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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD

(THIS THE 9th DAY OF December, 2010)

Hon'ble Dr.K.B.S. Rajan, Member (J)
Hon'ble Mr. D.C.Lakha, Member (A)

Original Application No.1131 of 2006
(U/S 19, Administrative Tribunal Act, 1985)

Lavkush Kumar Sonkar, aged about 48 years
Son of Late Buchcha Lal Soankar,
R/o 70-A/1/101 Pura Parain Daraganj
Allahabad

..... Applicant

Present for Applicant : Shri.R.R.Tripathi, Advocate

Versus

1. Union of India through its Secretary,
Ministry of Defence,
New Delhi.
2. Director General of Ordinance Services,
Master General of Ordinance Branch,
Army H.Q, D.H.Q.P.O,
New Delhi.
3. Officers-Incharge,
A.O.C. Records, P.O.Trimulgherry,
Secunderabad (A.P.)
4. Commandant Ordinance Depot,
Allahabad.

..... Respondents


Present for Respondents : *Anil D. Tiwari* ~~Raj Dev Tiwari~~, Advocate


O R D E R

(Delivered by Hon. Dr. K.B.S. Rajan, Member-J)

The short question for consideration in this case is whether for the purpose of promotion to the post of LDC under the 10% quota of Group 'D' personnel, in respect of vacancy that fell due prior to 2006, persons holding the post of Fireman Gr. I, which till 2006 was treated as Group 'D' and thereafter Group 'C' should be considered.

2. The brief facts of the case are that the Recruitment Rules, (vide Annexure 7) for DGPA Group 'C' and Group 'D' non-gazetted, non ministerial (Fire fighting staff) Rules 2000 interalia provide for the post of Fireman Grade-I in the then scale of pay of Rs. 2650-4000. The said post has been classified as Group 'D' non-gazetted non ministerial. The applicant was appointed under the provisions of these rules as Fireman in May 1988.

3. Vide Army Head Quarter's letter dated 22.3.2004 notification was issued for filling up of 10% posts of Lower Division Clerks from amongst Group 'D' non Industrial employees who fulfill the requisite educational qualifications and have rendered 5 years of regular service in the grade. Annexure A-2 refers. In pursuance of the said letter applications were invited by the respondent No.4 vide letter dated 10.6.2005. The applicant to this OA applied for the same. Through he was placed at Sl.No.50 in the panel for



promotion to the post of LDC, vide Annexure-3, while juniors to the applicant from the panel were posted as LDC, the applicant was not so promoted. Consequently, the applicant made a representation which was replied to vide Annexure-I and the same reads as under:-

114516/Gp.'D'/ESTT(NI)

20 Jul.2006

ESTABLISHMENT (NI)

RECRUITMENT OF GROUP 'D' (NON)
INDUSTRIAL EMPLOYEES FOR PROMOTION TO
Gp.'C' POST OF

1. Refer to your application dated 17.7.2006.
2. It is intimated that your application along with all connected documents were forwarded to AOC (Record) for recruitment of Gp.'D' employee for promotion to Group 'C' post as LDC in this depot.
3. After scrutinisation of documents it was revealed by AOC (Record) that you are already in Group 'C' post of Fireman. Therefore, ll documents along with Service Book received back not considering for Group 'C' post as LDC.
4. You are hereby informed accordingly.

Sd/
Rajender Kumar
OOC

Personnel Officer
P/No. ALD 289 E/Man
Shri Lavkush Kr.Soankar
Through
ISO / CSO

4. The applicant made an effort through Union in this regard and in reply thereof vide Annexure A-6 it was indicated that erroneously the category of Fireman was categorized as Gp.'D' post in the previous Recruitment Rules. Now the Recruitment Rules in

respect of Fire-staff have been amended vide SRO 93 dated 15.7.2006. The said letter reads as under:-

TO PROVIDE GP. C POST BY AOC RECORDS TO ELIGIBLE FIREMEN Gp.'D' EMPLOYEE NON INUDSTRIAL(LOCALLY CONTROLLED) EMPLOYED IN ORDANANCE CORPS.

