

(2023) 01 CAT CK 0031

In the Central Administrative Tribunal

Case No : Original Application No. 1291 Of 2016

Krishan Lal

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 20-01-2023

Acts Referred:

Citation : (2023) 01 CAT CK 0031

Hon'ble Judges : Ashish Kalia, Member (J); Dr. Anand S. Khati, Member (A)

Bench : Division Bench

Advocate : Yogesh Sharma

Final Decision : Dismissed

Judgement

Ashish Kalia, Member (J)

1. This OA has been filed by the applicant seeking the following main reliefs:

"(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 2.3.2016 (Annex.A/1), declaring to the effect that the same is illegal, arbitrary, discriminatory and consequently, pass an order directing the respondents to consider and to promote the applicant to the post of Supervising Officer from the date of promotion of his junior with all the consequential benefits with arrears of difference of pay allowances.

(ii) That the Hon'ble Tribunal may graciously be pleased to quash and set aside the decision taken by the Respondents communicated vide their letter dated 26.12.2013.

(iii) That the Hon'ble Tribunal may graciously be pleased to set aside the promotion orders of the juniors to the applicant, namely, Sh. Mahesh Kumar and Sh. Satish Kumar.

(iv) That the Hon'ble Tribunal may graciously be pleased to direct the Respondent to revert the applicant to the post of UDC as prayed by him vide his

application dated 24.07.2012, 04.03.2013 and 05.06.2013 prior to 09.12.2013 when he was on probation to the post of Cashier and had lien on the lower post of UDC."

2. The brief facts, as stated by the applicant, are that he was promoted to the post of UDC w.e.f. 03.09.1997 and was selected to the post of Cashier w.e.f. 10.05.2011. He was placed on probation for a period of two years. Later on, he requested for reversion to the post of UDC by making a representation on 24.07.2012. However, he was not allowed to be reverted to the post of UDC as the department did not have substitute to replace him. But his juniors were given promotion in his parent cadre as the applicant's name was deleted from the seniority list.

3. Learned counsel for the applicant submits that one similarly situated person namely, Sh. S.K. Bhardwaj was appointed/promoted as Supervising Officer and was permitted to discharge the duty of Cashier till his retirement. But the applicant was not reverted and due to this he lost his next promotion to the post of Supervising Officer. Aggrieved, the applicant filed OA No. 3856/2014 before the Tribunal which was decided on 05.11.2015. Learned counsel submits that the respondents did not implement the same in true letter and spirit and rejected the claim of the applicant vide impugned order dated 02.03.2016.

4. Notices were issued to the respondents, who filed their reply.

5. The respondents have, in paras 3 and 4 of the reply, stated as under:

"3. That the OA under reply is barred by limitation, delay and laches. It is submitted that the applicant has challenged the order dated 02.03.2016 along with O.M. dated 26.12.2013 by filing the present OA and in view of the law settled by the Hon'ble Apex Court in "S.S. Rathore Vs. State of M.P." reported in AIR 1990 SC 10, paras 15 to 22 and "UOI vs. M.K. Sarkar", reported on 2010 (2) SCC 59.

4. That it is settled law that one cannot derive benefit out of bonafide administrative mistake and the competent authority can always correct the mistake."

6. Further, they have stated in the Parawise reply as follows:

"Para-1 That the contents of the corresponding para, except those being matter of record, are wrong, misleading and misconceived and hence vehemently denied. The impugned orders have been issued by the competent authorities, in accordance with relevant rules and instructions on the subject. The fact is that M/o Urban Development has issued OM No. F. No. 0-17034/4/2012/PBN dated 26/12/13 received in Department of Publication on 03/01/2014, annexed as Annexure-R-V, advising as follows:

"Cashier with 6 years regular service; failing which combined 10 years? regular service in the grade of UDC and Cashier; failing which UDC with 10 years regular

service in the grade.”

It is submitted that this Department, in this connection, has already initiated necessary action with regard to amendment in the eligibility clause of the Recruitment Rule for the post of S.O. of Department of Publication in accordance with the above advice of the Ministry. The file relating to amendment in the eligibility clause of Recruitment Rule has already been submitted to the M/o UD vide file no. A-12018/2014-PBN (Amendment) dt 27-02-14. This Department has received Ministry of Urban Development O.M. No. F. No. 0-17034/4/2012/PBN dated 26-12-2013 only on 03-01-2014. Photocopy of Acknowledgment Book of MoUD is also annexed. The photocopy of Peon Book received by Sh. Krishan Lal showing the date of receipt as 27-12-2013 is, infact, the date of receipt by CR Section of MoUD. The fact is that the said letter of MoUD was received in this Department only on 03-01-2014. Since Sh Kishan Lal was promoted from the post of UDC to the post of Cashier on regular basis as per existing RR of Cashier. Therefore his name was taken on the roll of cashier as well as in the seniority list of cashier of Department of Publication. The draft seniority lists for the year 2012 and 2013 in respect of all categories of the staff including the seniority list of Cashier containing the name of Sh. Kishan Lal as Cashier were circulated/notified for information of all concern vide this Department O.M. No. Seniority List/?13? & ?C?/Estt./13 dated 27-05-2013 respectively annexed as Annexures-VII-VIII. It is further submitted that fifteen days time was given in both the draft seniority lists inviting objections, if any, before finalization of seniority lists. Sh. Kishan Lal has never raised any objection with regard to his seniority obviously because the incumbent/petitioner was aware that he was no longer in the seniority list of UDC after he has joined the promotional post of cashier on regular basis and his name has been placed in the seniority list of cashier as per rule. Therefore his name was removed from the seniority lists of UDC and was not considered for the post of S.O. in the next DPC.”

