are available for rotation that is as have joined the service or post. The principle and practice of assigning seniority to the direct recruits with reference to the vacancy year was done away with by these OMs and thus the seniority to direct recruit is to be assigned with reference to the year of joining and not with reference to the year of vacancy. In this view of

the matter, we are of the considered view that the applicant is not entitled for seniority from the date of occurrence of vacancy under LDCE quota.

9. We may observe that the effect of model calendar for DPC vide DOPT's OM dated 08.09.1998 is applicable only for DPCs normally held for vacancies arises on year to year basis and are filled purely by considering the annual confidential reports of the employees. Whereas in the present case the promotion of the applicant was through the channel of LDCE for which the model calendar for DPC is not applicable. Therefore, the reliance placed by the learned counsel for the applicant on the decisions of **N.R.Banerjee (supra)** and **G.S.Bedi (supra)** is not applicable in the present case as we find that in both the cases the promotion of the applicants solely based on their performance in the annual confidential reports and not on passing of any LDCE, and as such these judgments cannot strengthen/ buttress the claim of the applicant for antedating his promotion. The promotion of the applicant to the post of Head Clerk was made by his passing the LDCE and not by considering his ACRs.

10. The Hon'ble Supreme Court dealing with a similar issue held in the case of **Bharat Sanchar Nigam Limited and others Vs. S.K.Dubey & others**, Civil Appeal No.7830 of 2014 decided on 12.8.2014 held thus:

“7. Moreover, it is well settled principle in service jurisprudence that a person appointed on promotion shall not get seniority in earlier year but shall get a

seniority of the year in which his/her appointment is made. In the absence of any express provision in the rules, no promotion or seniority can be granted from a retrospective date when the employee has not been born in the cadre. It is common ground that 1996 Rules or 2002 Rules have nothing to do with inter se seniority between promotees of 75% quota based on seniority-cum-fitness and 25% promotion on the basis of Departmental Competitive Examination".

11. In the instant case we find that for the vacancies of the years 2000-01, 2001-02, 2002-03 and 2003-04 against 20% quota meant for LDCE, the LDCE was held in the year 2006 and vide order dated 28.6.2011 (Annexure A-5) the applicant was notionally promoted as Head Clerk/ Assistant with effect from 14.11.2006, as a special case, in terms of the order dated 10.02.2010 (Annexure R-1), which stipulated that "*the Head Clerk/ Accountants/ Assistants working under the zonal heads of Hyderabad/ Bhopal/ Jaipur, who have qualified the departmental examination held during March 2006 for promotion of UDC/SK to the post of Head Clerk/Assistant may be granted notional promotion w.e.f. the date of declaration of result in the zone of Hyderabad/Bhopal/ Jaipur*". Thus, in view of the above decision of the Hon'ble Supreme Court in the matters of **S.K.Dubey** (supra) we are of the considered opinion that since the applicant has already been given notional promotion from the date of declaration of the result of LDCE i.e. w.e.f.

14.11.2006, he is not further entitled for promotion from an earlier date i.e. from the date of occurrence of vacancy, as sought for by him.

12. Accordingly, we do not find any illegality or irregularity in passing the impugned speaking order dated 16.11.2012, by which the respondents have rejected the prayer of the applicant for promotion to the post of Assistant/Head Clerk from the date of occurrence of vacancy.

13. Considering all pros and cons of the matter, we are of the considered view that the applicant is not entitled for the reliefs sought for by him in this Original Application.

14. In the result, the Original Application is dismissed, however, without any order as to costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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