

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/00417/2015

HYDERABAD, this the 29th day of April, 2021



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

1.S.MallikarjunaRao S/o Late Sri Rama Murthy,
Aged about 49 years, Occupation – Hawaldar,
Office of Customs, Central Excise & Service Tax,
Division-II, Temple Street, Kakinada, East Godavari
District, R/o H.No.10-4-35/1, Seshagirirao Street,
Ramaraopeta, Kakinada-4.

2.C.A.Shariff S/o Late Jabbar Shariff,
Aged about 44 years, Occupation – Hawaldar,
Office of Customs, Central Excise & Service Tax,
Division-I, Port Area, Kakinada,
R/o H.No.17-10-342/147D, Sanjeenagar,
Near AMG School, Kakinada,
East Godavari District.
...Applicants

(By Advocate :Mr. M. V. Krishna Mohan)

Vs.

1.Union of India rep by The Chief Commissioner,
Central Excise & Customs, Visakhapatnam Zone,
Visakhapatnam.

2.The Commissioner, Customs & Central Excise,
Visakhapatnam, Commissionerate-II, New
Central Excise Building, Port Area, Visakhapatnam.

3.The Commissioner of Customs & Central Excise,
Hyderabad III Commissionerate, Basheerbagh,
Hyderabad.

....Respondents

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

ORAL ORDER
(As per Hon'ble Mr. B.V. Sudhakar, Administrative Member)



Through Video Conferencing:

2. The OA has been filed in regard to the promotions of the applicants to the cadre of LDC with effect from 28.09.2002 on par with their juniors on notional basis and consequently to direct the Respondents to promote the applicants with effect from 28.09.2002 in the cadre of LDC on notional basis from the date the immediate junior of the applicants was promoted, by protecting the seniority and grant other consequential benefits and accordingly pay them all arrears of pay and other consequential benefits.

3. The brief facts of the case are that initially the applicants were appointed in the Respondents organization as Sepoys on 10.04.1991 and 11.04.1991 respectively. The post of Sepoy was later re-designated as Hawaldar and seniority list in the cadre of Hawaldars was issued on 06.05.2002, as on 01.01.2002. The 1st applicant's name appears at Sl.No.90 and the second applicant's name appears at Sl.No.94. They have not been granted promotion though 20 years of service has been rendered. The Sepoys/Hawaldars are eligible for promotion to the cadre of LDC, if they possess the requisite qualifications such as, pass in 10th Class and typewriting test in English conducted by the Department. The Recruitment Rule prescribes that the appointment to the post of LDC is on the basis of 100% promotion from the feeder cadre. Out of the said 100%, fifty percent of the posts have to be filled up as per seniority cum fitness, who have



Matriculation or its equivalent qualification. The other 50% has to be filled up by way of departmental examination. The applicants were qualified in the Departmental Examination and the results were communicated vide letter dated 13.10.1997, but they did not qualify in the Typewriting test held in the year 2002. Juniors to the applicant qualified in the Typewriting test and they were promoted to the cadre of LDC in the years 2002 and 2010 respectively. The grievance of the applicant is that the juniors have been promoted to the cadre of LDC and shown as senior to the applicants. Therefore, the present OA.

4. The contentions of the applicants are that the Typewriting test for the post of LDC was held with very short notice. The conduct of Typewriting test was challenged in OA No.799/2003 wherein it was directed to conduct a supplementary typewriting test by giving reasonable time to all those candidates who have failed in the earlier test. The Supplementary Typing test was conducted on 10th and 11th of October, 2005 and the applicants have passed the same. Hence the applicants submit that they have to be promoted on par with their juniors. The applicants have represented to the Respondents and the same was rejected vide order dated 01.10.2014 stating that, “the employees qualifying at an earlier examination are considered before those who qualify at a later examination”. The applicants state that in the earlier Recruitment Rules, qualifying in the Typewriting Test was not a condition. Further, in the previous Recruitment Rules for promotion to LDC under 5% quota, employee have to pass the Typing Test within two years from the date of their promotion as LDC. Besides, promotion to the post of LDC cadre has to be done based on zonal seniority and not on the



Commissionerate Seniority list. The juniors to the applicants were promoted based on Commissionerate-wise seniority list. The applicants are eligible for promotion in the grade of LDC as per their seniority in the cadre of Hawaldar on par with juniors after having qualified in the typing test in 2005 as per old recruitment rules and not granting the same is arbitrary, illegal and discriminatory.

5. The Respondents, in their reply statement have stated that the seniority list as on 01.01.2002 referred to by the applicants was issued by Visakhapatnam Commissionerate. Due to cadre restructuring, Visakhapatnam-II Commissionerate was formed with effect from 01.11.2002. Subsequent to cadre restructuring, seniority lists of the two Commissionerates were maintained separately. Based on the seniority list of Sepoys of Visakhapatnam-I Commissionerate as on 01.01.2010 Mr.J.V. Lakshmi pathi Rao was promoted as LDC. The applicants have passed the Departmental Written Examination and the results were declared vide letter dated 13.10.1997 but they did not qualify in the Typing test, which is necessary for promotion to the LDC post. Based on the orders passed in OA No.799/2003, decided on 10.03.2004, the Respondents have conducted a supplementary typewriting test in the year 2005 and the applicants qualified in the test. The Respondents further state that Mr. Ch. Madhava Rao, though junior to the applicants, was promoted to the cadre of LDC in the year 2002 itself as he qualified in the typing test conducted in the said year. Therefore, he ranks senior to the applicants. Coming to the case of another junior Mr. J.V. Lakshmi pathi Rao, the Respondents state that he cannot be treated as junior to the applicants since he belongs to Visakhapatnam-I



Commissionerate whereas applicants belong to Visakhapatnam-II Commissionerate (now Kakinada Commissionerate) and promotions to the cadre of LDC under the 'Central Excise and customs Department Lower Division Clerk Recruitment Rules, 2002', are ordered based on Commissionerate-wise seniority lists as observed by the Tribunal in OAs 417 & 428 of 2008. Therefore the applicants cannot compare themselves with Sri J.V. Lakshmipathi Rao. The seniority list of 01.01.2002 is not relevant when another seniority list was issued on 01.01.2010 consequent to formation of new Commissionerate.

