

(vi) Review of the E.C's decision in the matter of Seniority of Smti R. Kharbhih, U.D.C.

The E.C. vide Resolution No. EC:104:99:6:6:(vi) placed at Annexure - I, had decided that Smti R. Kharbhih, UDC, may be granted Seniority in the UDC Cadre from the date of joining as Stenographer i.e. 15.2.1980.

The above decision of the E.C. has raised controversial issues which may lead to serious complications to the detriment of other employees and may invite litigations from such employees.

It is therefore pertinent that the above decision of the E.C. is reviewed in the context of the following ~~facts~~ developments.

1. Smti R. Kharbhih was appointed on 15.2.1980 as Stenographer in the Secretarial Cadre on her own volition.
2. She was accommodated as UDC in the Ministerial Cadre w.e.f. 13.6.1989 under very special consideration, although, such change of Cadre was not permissible under any Rules/Laws, unless, she was appointed through regular Selection procedure as UDC.
3. The Seniority List of UDC's in its draft stage showing her position as on 13.6.1989 was circulated on 27.8.1993 to all concerned UDCs for comments/observations. The Draft Seniority List was declared as final on 21.12.1993 since no observations/comments on the Draft List was received from the UDCs including Smti R. Kharbhih.
4. Due to fresh induction of UDCs thereafter, the Seniority List circulated as on 27.8.1993 was updated and the Draft List was circulated on 2.12.1997. In this Draft List, the name of Shri T.Chakraborty was shown as UDC with effect from 15.10.1985 due to redesignation of his post of Technician-cum-Store Keeper as UDC with effect from the date he joined as Technician-cum-Store Keeper. The said Draft Seniority List was not challenged by UDCs including Smti R. Kharbhih. Therefore, the List was treated as Final and notified on 21.3.1998.

contd....2..

5. On matter of principle

- i) On her appointment to the post of UDC on 13.6.1989, vide appointment Order bearing No. F.4-9/Estt-1/85-3117 dt. 30.6.1989(Annx.II) Smti R. Kharbhih was informed that her Seniority will be next to Shri Stomel Rane. Smti R. Kharbhih, should have immediately sought clarification from Administration on the Seniority position of Shri Stomel Rane, but she did not do so.
- ii) Smti R. Kharbhih did not even contest the first Draft Seniority List of UDC circulated on 27.8.1993 and the Final Seniority List thereafter dt. 21.12.1993 claiming her Seniority in the UDC Cadre from the date she was appointed as a Stenographer i.e. 15.2.1980.
- iii) She also did not contest the Second Draft Seniority List circulated on 2.12.1997 wherein the position of Shri T. Chakraborty was shown as on 15.10.1985 on the ground that she did not receive the Second Draft Seniority List.

Smti R. Kharbhih choose to contest only on 22.4.1998 i.e., after a lapse of considerable time and after the Draft was finalised.

The undue delay and lapses in filing the representation when the cause of action arose to her as far back as in 1993 and in 1997 does not extend the period of limitation on the plea that Smti R. Kharbhih did not receive the Draft Seniority List when similarly placed UDCs had received the same.

On merit, the plea of Smti R. Kharbhih for placing her seniority in the UDC Cadre from the date of her appointment as S a Stenographer i.e. 15.2.1980 as extended in the case of Shri T. Chakraborty redesignated as UDC from the date of his appointment as Technician-cum-Store Keeper i.e. 15.10.1985 is also not maintainable on the following grounds:

1. Shri T. Chakraborty was appointed on 15.10.1985 as Technician-cum-Store Keeper which was an isolated post having no regular Cadre of its own. The Post

was re-designated as UDC and brought into regular Ministerial Cadre ^(Annexure-III) since both the posts carried the identical pay scale and the incumbent was performing the duties of Cashier in the erstwhile NEHU Kohima Campus.

