

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

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O.A. NO. 1601/2003

NEW DELHI THIS 12th DAY OF MARCH 2004

HON'BLE SHRI SHANKER RAJU, MEMBER(J)  
HON'BLE SHRI S.A. SINGH, MEMBER (A)

Abhay Raj Sharma,  
S/o Late Shri Richhpal,  
R/o Vill. & PO: Kenganhari,  
New Delhi - 110 071

.....Applicant

(By Shri Sama Singh, Advocate)

VERSUS

1. Union of India,  
Through the Secretary,  
Ministry of Defence, South Block,  
New Delhi - 1100011
2. The Jt. Secretary (Training) &  
Chief Administrative Officer,  
Ministry of Defence, E Block,  
New Delhi - 110011
3. The Dy. Chief Administrative Officer (Personnel)  
Min. of Defence, E Block,  
New Delhi 110011.

.....Respondents

(By Shri Y.S. Chauhan proxy for Sh. M M Sudan  
Advocate)

O R D E R (ORAL)

BY HON'BLE SHRI S.A. SINGH, MEMBER (A)

The applicant was appointed as ad hoc LDC on 22.9.79. He successfully passed the Clerks Grade Examination for Group 'D' staff on 31.7.1980, and thus his appointment became appointment against a temporary post of LDC w.e.f. 31.7.1980, with the following term and conditions:

- i) The appointment is temporary and will not confer any title to permanent employment.

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ii) The appointment will be terminated at any time by a month's notice given by either side, viz. the appointee or the appointing authority, without assigning any reason. The appointing authority, however reserves the right of terminating the services of the appointee forthwith or before the expiry of the stipulated period of notice by making payment to him of a sum equivalent to the pay for the period or the unexpired portion thereof.

iii) The appointee will be on probation for two years, which period may be extended or curtailed at the discretion of the competent authority. During the period of probation, he may be required to undergo such training and to pass such tests as may be prescribed from time to time.

iv) The appointment shall be subject to the condition that he shall pass a typewriting test held by the Staff Selection Commission (Department of Personnel & AR), at a minimum speed of 30 words in English or 25 words in Hindi per minute within a period of one year from the date of appointment, failing which no increment shall be admissible to him until he passes the test. In case he does not pass the said typewriting test within the probation period of two years, he shall be liable to be reverted to his substantive appointment or temporary post held by him before his appointment to Lower Division grade."

2. He was confirmed to the post of LDC on 31.12.1987 and promoted as UDC on 6.2.90. The grievance of the applicant is that he was eligible for promotion as UDC in the year 1984 whereas he had been given this promotion only in 1990. Further had his ad hoc service been counted he would be eligible for promotion in the year 1984 and he would have been eligible for promotion as Assistant in 1999/2000. He has been deemed this promotion because he has been promoted in 1990 only. He is also aggrieved that though he qualified in the Clerks Grade Examination Grade 'D' Staff test in 1979, candidates who had passed the examinations in latter years have been held senior to the applicant and promoted, which is highly

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discriminatory . The applicant adds that he has been denied promotion in his turn because he did not pass the typing test stipulated in his appointment letter. However , the appointment letter also stipulates that if he fails to pass the typing test he shall be liable to be reverted back . As he was not reverted it could be deemed that the condition of typing test had been waived. Therefore he should have been confirmed after 2 years period of probation. He also claims that the conditions of appointment only stipulate that failure to pass the typing test will debar him getting increments. It does not debar him from further promotion. He has been denied increments hence by denial of promotion thus he has been penalised twice.

3. He relies upon the judgement of the Tribunal in the case of Rishipal & Others Vs. UOI & Others (OA No. 2119/1999) decided on 25.5.2001 for counting of his ad hoc service for seniority purposes. Based on these averments he has prayed for quashing of the impugned order and asked for the relief of fixing his seniority on the basis of his appointment as LDC on ad hoc basis with all consequential benefits and promotion as UDC prior to his juniors, and as Asstt. thereafter in accordance with his seniority.

4. The respondents have contested the claim of the applicant and pleaded that the seniority of the applicant was linked with his confirmation as per existing instructions at the time of his appointment. One of the conditions of his appointment was passing of the Typewriting Test within stipulated period. As he failed to pass this test the seniority was relegated and the LDCs who joined after him were promoted as UDC as they were

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confirmed in LDC because they had passed the typing tests. The applicant was confirmed on 31.12.87 when he attained the age of 45 years because after 45 years passing the typewriting test as exempted. Until his reaching the age of exemption from the typing test, his status remained that of a probationer. He could be confirmed in the grade of LDC only on 31.12.87 alongwith other LDCs. Based on this seniority he was promoted as UDC on 6.2.90, For promotion to the post of Assistant only his seniority from the date of his promotion as UDC, has to be taken into consideration.

5. As far as the question of counting of ad hoc seniority is concerned he has no right for counting of ad hoc seniority as per exant rules. The ratio of judgement on Rishipal & Ors Vs UOI & Ors. (supra) is not applicable to the applicant. He was also not one of those who had challenged the seniority before the Tribunal in this case and as such the judgement is not applicable on him.

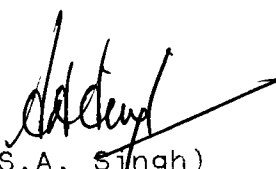
6. After having heard the parties and going through the documents brought on record, we find that the short question before the Tribunal is can the applicant claim seniority for promotion to UDC if he has not fulfilled the condition of passing the typewriting test stipulated in the appointment letter.


7. The relevant portion of the appointment letter has already been reproduced in para 1 above and that it is seen that the applicant was required to pass the typewriting test within the probation period of two years failing which he was liable to be reverted. Further it is also seen from the terms and conditions of appointment

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letter that the period of probation could be extended at the discretion of the competent authority. The respondents have given benefit of this condition by extending his probation period despite his being unable to pass the typewriting test. They would have been well within their right to terminate the services for his failure to pass the requisite typewriting test but they have not done so but have given him the benefit of continuing in service until he attained the age for becoming eligible for exemption from the typewriting test. They have then confirmed him and given him promotion as UDC. We find no merit in the argument of the applicant that by not terminating his appointment after two years on not passing the typewriting test, it should be deemed that the condition of the test had been waived. The respondents had two alternative, either to revert/terminate applicant's appointment or continue him on probation. They have chose the latter., The applicant cannot now stretch this to cover his inability to pass type typewriting test as waival of the test. We find that the respondents have acted in fair and equitable manner.

8. In view of above the OA is without merit and is accordingly dismissed. No costs.

  
(S.A. Singh)  
Member (A)

  
(Shanker Raju)  
Member (J)

Patwal/