1. Reference your Representation No.BPMS/56/2006 dated 28 Jul.06 on the above subject.
2. It is clarified that promotion to the post of LDC from Gp.'D' (Non-Ind) under 10% quota is strictly for Gp.'D' (Non-Ind) employees only. The pay scale of Fireman is Rs.2750-70-3300-75-4400, which is a Gp.'C' post as per the DOP&T Notification No. 13012/1/98-Estt. (D) dated 20th April 1998. More over CGDA, R.K.Puram, New Delhi has also clarified that the post of Fireman in the pay scale of Rs. 27560-4400 is a Gp.'C' post. Hence, Rs. 30/- is being deducted on account CGEIS subscription. However, Erroneously, the category of Fireman was categorised as Gp.'D' post in the previous RRs. Now the RRS in respect of Fire staff has also been amended vide SRO 93 dated 15 Jul 2006 and circulated to all concerned vide this HQ letter No./23731/Fire Staff/)S-8C (ii) dated 25 Jul. 2006.
3. In view of above mentioned factual position, the post of Fireman has been debarred for promotion to the post of LDC from Gp.'D' (Non-Ind) under 10% quota.

5. The applicant has challenged Annexure A-I and A-6 orders and prayed for the following:-

- (i) to issue any order or direction to the respondents to set aside the impugned order dated 20.07.2006 issued by Sri Rajendra Kumar OOC Personnel Officer Respondent No.4 intimated that after securitization of documents for recruitment of Group 'D' employee for promotion to group 'C' Post as LDC to the applicant, was revealed by AOC record (Annexure A-1).
- (ii) to issue any order or direction to set aside order dated 03.08.2006 stated that erroneously the category of Fire man was categorized as group 'D' Post in the previous RRS. Now the RRS in respect of Fire Staff has also the amended vide SRO 93 dated 15.07.2006 and circulated to all concern vide Head Quarter No.A/23731/Fire Staff/OS -8C (ii) dated 25.07.2006 (Annexure A-6).
- (iii) to issue order or direction to the respondents concern to give the letter of promotion to the applicant as Lower Clerk post w.e.f. 15.06.2006 by which the Junior to the applicant have been promoted.



- (iv) *to issue order or direction to give the arrear and other benefits of LDC post to the applicant from the date of 15.06.2006.*

6. Respondents have contested the OA. They have indicated that though the applicant figured in the select panel it was observed by the respondents that the pay scale of Fireman, Gestetener Operator and Cooks were in the grade of 2750-4400, 2750-4400 and 3050-4590 respectively and as per Rule 6 of CCS (CCA) Rules 1965 these posts are classified as Gp.'C' post and they are not eligible for promotion to another Gp.'C' post of LDC. Clarification sought from Integrated Headquarter of Ministry of Defence (Army) was also given by then vide their letter dated 13.2.2006. The communication reflected that as per DOP&T Notification dated 20.4.1998 reproduced under Rule 6 of CCA Rules a post carrying pay of a scale over 4000 but less than 9000 is classified as Gp.'C' post. Action to amend the Classification of this post in SRO (Recruitment Rules) is pending with the Ministry of Defence. Subsequently it was in Jul. 2006 that the Notification amending the Recruitment Rules was issued varying the post of Fireman has been classified as Gp.'C'. In the Rejoinder as well as supplementary rejoinder the applicant has stated that at the time when the vacancy for the post of LDC occurred the rule that was in vogue is the 2000 notification and as such according to the settled law the vacancy shall be filled in accordance with the Recruitment Rules in force on the date of vacancy, unless rules made subsequently have been given expressly retrospective effect (and the vacancies existed on the date of such

revised Recruitment Rules). In the instant case the vacancy pertained to 2004 and the amended Recruitment Rules came into force in July 2006 which specifically mentioned that the rules take prospective effect only.

7. Parties having consented to file the written arguments orders were reserved, and accordingly they have filed the respective written arguments. In sum one substance the written arguments contained the same contentions as contained in the pleadings.

8. Written arguments and the pleadings were considered. Rule 6 of CCS (CCA) Rules and revised the Classification of Posts, Group 'A', 'B', 'C' & 'D' read as under:-

6. Classification of posts.

Civil posts under the Union other than those ordinarily held by persons to whom these rules do not apply, shall by a general or special order of the President, be classified as follows:

- (i) Central Civil Posts, Group 'A'
- (ii) Central Civil Posts, Group 'B'
- (iii) Central Civil Posts, Group 'C'
- (iv) Central Civil Posts, Group 'D'

6-A All references to Central Civil Services/ Central Civil Posts, Class I, Class II, Class III and Class IV in all Rules, Orders, Schedules, Notifications, Regulations, Instructions in force, immediately before the commencement of these rules shall be construed as references to Central Civil Services/ Central Civil Posts, Group 'A', Group 'B', Group 'C', and Group 'D' respectively, and any reference to "Class or Classes" therein in this context shall be construed as reference to "Group or Groups", as the case may be.

