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**(2014) 01 GUJ CK 0108**

**In the Gujarat High Court**

**Case No : Special Civil Application No. 1753 of 2006**

R.M. Pathan

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision :** 17-01-2014

**Acts Referred:**

**Citation :** (2014) 01 GUJ CK 0108

**Hon'ble Judges :** Vijay Manohar Sahai, J;K.J. Thaker, J

**Bench :** Division Bench

**Advocate :** P.H. Pathak, for Petitioners No. 1, for the Appellant; Gaurang H. Bhatt, Advocate for Respondent(s) No. 2-3 and Mr. Shakeel A. Qureshi, Advocate for Respondent(s) No. 1-2, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

K.J. Thaker, J.—The petitioner before us, who is now a retired employee and a Senior Citizen, has prayed to quash and set aside the order of the Central Administrative Tribunal, Ahmedabad, Dated: 11.07.2003, rejecting O.A. No. 16 of 1998 and to grant the reliefs claimed by him in the original application. The brief facts giving rise to the present petition, reads as under;

2. The petitioner, herein, joined the services with the respondents from 05.03.1958 as LDC and he was promoted to the post of UDC in the year 1967. It appears that, then, the case of the petitioner was referred to DPC for confirmation. However, due to some adverse remarks, the recommendations of DPC were kept in a sealed cover and the petitioner was reverted to the post of LDC vide order dated 05.04.1977. The petitioner, hence, preferred S.C.A. No. 1949 of 1980 before this Court, challenging the aforesaid order. This Court directed the respondents to treat the representation of the petitioner, Dated: 19.03.1977, as an appeal and to dispose of the same by 31.07.1983. Pursuant thereto, the respondents passed the order dated 29.07.1983 and set aside the reversal order of the petitioner dated 05.04.1977 and the case of the petitioner was again placed before review DPC for confirmation on the post of UDC. By

virtue of the recommendations made by the review DPC vide its order dated 05.02.1987, the petitioner came to be confirmed on the post of UDC w.e.f. 01.01.1984. Being aggrieved by the same, the petitioner made a representation dated 30.06.1987 before the respondents, which came to be rejected on 02.05.1988. The petitioner, therefore, again approached this Court by way of S.C.A. No. 1377 of 1988 and this Court vide its order dated 30.10.1992 disposed of the said petition, directing the petitioner to approach the appropriate forum. The petitioner, then, preferred O.A. 463 of 1992 before the Tribunal, claiming various reliefs. The Tribunal disposed of the aforesaid O.A. vide its order dated 09.11.1993, directing the respondents to consider revised deemed date of confirmation and to convene a review DPC to consider the case of the petitioner. Pursuant thereto, DPC passed an order dated 25.04.1994, fixing the date of confirmation of the petitioner w.e.f. 26.07.1979. However, the petitioner was not satisfied with the said order, since, he was placed below one R.V. Munia, who was confirmed on the post of UDC on 15.02.1979, and above one J.H. Parmar, who was confirmed on the post of UDC on 29.08.1979, and hence, he challenged the findings of the review DPC as well as the speaking order passed by the respondents by way of O.A. 16 of 1998. The tribunal, then, rejected the said O.A. on the ground of limitation as well as on merits, against which, the petitioner preferred R.A. No. 8 of 2004 along with M.A. Of 65 of 2004 in O.A. 16 of 1998, which also came to be dismissed by the Tribunal vide order dated 11.06.2004. Hence, the present petition.

3. Heard. We have perused the affidavit-in-reply dated 14.02.2007 filed by the respondent, more particularly, Paragraph-4, thereof. However, the fact remains that the adverse remarks in the service record of the petitioner were not to be considered, since, the same were reviewed and annulled and despite that he was not given the benefit of the same and on the contrary was reverted to the post of LDC vide order dated 05.04.1977. This Court while disposing of S.C.A. No. 1949 of 1980, had directed the respondents to consider the representation of the petitioner dated 09.03.1977 as an appeal and to dispose of the same by 31.07.1983. However, same was not disposed of by the appellate authority for a period of three years, and therefore, the petitioner was constrained to file SCA 2001 of 1983, wherein, the appellate authority was directed to dispose of the same and subsequently the authorities set aside the reversion of the petitioner, as is emerging from Paragraph-"f" and "g" of the affidavit filed by one Mihir Kumar, Dated: 14.02.2007, and produced at Page-59 to the petition. Pursuant thereto, though, the petitioner was confirmed on the post of UDC w.e.f. 01.01.1994, he again made a representation dated 30.07.1987, since, he was not given the benefits at par with one Shri. S.N. Vyas, who was immediate senior to him. The petitioner, hence, again approached this Court by way of C.A. No. 1377 of 1988 in Special Civil Application No. 1943 of 1980, which, came to be disposed of vide order dated 13.10.1992 with a direction to the petitioner to approach the appropriate forum, since, by that time CAT had started functioning in the State of Gujarat. The petitioner was, thereafter, promoted to the post of

Dy. Office Superintendent, Level-II, vide order dated 04.02.1992. However, since, the petitioner was not satisfied with his confirmation on the post of UDC w.e.f. 01.01.1994, he preferred O.A. No. 463 of 1992, wherein, the Tribunal directed the respondents to consider the case of the petitioner for deemed date of confirmation on the post of UDC, on the basis of the notional review of DPCs held from 1974 onwards. Pursuant thereto, the deemed date of confirmation of the petitioner was fixed as 26.07.1979 vide speaking order dated 25.04.1994. Paragraph-6 of the aforesaid order reads as under, which is produced at Page-81 to the petition;

6. Accordingly, Shri. R.M. Pathan, DOS Level-II (Retd.) is confirmed in the grade of U.D. Clerk with effect from 26.7.79. On his confirmation as above, the seniority of Shri. R.M. Pathan is fixed below Shri. R.V. Munia but above Shri. J.H. Parmar, who had been confirmed in the grade of U.D. Clerk vide E.O. No. 52/97 dated 15.2.79 and 241/79 dated 29.8.79, respectively.

4. In view of the above, it is submitted by the respondents that now nothing remains to be done in the matter. Pursuant to the above, the petitioner was also given the seniority, and therefore, no fault can be found with the observations made by the Tribunal in Para-1 of the order passed in O.A. 163 of 1992. The observations made by the Tribunal at Paragraph-9 of its order dated 11.07.2003, passed in O.A. 16 of 1998 reads as under;

9. We also find that the applicant has subsequently been given the benefits of fixation of pay, payment of arrears of pay and allowances, revision of pension and payment of amount of death-cum-retirement gratuity and commuted value of pension etc. and the applicant had not raised any objection against the further promotion etc. given to him till he filed this O.A. in the year 1998. The speaking order was communicated to him in June, 1994 as per his own admission but he did not choose to challenge the same till he filed his O.A. No cogent reasons are given by him for not challenging the order within time. We are therefore of the opinion that the O.A. deserves to be rejected on the ground of limitation as well as on merit. The O.A. Is therefore rejected with no order as to costs.

5. The observations made by the Tribunal, as above, in our opinion are erroneous and perverse and the orders under challenge before us are also bad in law, since, the respondents in unequivocal terms stated before this Court that they would consider the case of the petitioner along with other eligible candidates. Under the circumstances, we are convinced that prayers made in this petition deserve to be granted. In the result, this petition is ALLOWED. The respondents are directed to grant the consequential benefits to the petitioner from 18.03.1974 within a period of three months from today. Rule is made absolute. No order as to costs.