The process of rationalisation of designation as introduced by the UGC was solely ^{intended} for isolated posts having no regular cadre of its own. The intention of the said process was to reduce the strength of multi-farious isolated posts existing in the Central Universities by bringing them into a regular existing Cadre. Accordingly, several isolated posts in the University were rationalised and brought into a regular Cadre which includes the rationalisation of the post of Technician-cum-Store Keeper by way of re-designation of the post of UDC.

In the case of Smti R. Kharbhih, her initial appointment was as a Stenographer ^{which} belonged to a regular Secretarial Cadre. She was accommodated as a UDC in the Ministerial Cadre against her post of Stenographer with effect from 13.6.1989. She was allowed to change her Cadre from Secretarial to Ministerial Cadre with effect from 13.6.1989 as a very special case by the DPC which was not governed by any Rules/Law or by rationalisation process.

It is apparent from the above that the case of re-designation of the post of Shri T. Chakraborty and Smti R. Kharbhih stands on different footings and distinct from each other. In the case of former, it was as a result of rationalisation process and in the case of latter, it was on a sympathetic considerations and treated as a very special case which would have been ~~denied~~ by the University.

It may be stated here that 'SENIORITY' occupies an important place in the Service Condition of employees. It is from this, the flow of promotion takes place. Therefore, if a Seniority is disturbed after a long lapse of time, it is bound to unsettle already settled matter which will be detriment to others.

The Seniority can be ~~corrected~~ if it is due to bonafide administrative errors, but it cannot undergo changes due to extraneous reasons as in the instant case. Such changes will demean the list prepared as Final and will create sense of insecurity in the minds of employees creating administrative complications and difficulties.

Further, the University had already regretted the please of Smti R. Kharbhih from time to time on the ground of merit and justifications. Therefore, if this administrative action is to be invalidated, it should be supported by valid justifications which the E.C. has not specified in its decision.

Notwithstanding what has been stated above, if Smti R. Kharbhih, UDC is given the Seniority from the date of her appointment as Stenographer i.e. 15.12.1980, the following complications will arise.

- (a) it will adversely affect the Seniority of UDCs who were senior as on 15.2.1980.
- (b) all settled cases of promotion of UDCs have to be re-opened.
- (c) cases of similar nature rejected earlier and fresh cases have to be entertained.
- (d) the administrative difficulties will compound due to litigations.
- (e) it will adversely affect the interest of the University and other employees held as Respondent and Co-respondents respectively in the Court's Proceedings in the case Civil Rule No. 47(SH)1996 - Shri A.K. Shama Vrs. NEHU & Others. In this regard the representations received from the concerned employees may be perused at Annexure-IV.

In consideration of the background of the case, the matter is placed before the E.C. for review and decision.

U.O.NO.F.4-5/Estt.I/Apptt/33-1374.

EXTRACT TAKEN FROM THE 104TH EXECUTIVE COUNCIL MEETING HELD ON 26TH OCTOBER, 1999.

(vi) CASE OF SMTI.R.KHARBHIH, UDC REQUESTING FOR REVIEW OF HER SENIORITY POSITION IN THE POST OF UDC.

EC:104:99:6:6:(vi) : The Council considered the case of Smti.R. Kharbhih, UDC, requesting for review of her seniority in the post of UDC and RESOLVED that since the same had been done in a similar case she may be granted seniority w.e.f. the initial date of her joining the post as Stenographer i.e. 15th February, 1980.

28/-
Dated 30.6.99
(C. Jyngdoh)
Asst. Registrar
(Admn.)

Copy to :-

1. The Finance Officer, MEMU, Shillong.
 2. The Accounts Section, MEMU, Shillong.
 3. Smti. R. Kharbhih, UDC, Finance & Accounts Dept., MEMU, Shg..
 4. The Department Section concerned.
 5. Personal file of the official concerned.
 6. SO/ST Registrar.
 7. The Section Officer, SO/ST Cell, MEMU, Shillong.
- N.B. : 1. The appointment is made against the post of steno-
grapher held by her.
2. As ordered by Vice-Chancellor her seniority as UDC will
be fixed to Shil. Biemel Kharbhih.

