

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A No. 3323/2015

Reserved on : 27.08.2019

Pronounced on : 30.09.2019

**Hon'ble Mrs. Jasmine Ahmed, Member (J)
Hon'ble Ms. Aradhana Johri, Member (A)**

1. Virender Punia, Assistant Accounts Officer,
Aged about 41 years,
S/o. Sh. R. K. Punia
R/o. H. No. AA-84,
Shalimar Bagh, Delhi-110 088.
2. Sanjeev Kumar, Assistant Accounts Officer,
Aged about 38 years,
S/o. Sh. Chiman Lal,
R/o. B-4/12, Sec-15, Rohini, Delhi.Applicants

(By Advocate : Mr. M. K. Bhardwaj)

Versus

North Delhi Municipal Corporation & Ors.

1. The Commissioner,
North Delhi Municipal Corporation,
Civic Centre, New Delhi.
2. The Addl. Commissioner (FA&P),
North Delhi Municipal Corporation,
Civic Centre, New Delhi.Respondents

(By Advocate : Mr. Amit Sinha)

O R D E R

Ms. Aradhana Johri, Member (A) :

The two applicants are Assistant Accounts Officers with the respondents organisation-NDMC. They were selected as LDC in erstwhile Municipal Corporation of

Delhi on the basis of the competitive examination held on 11.08.2002 by Delhi Subordinate Service Selection Board. There was a delay in their appointment due to some litigation but they were finally appointed in 2005. The applicant no. 1 along with some others filed O.A No. 3719/2009 seeking quashing of the final seniority list of LDCs dated 01.02.2008 and claiming seniority from August, 2003 with all consequential benefits including pay benefits. This Tribunal allowed the O.A and upheld the entitlement of the applicant to notional seniority in the LDC cadre with effect from the date their batchmates came to be appointed. The in-between period was to be counted for the purpose of increment and at the time of fixation of salary but they would not be entitled to backwages. Accordingly, they were given appropriate seniority in the LDC seniority list. They were desirous of promotion to the post of Assistant Accounts Officer for which a preliminary examination, Part-I and Part-II exams of the Section Officers Grade Examination (SOG) were to be cleared. As per rules, the minimum period of three years service in LDC Grade was required before appearing for the said SoG examination. The applicants cleared the preliminary examination in 2009, the part-I exam in 2012 and part-II exam in 2013. Thereafter, promotions were granted to them in the Accounts cadre and the applicants were

appointed as Assistant Accounts Grade officer in January, 2014.

2. It is the contention of the applicants that they were not allowed to appear for the SoG examination on 2006-07 and 2007-08 along with their peers of the LDC cadre on the ground that they had not completed the qualifying 3 years service. They have claimed that since they have been given notional seniority along with their batchmates in the LDC cadre with effect from 2003 and their seniority in the seniority list of LDC has also been fixed, they should be given the consequential benefits accruing from correction of their seniority in the Grade of LDC from 2003. Accordingly the seniority of the applicants in the grade of Junior Accounts Officer and Assistant Accounts Officer should be corrected by placing them at par with their batchmates in the LDC cadre. They have further stated that they should also be considered for further promotion to the post of Accounts Officer.

3. The respondents have strongly denied the claims of the applicants. They have pointed out that this O.A is barred by limitation, delay and laches since the issue pertains to the applicants not being allowed to appear in the examination of 2006-07 and 2007-08 while this O.A has been filed only in 2015. They have further contended

that this is barred by principles of res judicata / constructive res judicata.

4. The respondents have stated that the applicants filed O.A No. 3719/2009 in which they sought seniority from August, 2003 in the LDC grade and all consequential benefits. The order of the Tribunal in the said case was for grant of notional seniority in the LDC cadre with effect from the date their batchmates came to be appointed. The applicants could have raised a separate plea regarding SoG exam since the so called cause of action had already arisen in 2006 when the said O.A was filed. Even if the so called seniority list for accounts officer has been issued subsequently vis-a-vis the applicants since they cleared SoG exam only in 2013, as per their own contention, the real cause of action arose in 2006 itself. Therefore, as per the respondents there is a delay in filing the present O.A and the same is accordingly barred by limitation.

5. The respondents have further stated that as per service rules, the criteria of 3 years service was not fulfilled by the applicants at the time of SoG exam of 2006. Therefore, the applicants were not allowed to appear for it. The Accounts cadre is a separate cadre from the LDC cadre for which the seniority list of AAO already exists. Any incumbent is allowed to claim the benefit of notional

seniority as granted to them in LDC cadre after switching to accounts cadre provided that such SoG exam had already been cleared by them. In the instant case due to non rendering of 3 years regular service as LDC up to 2006, the applicants were not eligible to appear in SoG preliminary examination 2006. Therefore, as per their contention, any benefit of antedated seniority of the LDC cadre after switching to accounts cadre becomes applicable only when the SoG examination has been cleared. They have also clarified that they have fully complied with this Tribunal's order in O.A No. 3719/2009 by granting notional seniority as LDC and re-fixing the seniority in the seniority list. They have further stated that the LDC seniority will not entitle the applicants to any benefit till they clear the SoG exam. Further they have pointed out that LDCs appearing for SoG also is optional and not compulsory since it is open for LDCs who do not appear for this exam to pursue career advancement in other than accounts cadre. Further there is no certainty that if the applicants had appeared in the exam of 2006 they would have passed.

6. Heard Mr. M. K. Bhardwaj, learned counsel for applicants and Mr. Amit Sinha, learned counsel for respondents.

7. First of all, on the issue of limitation raised by the

respondents, it appears that the cause of action arose in 2006 when the applicants were not allowed to appear in the SoG exam since they had not completed requisite 3 years service. This O.A has been filed in 2015 without any suitable explanation as to why it was not filed earlier or without any prayer for condonation of delay. Therefore, it is affected by limitation, delay and laches.

8. Next we come to the issue of *res judicata/constructive res judicata*. The applicants did claim antedated seniority with effect from 2003 and all consequential benefits including pay benefits in O.A No. 3719/2009 wherein the following order was passed :-

“8. We would, accordingly, allow the O.A and uphold the entitlement of applicants to seniority with effect from the date their batch mates came to be appointed. Though the applicants would not be entitled to back wages, the period aforementioned shall be counted for purposes of increments and this aspect shall also be retained in view at the time of fixture of the salary. In the circumstances, of the case, appointment of applicants aforementioned shall be notional in character.”

9. After due consideration, the effect of allowing notional seniority from 2003 was that this seniority would be counted for the purpose of increment and at the time of fixture of the salary. Therefore, this order does not grant any other relief claimed which arose from antedated seniority in the LDC cadre including the relief of antedated seniority in the accounts cadre, which would now definitely be impacted under the principles of *res judicata / constructive*

res judicata.

10. However, in the interest of justice, the merits of the case have also been considered.

11. It is admitted fact that as per the relevant service rules, three years service was essential for appearing in the SoG exam which the applicants did not possess at the relevant point of time and therefore, appeared in the exam as soon as they completed three years of service in 2009. At that point of time, the applicants did not come to the Court for redressal of this particular issue. It has also to be borne in mind that opportunities for promotion from LDC to other than the accounts cadre already existed which the applicants had a choice to avail of. In case they wanted to switch to the accounts cadre an essential precondition of clearing SoG exam was there. Keeping these facts in mind any seniority in the accounts cadre can be given to the applicants only after they cleared the said exam which was a necessary qualifying condition.

12. In view of the above discussion, we are of the view that this O.A has no merit and the same is accordingly dismissed. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Jasmine Ahmed)
Member (J)

/Mbt/