

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

**O.A.NO.807 OF 2011
Cuttack this the 16th day of August, 2013
CORAM**

**HON'BLE SHRI A.K.PATNAIK, MEMBER(J)
HON'BLE SHRI R.C.MISRA, MEMBER(A)**

Biswanath Patnaik
Aged about 56 years
S/o. late Basudeb Patnaik
Resident of Flat No.201, Metro Home Apartment
At-Damana Chhaka,
PO-Chandrasekharpur
Bhubaneswar-751 016
At present working as Office Superintendent
In the O/o. the Deputy Chief Labour Commissioner(Central)
Plot No.N-7-6 & 7,IRC Village
Behind ISCON TempleNayapalli
Bhubaneswar-751 016

...Applicant

By the Advocate(s)-M/s.B.Routray
P.Ku.Sahoo
S.Das
S.Jena
S.K.Samal

-VERSUS-

Union of India represented through

1. The Secretary,
Ministry of Labour & Employment,
New Delhi

2. The Chief Labour Commissioner(Central)
Ministry of Labour & Employment
Government of India,
Srama Shakti Bhawan
Rafi Marg,
New Delhi

3. The Deputy Chief Labour Commissioner (Central)
Plot No.N-7-6 & 7, IRC Village
Behind Iskan Temple
Nayapalli
Bhubaneswar-751 016



By the Advocate(s)-Mr.U.B.Mohapatra

ORDER

HON'BLE SHRI R.C.MISRA, MEMBER(A)

Applicant in this O.A. is working as Office Superintendent in the Office of the Deputy Chief Labour Commissioner(Central) at Bhubaneswar. He has approached this Tribunal with a prayer that the Limited Departmental Competitive Examination (in short LDCE) 2011 for the post of Labour Enforcement Officer (in short LEO) (Central) held on 26th and 27th November, 2011 may be quashed and the Respondents should be directed to consider the eligible Office Superintendents including the applicant to be absorbed as LEOs. A further prayer has been made that the Tribunal should pass an order that Stenographers are not eligible for promotion to the post of LEO.

2. The short facts of the case are that the applicant was promoted to the post of Office Superintendent on 25.3.2010 and has been continuing since then in this post. The Ministry of Labor & Employment has laid down the method of Recruitment to the post of Labour Enforcement Officer by a set of rules called Labour Enforcement Officer (Central) Recruitment Rules, 1984. As per the said Rules, the Labour Enforcement Officer(Central) which has been classified as General Central Service Grade-B Gazetted shall be filled up by way of selection. The said Recruitment Rules provide for two methods of recruitment vis., 75% by Direct Recruitment through UPSC and 25% by promotion failing which by Direct Recruitment. It is further provided that in respect of posts in the grade of LEOs belonging to promotion quota, 20% is allocated to be filled solely from amongst



Office Superintendent and the remaining 80% of the said quota is to be filled by way of LDCE which is open to UDCs and Stenographers with five years regular service and regularly appointed Office Superintendents. The grievance of the applicant is that he has been deprived of his promotion in the LDCE 2011 in view of the fact that the UDCs and Stenographers were allowed to appear in the said examination. In the O.A. the applicant has mentioned that on 3.11.2009 a clarification was made by the Government of India, Ministry of Labour & Employment that the Office Superintendents, Gr.I and Gr.II are merged and will be called as Office Superintendent only in PB 9300-34800 with GP Rs.4200/-. It was further decided to prepare a combined gradation list for the post of Office Superintendents and action was initiated for amendment of the Recruitment Rules. However, there has been delay in the finalization of the amendment of the said Recruitment Rules. At this stage, Respondent No.1 scheduled the LDCE 2011 that was held in New Delhi on 26th and 27th November, 2011 to fill up the 20% of the vacancies against the promotional quota in the grade of LEO(Central) under the Labour Enforcement Officer(Central) Recruitment Rules, 1984. In the meantime, the restructuring of the cadre of Stenographers in the Regional and Field Offices in the Organization of Chief Labour Commissioner (Central) has already been done on 26.5.2004. The applicant, however, has basically raised a question that when the Stenographers are not eligible for promotion to the post of Office Superintendent, ^{how} they can be made eligible for promotion to the post of LEO(Central). The applicant mentions that in view of this so called anomaly he made a representation to Respondent No.2 on 30.9.2011 to amend the