5. Heard learned counsel for the applicant. None present for the respondent.

6. The short question which arises in the OA is whether the applicant is entitled for reversion and promotion to the post of Supervising Officer or not ?

7. The impugned order dated 02.03.2016 reads as under:

“The undersigned is directed to refer to letter dated. 11/12/2015 from Sh. Krishan Lal Ex-Cashier of Department of Publication, addressed to the Secretary, Ministry of Urban Development, Nirman Bhawan, New Delhi through PSP Division of Ministry of Urban Development dated 14/12/2015 alongwith the certified copy of Hon'ble CAT's order dated 05/11/2015 (received on 16/12/2015) and to convey that the case of Sh. Krishan Lal. Ex-cashier of Department of Publication has been re-examined in pursuance of Hon'ble CAT's order dated 05/11/2015. The decision taken in the case by the competent authority is conveyed as under :-

1. Sh. Krishan Lal willingly offered himself for the regular promotional post of

Cashier stating in his application that "that I am regular UDC I fulfill the terms and conditions for the selection of cashier and I beg to offer myself candidate for the same."

2. Sh. Krishan Lal was promoted to the regular post of cashier w.e.f 10.05.2011.

3. He executed the prescribed Fidelity Bond for insurance worth 1,00,000 (One Lakh Rupees).

4. His name was taken on the roll of Cashier and seniority was accordingly fixed as Cashier by deleting his name from the seniority list of UDC soon after his regular promotion. He had no objection on his seniority as Cashier.

5. He had applied through an application dated 24.07.2012 with the options either to allow him Cash Handling Allowance or to re-designate him as UDC or revert him from Cashier.

6. He was informed by the office vide letter no. Estt/6980/12 dated 10.04.2013 that his request was considered but Cash Handling Allowance is not admissible to him as the Cash Handling is the part and parcel of duties of Cashier..

7. Sh. Krishan Lal again gave an application dated 05.06.2013 just few days before DPC meeting for the post of Supervising Officer (S.O.) in June 2013 and requested to revert him as UDC. At that time he had completed two years service in the regular post of Cashier.

8. Neither he was given any letter by the office in respect of completion of his two years probation nor his probation period was extended. As per practice no such formal letter of completion of probation period in the case of promotion from Group C to Group C is given as per DOP&T's guidelines. Moreover, as per DOP&T guidelines on completion of probation, if no confirmation order is issued, it is assumed that the officer's probation period is complete and is confirmed.

9. A DPC was held on 18.06.2013 for selection to the post of S.O. It may be seen that as per Recruitment Rules of Supervising Officer, Cashier with 06 years regular service or UDC with 10 years of service are eligible and considered for promotion. Shri. Krishan Lal is not fulfilling the eligibility criteria in the grade of cashier as he had only 02 years regular service in the Grade of Cashier instead of 06 years. Hence, he cannot be promoted to the post of Supervising Officer."

8. The applicant's counsel has referred to the judgment passed by this Tribunal in OA No. 3856/2014 dated 05.11.2015 where this Tribunal had disposed of the OA with direction to the respondents to re-examine the case of the applicant for reversion/promotion to the post of Supervising Officer in the wake of factual backdrop recorded in the Note dated 23.12.2013, within a period of eight weeks from the date of receipt of a copy of the order. He submits that as per this decision, his case for reversion should have been considered and resultantly, he should have been reverted back to the post of UDC. Thus, giving him the opportunity of being considered for the next promotional post of Supervising

Officer as he had completed more than 10 years service as UDC.

9. In fact, learned counsel for the applicant submits that the respondents ought to have reverted the applicant to his original post of UDC while he was on probation to the post of Cashier and that he should have been considered for the post of Supervising Officer but due to shortage of Cashiers, he was not allowed to be reverted in public interest. Thus, it has marred his chances for promotion to the said post because he had completed ten years service as UDC.

10. On the contrary, learned counsel for the respondents has drawn our attention to the Impugned Order dated 02.03.2016 where it is mentioned that the application dated 05.06.2013 was preferred just a few days before the DPC meeting for the post of Supervising Officer in June 2013 and at that time, he requested to revert him as UDC. But, by that time, he had completed two years service in the regular post of Cashier. It is further stated that he was neither given any communication on completion of probation nor his probation period was extended.

As per practice, no such formal letter is issued in this regard as per DoP&T guidelines.

11. As regards the juniors, who got promoted and deletion of applicant's name from the seniority list, the respondents state that for the post of Supervising Officer, Cashier with 6 years' regular service; failing which combined 10 years' regular service in the grade of UDC and Cashier; failing which UDC with 10 years regular service in the grade were eligible. Since the applicant was not in the cadre of UDC on account of his promotion to the post of Cashier on regular basis, his name was removed from the list of UDC and was absorbed in the cadre of Cashier which is a different cadre altogether. The Recruitment Rules were submitted for amendment on 27.02.2014. Since, the applicant was promoted to the post of Cashier on regular basis as per the existing Recruitment Rules of the Cashier, therefore, his name was taken on the roll of Cashier as well as in the seniority list of cashier of Department of Publication. The draft seniority lists for the year 2012 and 2013 in respect of all categories of the staff including the seniority list of Cashier containing the name of applicant as Cashier was circulated.

Thus, he cannot put forth his case now belatedly for grant of reversion and promotion.

12. After considering the rival contentions, we are of the view that the applicant was well aware that he was not on probation or he had no lien for reversion to the UDC cadre and that his name was deleted from the seniority list of UDCs. It is also seen from the record that this Tribunal in OA No. 3856/2014 had already directed the respondents to re-examine the applicant's case for reversion/promotion to the post of Supervising Officer which they have already considered in accordance with the Rules. Hence, we do not find any merit in the OA and the same deserves to be dismissed. Hence, dismissed. No order as to costs.