



**Central Administrative Tribunal
Principal Bench**

OA No.3365/2019
MA No.3683/2019

Order Reserved on: 22.11.2019

Pronounced on: 05.12.2019

Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)
Hon'ble Mr. Pradeep Kumar, Member (A)

Brij Pal Singh Gosain,
S/o Mor Singh Gusain, LDC,
Age 59 years, Group-C,
R/o G-292, Gazipur Village,
Delhi-110096.

-Applicant

(By Advocate Shri Gauraan Bhardwaj)

1. Union of India, through Secretary,
Department of Sports,
Ministry of Youth Affairs and Sports,
Shastri Bhavan,
New Delhi.
2. The Director General,
Sports Authority of India,
J.N. Stadium Complex,
East Gate, Lodhi Road,
New Delhi.
3. The Secretary,
Sports Authority of India,
J.N. Stadium Complex,
East Gate, Lodhi Road,
New Delhi.
4. The Director (Personal & Coaching),
Sports Authority of India,
J.N. Stadium Complex,



East Gate, Lodhi Road,
New Delhi.

(By Advocate Ms. Geetanjali Sharma)

ORDER

Hon'ble Mr. Pradeep Kumar, Member (A):

1. Applicant joined as daily wager class-IV employee in Jawahar Lal Nehru Stadium at the time of IX Asian Games. Later on Sports Authority of India (SAI) was set up on 01.04.1984 as a Society and which was the successor to IX Asian Games. Applicant was regularized as a Class IV employee, House Boy in SAI. Next promotion was to the post of LDC.

2. The Recruitment Rules (RRs) prescribe the following method for filling up the post of LDC:

"Recruitment to the post of LDC

Direct Recruitment – 85%

Promotion – 5% by Seniority of Class IV Employees

and;

Departmental qualifying Examination – 10%.

Further subject to possessing the educational qualification at the minimum level of Matriculation including passing of typing test at the prescribed level."

3. Applicant pleads that typing test for English was conducted on 04.06.1986 and for Hindi Typing test, it was conducted on 11.07.1986 and total 17 candidates, including applicant participated. Eight candidates,



including the applicant, were declared successful. The list as approved by Secretary, SAI is as follows:

<u>S. No.</u>	<u>Name</u>	<u>Typing Speed</u>	<u>Medium</u>
(a)	Smt. Veena Sharma	48 w.p.m.	English
(b)	Sh. Rajesh Singh	42 w.p.m.	English
(c)	Sh. Satya Narain	40 w.p.m.	English
(d)	Sh. M.K. Sharma	48 w.p.m.	English
		28 w.p.m.	Hindi
(e)	Sh. Brij Pal Singh Gusain	40 w.p.m.	English
(f)	Sh. Vijay Prakash Juyal	34 w.p.m.	English
(g)	Sh. Bani Prasad	31 w.p.m.	English
(h)	Sh. Ram Murthy	29 w.p.m.	Hindi

Candidates at (a) to (d) were promoted as LDC on 12.08.1986. It is pleaded that even though vacancies existed for next full year, i.e., the currency of this panel, so as to promote the remaining 04 also but the remaining four were not promoted. Subsequently the candidate at serial No. (h) Shri Ram Murthy was promoted as LDC w.e.f. 23.05.1990 and he was allowed notional seniority w.e.f 01.08.1986. The applicant was promoted as LDC w.e.f. 24.05.1994.

4. Thereafter, belatedly applicant preferred a representation dated 17.09.2018 pleading that he needs to be given notional seniority at par with Shri



Ram Murthy who was junior to him in the select list when typing test was held and he needs to be granted notional seniority w.e.f. 01.08.1986.

4.1 Applicant has also submitted the noting sheets for the period 30.10.2018 to 22.08.2019, where his representation dated 17.09.2018 was examined. The note dated 16.05.2019, therein made by Consultant (Pers.) reads as under:

“Prima facie there are no grounds to accept the request of Shri Birj Lal Gusain, for retrospective promotion as LDC from 1.8.1986 in place of 24.5.1994 for the reasons already explained in para 4 of my earlier note at page 5/N. As regards appointment of Shri Ram Murthy as LDC, though he was down below in the panel (para 3 of note at page 2/N) ignoring claim of Shri Gusain, it is reiterated that the relevant facts and details provided in his representation cannot be verified at this belated stage after 33 years.