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Recruitment Rules before holding the LDCE for LEOs in order to protect the interest of a large number of employees like him and who are similarly placed as his, whose interest will be adversely affected in case such promotional posts are filled up by way of LDCEs. Respondent No.2, the Chief Labour Commissioner(Central), New Delhi has communicated to Respondent No.3, i.e., the Deputy Chief Labour Commissioner(Central), Bhubaneswar that the process for amendment of Recruitment Rules for Office Superintendents and Stenographers has been initiated already and is in the process of submission to DOP&T as well as to UPSC. The amendment to the Recruitment Rules for the post of LEOs (Central) will be taken up after the amendment of Recruitment Rules of the feeder grade posts is completed. However, before the amendment process of the Recruitment Rules for the LEOs is undertaken it was decided to hold the LDCE 2011 in an illegal and arbitrary manner which has affected the rights of the present applicant to get his promotion to the grade of LEO (Central). Pending finalization of the amendment of the Recruitment Rules, LDCE 2011 was held hastily. By that process Stenographers who are not eligible for the post of LEOs will be considered for promotion by appearing in the LDCE 2011. It is also the case of the applicant in this O.A. that he is holding the post of Office Superintendent with GP Rs.4600/- and in the event he gets promotion to the post of LEO (Central), he will get the same GP causing no financial burden on the Respondents. On the other hand, because of the LDCE 2011 the applicant will be humiliated before his juniors who are working as Stenographers and not otherwise eligible even for the post of Office Superintendent being selected as

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Labour Enforcement Officer(Central). The Stenographers are drawing GP Rs.2400 whereas the present applicant is drawing GP Rs.4600 and therefore, it will be highly unjustified to give promotion to the Stenographers enjoying presently GP ~~Rs~~ 2400 to the post of LEO (Central) with GP ^{Rs} 4600. It is the case of the applicant that this will severely prejudice his promotional interest.

3. The Respondents have filed their counter affidavit in which they have first of all mentioned that the post of LEO is the backbone of the organization. It is the LEO (Central) ^{who} ~~which~~ is enforcing various labour laws, which are of critical importance. The post of LEO (Central) is in the PB ^{Rs} 9300-34800 with GP ^{Rs} 4600 and the post is filled in accordance with the Labour Enforcement Officer(Central) Recruitment Rules, 1984. These Rules provide for two methods of Recruitment as detailed below.

- i) 75% by Direct Recruitment through UPSC
- ii) 25% by promotion failing which by Direct Recruitment.

4. Further in respect of the posts in the promotion quota, 20% is allocated to be filled solely from amongst Office Superintendents and remaining 80% of the said quota is to be filled by way of LDCE which is open to UDCs and Stenographers with five years regular service and also regularly appointed Office Superintendents. The LDCE 2011, which was held on 26th and 27th November, 2011, was not to fill up 20% vacancies against the promotion quota, but 80% vacancies of the promotional posts as per the provisions of the said Recruitment Rules. The Respondents have also filed a copy of the Recruitment Rules at Annexure-R/1 which reads as under:



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- (i) 20% vacancies in the promotion quota :-
Office Superintendent, Grade I with 3 years' regular service in the grade, failing which Office Superintendent, Grade-I with 8 years regular combined service in the grades of Office Superintendent, Grade I and Office Superintendent, Grade-II.
- (ii) 80% of vacancies in the promotion quota:
On the basis of Limited Departmental Competitive Examination to be conducted by the Department of Labour open to Upper Division Clerks/Stenographers with 5 years regular service in the grade and regularly appointed Office Superintendents Grade I and Office Superintendents Grade II working in the Office of the Regional Labour Commissioners (Central).

5. Therefore, according to Respondents, the present applicant, who is Office Superintendent has two channels for promotion to the post of LEO (Central), viz., (i) through LDCE and (ii) by way of seniority quota of combined service in the grade of Office Superintendent. On these grounds, the Respondents have argued in the counter affidavit that the contention of the applicant that he is being deprived of an opportunity of promotion is incorrect and misleading. The restructuring of the Stenographers service as per the Department of Personnel & Training O.M. dated 6.8.1999 *has* as no relevance to the filling up of the post of LEO (Central). Another significant fact mentioned in the counter affidavit is that the applicant himself appeared in the LDCE held in the year 2003 and 2004. However, he failed to qualify *in* the same. He was also eligible to appear in the LDCE held in the year 2011, but he did not appear in the said examination. It is also denied in the counter affidavit that the Respondents had initiated the process of amendment of the existing Recruitment Rules for the post of LEO (Central) ~~from time to time in the year 1984~~. It is also submitted by the Respondents that the LDCE, 2011 has been held on 26th and 27th November, 2011 in accordance with