GOVERNMENT OF INDIA'S ORDERS

Revised Classification of Posts, Groups 'A', 'B', 'C', and 'D'- S.O.332 (E).- In exercise of the powers conferred by the proviso to Article 309 and Clause (5) of Article 148 of the Constitution read with Rule 6 of the Central Civil Services (Classification, Control

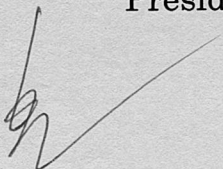


and Appeal) Rules, 1965, and in supersession of Paragraph 2 of the notification of the Government of India in the Department of Personnel and Administrative Reforms number S.O.5041, dated the 11th November, 1975, as amended by the notification of Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) number S.O. 1752, dated the 30th June, 1987, and after consultation with the Comptroller and Auditor-General of India in relation to persons serving in the Indian Audit and Accounts Department, the President hereby directs that with effect from the date of publication of this order in the Official Gazette, all civil posts under the Union shall be classified as follows:-

Sl.No.	Description of Posts	Classification of Posts
1.	A Central Civil Post carrying a pay or a Scale of pay with a maximum of not less than 13,500	Group 'A'
2.	A Central Civil post carrying a pay or a scale Of pay with a maximum of not less than Rs.9000 but less than Rs.13,500	Group 'B'
3.	A Central Civil post carrying a pay or a Scale of pay with a maximum of over Rs.4,000, but less than Rs.9,000	Group 'C'
4.	Central Civil post carrying a pay or a scale Of pay the maximum of which Rs.4000 Or less	Group 'D'

9. The contention of the applicant is that the Rule relied upon by the Department apply only to disciplinary proceedings and not for the purpose of promotion etc. For the purpose of promotion etc it is the Recruitment Rule that is supreme. In so far as the post of Fireman is concerned the Recruitment Rule is of 2000 which is posterior to the aforesaid Government of India Notification of 1998.

10. A perusal of Rule 6 would clearly indicate, " Civil Posts under the Union other than those ordinarily held by persons to whom these Rules do not apply so, by a general or special order of the President, be classified as follows:"




11. Notification dated 20.4.1998 extracted above also refers to Rule 6 of the Central Civil Services (Classification, Control & Appeal) Rules 1965. Ministry of Home Affairs order dated 12.6.1998, also appended to rule 6 of the very same CCS (CC&A) Rules, states that for any specific reason, concerned department proposes to classify the post differently it would be necessary for the department to send a specific proposal for the Department of Personnel & Training giving for the justification in support of the proposal. Of course, the said order prescribed a time limit of three months. The above would go to show that prescription of classes is not inelastic. Since Recruitment Rules upto 2000 vide Annexure A-7 is posterior to the April 1998 order, and since such recruitment rule has been cleared by the DOP&T in so far as classification of various posts is concerned, the one that has to be prescribed by the Recruitment Rules alone should have been taken into consideration. In other words, there is an implied exemption granted by the DOP&T from the earlier order to treat such posts containing maximum pay of Rs.4000 and above as Group 'D', as has been indicated in the Recruitment Rules. It is well settled that the special law overrides the general law. (see **Department of Telecommunication vs M. Krishnan, 2009(8) SCC 481**).

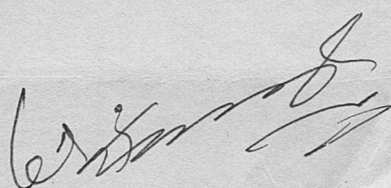
12. It is a different matter if from 2006 the respondents have included the post of Fireman etc as Gp.'C'.

13. The 10% post for LDC has been earmarked to be filled up by promotion from amongst Gp.'D' personnel. The applicant was placed in the pay scale of 2750-4400 and there may be individuals working in posts carrying lower pay scale. The pay scale of LDC is higher than that of a Fireman and other post carrying less pay scale than that attached to the post of Fireman. If opportunity available to the persons functioning in lower posts is not extended to the persons holding the post of Fireman, such persons holding the lower post would steal with a march-over persons holding the post of Fireman. The same would result in an anomalous situation. As such, reading harmoniously the Recruitment Rule with Rule 6 of the CCS(CCA) Rules the only possibility is to treat the post of Fireman for the purpose of 10% quota for promotion to Gp.'C' as Gp.'D' as per the Recruitment Rules.

14. In view of the above the **OA succeeds**. The impugned order at Annexure 1 & 6 are hereby quashed and set aside. It is declared that the applicant is entitled to be considered for promotion under the 10% quota as per the panel already prepared. He shall also retain his seniority in the post of LDC above his immediate juniors who have been promoted under the 10% quota.

15. Respondents are directed to pass suitable orders in this regard including fixation of pay of the applicant as well as affording seniority to him within a period of six months from the date of communication of this order. No costs.


(D.C. Lakha)
Member-A


(Dr. K.B.S. Rajan)
Member-J