2. It is noted that the initial promotions as LDCs from amongst Group D employees based on the panel prepared after typing test were contrary to the eligibility requirement of five years regular service in Group D. The services of Shri Gusain were regularized in Group D in SAI w.e.f. 1.9.1984 and in the normal course he could have been considered for promotion as LDC only on completion of 5 years i.e. September, 1989 subject to availability of promotion quota vacancies. In fact none of those placed in panel have 5 years service in Group D because their dates of appointments were mostly during 1984. There was no specific approval of DG, SAI/Secretary, SAI to dispense with the requirement of five years service as Group D required for promotion as LDC based on typing test. All the relevant details are available in File No.10(1)86-Admn.

3. It is noted that Shri Ram Murthy was promoted as Clerk (Hindi Typist) on adhoc basis vide order dated 23.5.1990 (page 9/cor.). However it is surprising to note that he was given notional seniority in LDC cadre w.e.f. 1.8.1986 i.e. the date the persons in panel of typing test were promoted,



vide office order no.9/92 dated 8.1.1992 (page 8/cor.). This is something unusual and needs to be investigated from the relevant records especially the reasons of his appointment as well as the grounds on which notional seniority was allowed from retrospective date.”

4.2 Thereafter the notings by Assistant Director (Pers.) and Director (Pers.) made on 21.08.2019 and 22.08.2019 respectively, read as under:

“Reference preceding notes which relates the retrospective promotion of Shri Brij Pal Gussain as LDC from 1.8.1986. Since it is a long pending case of about 33 years, we cannot verify the facts and details provided by Shri Gussain in his representation at this belated stage.

Keeping in view, as proposed at ‘A’ may please be considered.

Submitted pl.

Sd/-
21/8

Dir (Pers)

At this point, no order can be taken.

Sd/-
22/8”

4.3 This decision was communicated to the applicant on 11.09.2019, which reads as under:

“Reference your application dated 17.09.2018 and subsequent reminder dated 28.08.2019 on the subject cited above.

It is regretted to inform you that at this stage no action can be taken regarding your promotion.

This issues with the approval of Competent Authority.”

5. Applicant is aggrieved at this rejection and filed the OA seeking direction to quash letter dated



11.09.2019 and to retrospectively promote him to the post of LDC w.e.f. 01.08.1986. Certain other reliefs are also sought.

MA No.3683/2019 has also been filed seeking exemption from filling dim copies of annexures.

6. Matter has been heard at length. Shri Gauraan Bhardwaj, learned counsel represented the applicant and Ms. Geetanjali Sharma, learned counsel represented the respondents.

7. The cause of action arose way back in the year 1990 when Shri Ram Murthy was promoted as LDC along with notional seniority w.e.f. 01.08.1986. Applicant kept quiet for last 29 years. This is hopelessly time barred. No reasons have been brought out for this delay. The OA is liable to be dismissed on account of this delay itself.

8. Even on merit, the note-sheet of Consultant (Pers.) of 28.11.2018 is a clear pointer that only 04 posts were available in promotee quota of 10% for class IV staff who could be promoted if they pass the typing test. Admittedly, applicant passed the typing test but was at position no.5 in said list and could not be promoted.



9. SAI have noted that promotion of Shri Ram Murthy granted on 23.05.1990 with notional seniority w.e.f. 01.08.1986 is unusual and may need investigation. This is for SAI to follow up.

However, if there was something wrong granted for Shri Ram Murthy, it does not justify to repeat the wrong for applicant.

10. Therefore, on ground of merit also, OA does not survive. Accordingly, OA is dismissed at admission stage itself for want of merit. No costs.

(Pradeep Kumar)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

‘San.’