

**CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH  
HYDERABAD**

**OA/020/255/2015**

Date of CAV: 23.03.2021

Date of Pronouncement: 06.04.2021



**Hon'ble Mr. Ashish Kalia, Judl. Member**  
**Hon'ble Mr. B.V. Sudhakar, Admn. Member**

1. P. Rambabu, S/o. Late Polipilli,  
aged about 50 years,  
Occ: Havaladar, O/o. The Commissioner of Central Excise  
and Customs, Commissionerate-II, Visakhapatnam.
2. A. Ramana Rao, S/o. Late Ramulu,  
aged about 49 years,  
Occ: Havaladar, O/o. The Commissioner of Central Excise  
and Customs, Commissionerate-II, Visakhapatnam.
3. K. Ramakrishna, S/o. Late Sambaiah,  
aged about 49 years,  
Occ: Havaladar, O/o. The Commissioner of Central Excise  
and Customs, Commissionerate-II, Visakhapatnam.
4. A. Rama Krishna Rao, S/o. A. Chandram Dora,  
aged about 46 years,  
Occ: Havaladar, O/o. The Commissioner of Central Excise  
and Customs, Commissionerate-II, Visakhapatnam.
5. K. Brahmanandam, S/o. Yendaiah,  
aged about 53 years,  
Occ: Havaladar, O/o. The Commissioner of Central Excise  
and Customs, Commissionerate-II, Visakhapatnam.

...Applicants

(By Advocate: Sri KRKV. Prasad)

Vs.

1. Union of India rep. by  
The Secretary, Government of India,  
Ministry of Finance, Department of Revenue,  
Central Board of Excise and Customs,  
North Block, New Delhi.
2. The Chairman, Central Board of Excise and Customs,  
North Block, New Delhi – 110 001.

3. The Commissioner of Customs & Central Excise and Service Tax, Hyderabad-I Commissionerate, Basheerbagh, Hyderabad.
4. The Commissioner of Customs & Central Excise, Visakhapatnam-II, Commissionerate, Port Area, Visakhapatnam.

... Respondents



(By Advocate: Smt. K. Rajitha, Sr. CGSC.)

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**ORDER**  
**(As per Hon'ble Mr. B.V. Sudhakar, Admn. Member)**

2. The OA is filed in regard to denial of promotion to the applicants due to change in the recruitment rules.



3. The brief facts of the case are that the applicants are working as Sepoy in the respondents organisation. To be promoted as LDC, the Recruitment Rules specify educational qualification as SSC and to render a minimum service after clearing the Departmental Exam prescribed. Applicants having rendered the minimum service prescribed and passed the departmental exam/ typewriting test were awaiting orders of promotion. Instead, respondents vide letter dated 2.2.2015 called for details of the Sepoys who passed the 12<sup>th</sup> standard to be considered in the DPC for filling up the vacancies of 2014-15. The Recruitment Rules were modified in 2013 based on the model recruitment rules issued by DOPT. Aggrieved over non-selection as LDC due to change of Recruitment Rules, the OA is filed.

4. The contentions of the applicants are that they are similarly situated employees as those who possessed SSC qualification and were promoted as LDC without following the model recruitment rules (RR) circulated by DOPT in 2009. The revision of the recruitment rules has no nexus to any objective to be achieved. Respondents have not given an opportunity of availing exemption in respect of the higher qualification in a given time frame. Without filling up the vacancies of the earlier years, the impugned amendment is made applicable to all the vacancies under 2014-15. A class within class has been created in LDC cadre with some having SSC qualification and some others with 12<sup>th</sup> standard, for doing the same duties.

Due to fortuitous circumstances, some employees with 12<sup>th</sup> standard would become eligible and the applicants who have already passed the departmental exam would be ignored. Due to advanced age, applicants would not be able to acquire the higher qualification and since they are retiring in the near future, there would be monetary loss if they are not promoted. The legitimate expectation of the applicants has been denied. By not granting the promotion to the applicant, Articles 14 & 16 of the Constitution have been violated.



5. Respondents confirm that the applicants have passed the departmental exam and are eligible to be promoted as LDC as per Recruitment Rules of 2002 and subsequently, amended in 2004, 2005 & 2009. However, new recruitment rules were framed in 2013 and amended in 2015 based on model Recruitment Rules issued by DOPT in 2009 in view of the higher pay and allowances granted by the 6<sup>th</sup> CPC. Though the model RRs were circulated in 2009, the same were examined in consultation with DOPT and the new RR were framed in 2013 and amended in 2015. The G.O.I has enforced the model RR in all the Departments to improve governance. Nevertheless, respondents have considered the case of the applicants in the DPC held for promotion to LDC and kept their results in sealed covers as ordered by the Tribunal on 20.2.2015, till the finalisation of the OA.

6. Heard both the counsel and perused the pleadings on record.

7. I. The dispute is in regard to non grant of promotion to the applicants to the LDC cadre despite passing the departmental exam and

possessing the requisite service. The applicants passed the Departmental exam and the typewriting test as under:



Applicant No.	Age	Date of Appointment	Date on which qualified in the departmental exam	Date on which qualified in the typewriting test
1	49 years	06.04.1965	13.10.1997	02.07.2007
2	49 years	05.02.1991	13.10.1997	02.01.2013
3	49 years	26.06.1992	04.12.1998	02.01.2013
4	46 years	17.03.1994	07.04.2014	...
5	53 years	26.06.1992	04.12.1998	...

