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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.924/2000

This the 29th day of May, 2003

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

HON'BLE SHRI KULDIP SINGH, MEMBER (J)

1. Ashish Mohan, Assistant,
Ministry of Defence,
Department of Revenue,
Room No.275, North Block,
New Delhi.
 2. K.R.Rajan, Assistant,
A-12, DGS&D, Jeevan Tara Building,
Parliament Street,
New Delhi.
- ... Applicants

(By Shri V.P.Uppal, Advocate)

-versus-

1. Union of India through
Secretary, Department
Personnel and Training,
North Block, New Delhi.
 2. Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi.
- ... Respondents

(By Shri A.K.Bhardwaj, Advocate)

O R D E R

Hon'ble Shri V.K.Majotra, Member (A) :

The two applicants, Shri Ashish Mohan and Shri K.R.Rajan, are working as Assistants in the Ministry of Finance (Department of Revenue) and Department of Supply (DGS&D) respectively. They had taken the Limited Departmental Competitive Examination (LDCE) for Section Officers (SOs)/Stenographers Grade 'B'/Grade-I for 1997 conducted by the Union Public Service Commission (UPSC) but were not recommended by the UPSC for appointment/promotion to the grade of SOs. Whereas

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respondents have appointed only 41 candidates on the basis of the 1997 LDCE, applicants have sought direction to respondents to fill up the 46 notified vacancies for the 1997 LDCE.

2. Briefly stated, the facts of the case are that the UPSC conducted LDCE for 71 vacancies of SOs/Stenographers Grade-I for the year 1996 and 46 vacancies for the year 1997. As per the Central Secretariat Rules, 1962, vacancies for promotion to SOs' grade are filled up : (1) 20% by direct recruitment on the basis of Civil Services Examination conducted by the UPSC; (2) 40% by promotion through LDCE conducted by the UPSC; and (3) 40% by promotion on the basis of seniority-cum-fitness. The result of the 1996 LDCE was delayed considerably and declared in August, 1998. Therefore, several candidates who appeared in the 1996 LDCE appeared in the 1997 LDCE also, as by then the result of the 1996 examination had not been declared. As a result, there was an overlapping of 15 candidates in the lists of successful candidates in both the examinations. The Department of Personnel and Training (DOP&T) requested the UPSC vide letter dated 29.12.1998 to furnish supplementary list to fill up requisite number of vacancies. In response, UPSC forwarded 15 names on 2.2.1999. It so happened that among these 15 names as well, 5 candidates were such who had earlier been appointed as SOs on the basis of the 1996 LDCE. As the Ministry of Defence where 5 vacancies of SOs grade earmarked for the aforesaid examination remained unfilled had informed the DOP&T that on review it had been decided

not to fill up more vacancies, DOP&T did not insist upon UPSC to furnish further five names. As such, out of 46 vacancies in the quota of LDCE only 41 vacancies were filled and 5 vacancies of SOs in the Ministry of Defence got reduced on review.

3. Applicants had filed the present OA on 19.5.2000 maintaining that even if 5 posts of SOs were to be reduced, such reduction had to be in proportion to the quota meant for different sources and should not be adjusted against the quota of LDCE alone. According to them, the reduction should have been in the ratio of 1:2:2 in respect of direct recruitment, seniority-cum-fitness and LDCE respectively. The Tribunal had dismissed the OA vide order dated 14.5.2001 as also RA No.264/2001 filed in the OA vide order dated 16.8.2001. Applicants filed a Writ Petition, i.e., CWP No.1839/2002 in the Hon'ble Delhi High Court which was decided on 6.8.2002. The Hon'ble High Court did not find fault with the Tribunal's view point relating to the right of the respondent/employer not to filling up the posts on administrative grounds (see : **Union of India v K.V. Vijeesh** reported in (1996) 3 SCC 139, **Shankarsan Dash v Union of India** reported in (1991) 2 SCC 47). However, the Hon'ble High Court observed that the Tribunal failed to deal with the contention of the petitioners that even if such a decision was taken, all the five posts meant for LDCE quota could not have been reduced and such a reduction had to be in the ratio/quota prescribed as per the statutory recruitment rules. The Tribunal's order dated 14.5.2001 was set aside and the case was remitted

for taking a fresh view of the matter and for decision on the aforesaid issue.