NORHEEASTERN HILL UNIVERSITY
P.O. LOWER LACHUMIERE SHG.

No. F.4-9/Estt-I/85 - 3117

Dated the 30.6.1989.

- APPOINTMENT ORDER -

On the recommendation of the Departmental Promotion Committee the Vice-Chancellor, NEHU, Shillong is pleased to accommodate Smti. Rosilian Kharbhih, Stenographer against the post of UDC on regular basis as a very special case in this University, in the scale of pay of Rs.1200-30-1560-EB-40-2040/- plus other allowances* as admissible under the rules with effect from 13th June. 1989.

The initial basic pay of Smti.R.Kharbhih is fixed at Rs.1410/- per month of the scale.

Sd/-

Dated 30.6.89

(C.Lyngdoh)
Asstt.Registrar
(Admn.)

Copy to :-

1. The Finance Officer, NEHU, Shillong.
2. The Accounts Section, NEHU, Shillong.
3. Smti.R.Kharbhih, UDC, Finance & Accounts Dept., NEHU, Shg..
4. The Department/Section concerned.
5. Personal file of the official concerned.
6. SC/ST Register.
7. The Section Officer, SC/ST Cell, NEHU, Shillong.

- N.B. : 1. The appointment is made against the post of Stenographer held by her.
2. As ordered by Vice-Chancellor her seniority as UDC will be next to Shri.Stomel Rane.

NORTH EASTERN HILL UNIVERSITY
P.O. NEHU CAMPUS SHILLONG

No.F.12-8/CRC/92 - 391

Dated the 10.3.1994.

- O R D E R -

The Vice-Chancellor, NEHU, Shillong is pleased to redesignate the post of Technician-cum-store-Keeper, Kohima Campus (in the pay scale of Rs.1200-30-1560-EB-40-2040/-) which is an ex-cadre post and the only post in the University as Upper Division Clerk in the Ministerial Cadre with retrospective effect from 1.1.1986.

The seniority of the existing incumbent namely Shri.Tapash Chakraborty, Technician-cum-Store keeper, Kohima Campus, redesignated as UDC is determined just below the juniormost UDC as on the date of his joining in the post w.e.f. 15.10.1985 which will stand below Shri.B.C.Dey, UDC, SASRD in the final seniority list of UDC.

This is in pursuance of the U.G.C.'s decision vide letter No.F. 22-6/85/(NFE) dated Nil regarding rationalisation on designations of Group 'B', 'C' and 'D' posts.

Sd/-

(S.Sailo)
Asstt.Registrar, CRC.

Copy to :-

1. The P.S. to the V.C., NEHU, Shillong.
2. The S.P.A. to the Registrar, NEHU, Shillong.
3. The Finance Officer, NEHU, Shillong.
4. The Pro Vice-Chancellor, NEHU Kohima Campus, Nagaland with reference to the letter No.NCKSM/C-9/86-1787 dated 4.10.93 (with spare copies for P/F & S.B) for information.
5. Shri.Tapash Chakraborty, UDC, Kohima Campus, Nagaland.
6. Concerned Personal file (Hqr.)
7. File No.F.13-1/CRC/91.
8. Seniority of UDC file.

6:5:6(3)

To Date November 5th, 1999.

The Vice-Chancellor,
North-Eastern Hill University,
Shillong.

Respected Sir,

In the meeting of the Executive Council held on the 26th October, 1999 a decision has been arrived to review and effect the Seniority of Smti.R.Kharbhih in the UDC cadre with effect from the date of her appointment as Stenographer in the University.