Therefore, 3 applicants have passed the departmental exam and the typewriting test by January 2013 and were eligible to be considered for promotion as per the earlier RRs, which underwent many amendments up to 2009. Respondents have framed the new RRs on 4.6.2013 and amended the same in 2015. The educational qualification was increased to 12<sup>th</sup> standard from SSC in view of the higher pay recommended by the 6<sup>th</sup> CPC and the need to improve governance. The interesting aspect to be observed is that 3 of the applicants have passed the departmental exam/typewriting test before the new recruitment rules came into vogue in June 2013. As per the interim order of the Tribunal dt. 20.02.2015 passed in this OA, the DPC, which met on 17.06.2015, considered the cases of the applicants for promotion as LDC and found the three applicants, who passed the departmental exam/typewriting test, as fit for promotion as per the contents of the sealed cover submitted by the respondents.

II. The question before us is as to whether the three applicants could be granted promotion as per the DPC minutes. In this regard, we observe that along with the DPC minutes, respondents have enclosed the vacancy position of LDC of various zones of the respondents organization, but they did not indicate the year of the vacancy, which indeed would have

facilitated to take a clear view in the matter. We are observing so, since it is settled law that the application of RRs would depend on the year of the vacancy. Hon'ble Supreme Court has observed as under, in ***State of Punjab v. Arun Kumar Aggarwal, (2007) 10 SCC 402*** :



32. He has also referred to *B.L. Gupta v. MCD (1998) 9 SCC 223*:

*“9. When the statutory rules had been framed in 1978, the vacancies had to be filled only according to the said Rules. The Rules of 1995 have been held to be prospective by the High Court and in our opinion this was the correct conclusion. This being so, the question which arises is whether the vacancies which had arisen earlier than 1995 can be filled as per the 1995 Rules. Our attention has been drawn by Mr. Mehta to a decision of this Court in **N.T. Devin Katti v. Karnataka Public Service Commission**. In that case, after referring to the earlier decisions in **Y.V. Rangaiah v. J. Sreenivasa Rao**, **P. Ganeshwar Rao v. State of A.P.** and **A.A. Calton v. Director of Education** it was held by this Court that the vacancies which had occurred prior to the amendment of the Rules would be governed by the old Rules and not by the amended Rules. Though the High Court has referred to these judgments, but for the reasons, which are not easily decipherable, its applicability was only restricted to 79 and not 171 vacancies, which admittedly existed.”*

By applying the above legal principle, the 3 applicants are eligible for being considered for vacancies up to June 2013. The number of vacancies shown by the respondents cadre is 69 and we believe some of them could belong to pre-June 2013 vacancies. In respect of the 4<sup>th</sup> and 5<sup>th</sup> applicants, they have not passed the departmental exam/ typewriting test by 2013 as per the details given in the OA/ DPC material papers, and hence, would not be eligible to be considered for promotion even as per the old recruitment rules. The argument of the Ld. counsel for the applicants that a class within class has been created, would not hold good since the 6<sup>th</sup> CPC has recommended a good hike in pay and the quality of people to man the jobs has to improve and therefore, the increase in educational qualification. Seeking relaxation as prayed for in the form of exemption in application of the new RRs, is impermissible under law. The recruitment rules amended

apply to a universal whole and not just the 4<sup>th</sup> and 5<sup>th</sup> applicants, who were not eligible as per old RR for not passing the departmental exam/typewriting test and have not acquired the higher qualification as per the amended RRs. Our remarks are based on the observations of the Hon'ble Supreme Court in ***A.Umarani Vs. Registrar, Co-op. Societies:***



**2004 (7) SCC 112**

*"52. Even recently in Suraj Parkash Gupta Vs. State of J & K - 2000 (7) SCC 561, this Court opined: (SCC p.582, para 28):*

*"28. The decisions of this Court have recently been requiring strict conformity with the Recruitment Rules for both direct recruits and promotees. The view is that there can be no relaxation of the basic or fundamental rules of recruitment."*

The organisation has to move forward in tandem with the changing needs and to meet the changing needs, it is for the employees to upgrade themselves to be considered for career rise. Learning is up to the grave and therefore, it is not the age, which applicants feel is the hurdle in obtaining higher qualification, but the interest to pursue learning, which is critical to come up in life.

III. In view of the legal principle enunciated by the Hon'ble Apex Court in regard to filling up the vacancies as per the prevailing Recruitment Rules, we direct the respondents to consider the promotion of the three applicants who were found fit by the DPC held on 17.6.2015 as LDC in the vacancies, if available prior to June 2013 as indicated in the material papers accompanying the DPC recommendations. On promotion, based on the availability of the vacancies, as directed, they shall be granted notional seniority from the date found fit by the DPC in the LDC cadre and they be

granted consequential benefits like fixation of pay etc. excepting back wages. Time period allowed to implement the judgment is 3 months from the date of receipt of the judgment.

IV. With the above direction, the OA is disposed of with no order



as to costs.

**(B.V. SUDHAKAR)**  
**ADMINISTRATIVE MEMBER**

**(ASHISH KALIA)**  
**JUDICIAL MEMBER**

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