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

7. I. The dispute is about granting promotions to the applicants on par with their juniors to the cadre of LDC. The applicants were appointed as Sepoys on 10.04.1991 and 11.04.1991 respectively. The applicants are eligible to be promoted to the cadre of LDC as per Recruitment Rules, 2002, which provides for 100% promotion from the feeder cadre, of which, 50% of the vacancies on the basis of "Seniority-cum-fitness" with Matriculation or equivalent qualification having 5 years regular service and remaining 50% of the vacancies by promotion on the basis of departmental qualifying (written and typing) examinations with 5 years regular service in the feeder cadre. The employees who are aspiring promotion for the post of LDC under the Departmental Examination quota have to pass both the components to be eligible to be promoted as LDC. The applicants have passed the written examination vide letter dated 13.10.1997. As the applicants could not clear the Typewriting test and the same was cleared by



the juniors to the applicants in the year 2002, the juniors were promoted to the LDC cadre. Some of the employees, who could not clear the Typewriting test, approached the Tribunal in OA No.799/2003 wherein the Tribunal directed the Respondents to conduct the supplementary typewriting test by granting one month preparation time. The Tribunal order was clear that on passing the type test the promotions are to be granted against available vacancies. The applicants have passed the Typewriting Test on 11.10.2005. The claim of the applicants is that though they have passed the test in the year 2005, they should be placed above Mr.Ch. Madhava Rao and Mr.J.V. Lakshmipathi Rao. As seen from the facts of the case, the said juniors have passed the Typewriting Test in the year 2002, whereas the applicants in 2005. It is true that the Mr.Ch. Madhava Rao and Mr.J.V.Lakshmipathi Rao are juniors to the applicants in the cadre of Sepoy / Hawaldar but without occupying the post in LDC cadre, the applicants cannot seek parity in seniority in LDC cadre on par with the erstwhile juniors in the sepoy cadre. Juniors having qualified both in written and typewriting test in the year 2002 itself in contrast to the applicants clearing the type test in 2005, they would be obviously senior to the applicants. Further it is also seen that Mr.J.V.Lakshmipathi Rao belongs to Vizag I Commissionerate whereas the 1st applicant belongs to Vizag II Commissionerate. As the Commissionerates are different, the applicants cannot compare themselves with Mr. J. V. Lakshmipathi Rao. Any comparison has to be on the basis of the same recruiting unit and the relevant latest seniority list.

II. Another contention of the applicants is that Respondents have to follow Zonal seniority in Group D cadre for promotions to the LDC

cadre but not Commissionerate-wise seniority, which is incorrect, in view of the Tribunal observation in OAs 417 & 418 of 2008 on 26.6.2009 as under:



“12. As seen from the new recruitment rules specifically framed in respect of lower division clerks in the Department of Central Excise & Customs, separate LDC cadre of each Commissionerate is created by a special provision incorporating in the rules. When the rules are specific, it is not open for the cadre controlling authority to deviate from the said rules and to decide that zonal-wise seniority of Group ‘D’ officers is to be considered for promotion to the cadre of LDC. Unless otherwise prescribed by the CBEC, the LDC cadre is to be treated as a separate cadre for each Commissionerate.”

Thus, zonal seniority in the Group D cadre cannot be the basis for promotion to the LDC cadre as per the order of the Tribunal cited supra.

III. The further contention of the applicants is that as they have passed the written test in the year 2002, they ought to be granted promotion from the said year is unacceptable since promotion to the cadre of LDC is contingent upon passing both the components of the exam namely written and typing test. Applicants passed the written test in 2002 and the typing test in 2005 and therefore their promotion to LDC can be subsequent to passing the type test and not earlier to the same. This Tribunal in OA No.799/2003, vide order dated 10.03.2004 directed the Respondents to conduct a supplementary typewriting test by giving one month time for preparation and therefore, the applicants got one more opportunity to appear in the typing test and such benefit cannot be sought to be extended for retrospective promotion with no provision in the Recruitment Rules. The Tribunal order in the cited OA in 2004 was also clear to consider those who passed against available vacancies and hence considering the applicants promotion from 2002 would not arise. If done, it would be doing injustice to those who passed the written test and typing test in 2002.

IV. One another contention of the applicants that they have been granted only one day time for appearing in the typewriting test in the year 2002 stands invalid in view of the respondents conducting the supplementary typing test granting one month time in compliance with the orders of the Tribunal in OA 799/2003.



V. Applicants contending that in the erstwhile recruitment rules there were certain provisions which did not prescribe type test and if prescribed for certain categories 2 years' time was prescribed is of no relevance since the selection is to be based on the applicable recruitment rules and not those which are irrelevant. The representations of the applicants dated 4.9.2014 and 5.9.2014 were duly responded by the Respondents by rightly rejecting their plea.

VI. In view of the facts and circumstances state above, we do not find any merit in the OA and therefore we dismiss the same with no order as to costs.

(B.V.SUDHAKAR) (ASHISH KALIA)
ADMINISTRATIVE MEMBER JUDICIAL MEMBER

vl