4. We have heard the contentions made by the learned counsel of both sides.

5. The learned counsel of applicants stated that the DOP&T is the cadre controlling authority for the Central Secretariat Service and as such, it is the responsibility of this Department to comply with the requirements of the Rules by making suitable appointments both for seniority quota as well as the LDCE based on information collected by them from various Ministries/ Departments of the Government. Referring to Office Memorandum dated 18.5.1999 (Annexure R-VII), the learned counsel stated that the Ministry of Defence intimated only two vacancies in the seniority quota while respondent No.1 nominated as many as ten persons against the seniority quota. Therefore, DOP&T could not have taken the ground that since the Ministry of Defence had withdrawn their request for filling up five posts in the LDCE quota, five posts in the quota could not be filled up. If at all reduction of five posts was to be effected that should have been in the ratio of 1:2:2, i.e., not more than two posts should have been reduced from the LDCE quota. He further pointed out that vacancies earmarked for LDCE quota were transferred to seniority quota thereby swelling its number from 46 to 53 while reducing the number of vacancies for LDCE to 41 only. The learned counsel stated that respondent No.1 should be directed to call for 14 additional names from the UPSC on

the results of the 1997 LDCE and applicants should be appointed as SOs if their names are recommended by the UPSC among the 14 additional names on the basis of results of the 1997 LDCE.

6. On the other hand, the learned counsel of respondents stated that the ^{cadres} ~~grades~~ of Assistant and Section Officer of the Central Secretariat Service are de-centralized into 33 cadres comprising one or more departments as mentioned in the Rules. These cadre controlling authorities report the number of vacancies to be filled against different quotas as per extant rules and instructions. The Ministry of Defence, as one of the cadre controlling authorities, informed the DOP&T on a review of vacancy position that five candidates in that cadre against the original requisition could not be appointed on administrative grounds. He stated that initially a firm number of 58 vacancies (General 46, SC 3, and ST 9) were reported to the UPSC to be filled up on the basis of LDCE 1997. However, only 46 candidates belonging to the General category qualified and their names were recommended by the UPSC for appointment as SOs. Out of these 46, 14 were found to have been selected and appointed on the basis of the earlier examination, i.e., LDCE, 1996 and one candidate who had indicated preference for both Private Secretary/Section Officer opted to join as Private Secretary. Thus, the UPSC was requested to furnish a supplementary list of 15 candidates which was duly received. Yet again, this supplementary list contained names of five candidates who had earlier qualified in the LDCE, 1996. Although the


UPSC was once again requested to send another supplementary list of five successful candidates, one of the cadres, i.e., the Ministry of Defence on reviewing the vacancy position intimated that they were not in a position to appoint any more candidates against the select list (exam quota 1997). As a result, the Department's request for additional five candidates was withdrawn. As regards 10 candidates who were originally allocated to Ministry of Defence against seniority quota on the basis of vacancy position received earlier, only four candidates could be so appointed and the remaining six were re-allocated to other cadres due to revised vacancy position furnished by the cadre. The learned counsel explained that the DOP&T tries to maintain the quotas under the rules for filling up posts on the basis of information regarding vacancies received from different Ministries/Departments. While efforts are made to maintain quotas of vacancies under different sources, it may so happen that the percentages may not conform to the desired ratio because of varying requirements in different cadres. Furthermore, while the Ministry of Defence having found on review that they could not take any more candidates for promotion in the LDCE quota, there were not more than 41 posts to be filled up from the 1997 LDCE quota.

7. Respondents have adequately explained about their efforts to fill up the vacancies from different sources on the basis of proportions fixed under the rules. They have also stated on the basis of information furnished by the Ministry of Defence that they did not

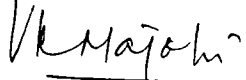
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have any more vacancies for the 1997 LDCE quota. DOP&T's stand in this behalf cannot be contested. Respondents have also explained how on account of higher frequency of retirement among the seniority quota candidates the vacancy position from that source changes fast. In any case, in view of the existence of 33 cadre controlling authorities dealing with various sources for filling up vacancies at different levels confronted with frequent administrative exigencies, we cannot find fault with the action of respondents impugned in this OA. When the Ministry of Defence has reported no further vacancies in the 1997 LDCE quota, the question of distribution of reduction to other quotas does not arise. Respondents have filled up 41 general category vacancies for the 1997 LDCE ^{on} the administrative ground, i.e., ^h non-availability of vacancies in the 1997 LDCE quota, ^h which cannot be ^h interfered with.

8. Having regard to the above discussion and the aforesaid reasons, the OA is dismissed being devoid of merit. No costs.


(Kuldeep Singh)
Member (J)

/as/


(V. K. Majotra)
Member (A)