The aforesaid decision of the Executive Council is detrimental to my interest and service career and therefore, I would like to submit this representation on the following grounds :

1. That Sir, a reference to the Civil Rule No.47 (SH) 1996 - Shri.A.K.Sharma Vs. NEHU and others as respondent (including the undersigned) is invited, where in the petitioner had filed a writ against the University for restoration of his position in the seniority in the Assistant cadre.
2. The University on record had filed a written argument for dismissal of the writ petition on the ground of laches since the petitioner had inordinately delayed filing his writ petition for more than 4 (four) years.
3. In the context of the written argument filed by the University in the said case, the Single Judge of the Honorable High Court, Shillong had dismissed the case on the ground of laches/delay. However, the petitioner has now filed a writ appeal before the Division Bench, High Court, Shillong.

Contrary to the above argument filed by the University before the Court of Law, the University has on the other hand decided to review and effect the seniority of Smti.R.Kharbhih, UDC after a lapse of more than ten years which would now upset settled matters which remained unchallenged for a long time. Further, the decision of the E.C. will also adversely effect the University's stand in the proceedings of the case which is now pending before the Honorable High Court.

I would like to mention here that in a number of judicial pronouncement it has been made absolutely clear that he who comes to the Government far too late to be regarded as legitimate complainant cannot upset matters, whereby persons who have by long lapse of time, come to regard their rights as permanently secure are suddenly deprived of the advantages which they enjoyed all along. It ensures that matters like one's position in the seniority after having been settled for once should not be liable to be re-opened.

Raking of old matters like seniority after a long time is likely to result in administrative chaos and complications which may invite serious litigation.

I would also like to mention here that, (i) seniority cannot be disturbed after a long lapse of time to the detriment of others, (ii) seniority cannot be challenged after a long lapse of time and (iii) seniority cannot be changed without offering opportunity of hearing to the effected party.

In view of the above I fervently hope that the E.C's decision for reviewing the seniority in favour of Smti.R.Kharbhih is examined judiciously in terms statutory rules on the ground that the seniority list finalised in 1989 would not clothe her with a fresh right to challenge the same after a lapse of more than 10 (ten) years and aspecially, when the University have filed its written argument in the Honorable High Court to dismiss the writ filed by Shri.A.K.Sharma on the ground of laches/delay.

Thanking you in anticipation.

Yours sincerely,

Sd/-
Employees concerned.

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(iv) Promotional avenues in respect of Medical Officers/
Sr. Medical Officers to Chief Medical Officer.

EC:106:2000:6:6: (iv): The Council considered the promotional avenues for the Medical Officers as intimated by the Ministry of Health and FW vide letter No.Z1 6023/11/96-CHS.V of 27th October, 98 and RESOLVED to implement the same.

(v) & (ix) LTC / TA/DA Claim of the University employees

EC:106:2000:6:6: (v) & (ix): The Council considered the late submission of LTC/TA/DA advance adjustments of the following staff and RESOLVED to condone the same on condition that they are first time defaulters.

1. Smti. Champa Chettri - Cook
2. Smti. Martha Gurung - Cleaner
3. Dr. V. Rengsi - Lecturer in History
4. Shri W. Majaw - Attendant, Department of History.
5. Shri JN Areng, LDC- Publication Cell.
6. Shri J. Rai, Peon, Publication Cell.

The Council, further RESOLVED that a Circular be issued by the Finance Department that no such condonation be allowed in future.

(vi) Review of the EC's decision in the matter of seniority
of Smti. R. Kharbhih.

EC:106:2000:6:6: (vi): The Council considered the case regarding the claim of seniority of Smti. R. Kharbhih, UDC, and RESOLVED to refer the matter to the Legal Adviser for his comments.

(vii) Revision of Pay Scales

EC:106:2000: 6:6: (vii): The Council considered the bifurcation of the Revised Pay Scales in respect of Technicians and RESOLVED that the matter be referred to the Committee appointed to look into the placement of ARs & DRs in the CAS.

(viii) Enhancement of Honorarium to Guest Lecturers.

EC:106:2000:6:6: (viii): The Council considered the enhancement of Honorarium to Guest Lecturers from Rs.150/- to Rs.250/- and RESOLVED to approve the same.