the existing Recruitment Rules for the said post. When the Recruitment Rules are not modified the Respondents are bound to conduct the examination as per the Recruitment Rules presently in force. On that basis the Respondents have contended that the applicant has been misdirected to approach the Tribunal for a relief which is absolutely unreasonable. It is also further submitted that consequent upon the implementation of the recommendations of the 6th CPC, Recruitment Rules for the post of LEO (Central) can be amended only after finalization of amendment to the Recruitment Rules of the feeder grade posts. In this case, the feeder grade posts are Stenographers, UDCs and Office Superintendents. The Recruitment Rules for the post of UDC and stenographers have been amended already and amendment of the Recruitment Rules for the post of Office Superintendents is under process in consultation with DoP&T/UPSC. The amendment of the Recruitment Rules for the post of LEO can be taken up only after the finalization of the Recruitment Rules of the feeder grades. When the Recruitment Rules are not modified, the Respondents are bound to conduct the examination as per the extant rules in force. If the Recruitment Rules are amended it will be only with prospective effect for the future vacancies but for the existing vacancies, the Recruitment Rules, as on date of occurrence of the vacancies or on the date of initiation of recruitment procedure for those vacancies shall apply.

6. The applicant's contention has been thoroughly challenged by the Respondents in the counter affidavit by pointing out that 20% of the promotion quota is exclusively earmarked for the Office Superintendents only for promotion



to the post of LEO (Central). For the purpose of filling up 80% promotion quota, Office Superintendents who are regularly appointed are eligible along with UDCs and Stenographers. For the UDCs and Stenographers, five years' experience has been prescribed whereas no such experience requirement is laid down for the Office Superintendents. The applicant himself had appeared in the LDCE in the year 2003 and 2004 held as per the existing Recruitment Rules and even though he was eligible to appear in the LDCE in the year 2011, he chose not to appear in the said examination. Therefore, the case made out by the applicant is highly unreasonable since he has already participated in the process of LDCE in the year 2003 and 2004 held in accordance with the existing Recruitment Rules.

7. The applicant has also filed a rejoinder to this counter affidavit wherein he has re-emphasized the fact that when the Stenographers are not eligible for promotion to the post of Office Superintendents, under no circumstance, they can be made eligible for promotion to the post of LEO. When the process of amendment to various Recruitment Rules has been initiated, holding up of the LDCE 2011 has been done in a hasty manner and has affected the right of the applicant to promotion. He has also mentioned the fact that the last recruitment for the post of LEO was held in the year 2004 and therefore, without amending the Recruitment Rules, the Respondents should not have conducted the recruitment/examination. The Stenographers and UDCs cannot be compared with Office Superintendents and cannot be treated as one cadre for the purpose of Recruitment to LEOs etc. The applicant has further admitted that he did not



appear in the LDCE 2011 since by that time he had already moved this Tribunal and the matter was sub judice.

8. Having heard the learned counsel for both the sides, we have perused the records. The facts are very clear that the Recruitment Rules to the post of LEO(Central) which is a very critical post in the Labour Organization is governed by the Labour Enforcement Officer(Central) Recruitment Rules, 1984. These rules provide for two methods of Recruitments, viz., 75% by Direct Recruitment through UPSC and 25% by promotion failing which by Direct Recruitment. We are not concerned here with the 75% quota which is to be filled by Direct Recruitment through UPSC. The matter of challenge is 25% by promotion to the post of LEO (Central). It is also the admitted position that 20% of this quota is allocated to seniority quota to be filled solely from amongst the Office Superintendents and the remaining 80% of the said quota is to be filled by way of LDCE which is open to UDCs and Stenographers with five years regular service in the respective grades and regularly appointed Office Superintendents. The Respondents have also filed copy of the provisions in the Recruitment Rules which have been discussed in the preceding paragraphs. The contest made by the applicant in this O.A. is regarding 80% of the said quota which is to be filled up as per the present Recruitment Rules by UDCs and Stenographers with five years of regular service and regularly appointed Office Superintendents. The contention of the applicant has been that UDCs/Stenographers cannot be compared with Office Superintendents. We have to go by the present Recruitment Rules for the said post which are in force. The Office Superintendents have been given priority since



out of 25% of promotion quota, 20% is allocated solely to the Office Superintendents. The remaining 80% of the promotion quota is open to UDCs and Stenographers with five years regular service in the grade and regularly appointed Office Superintendent, Gr.I and Gr.II working in the Office of the Regional Labour Commissioner(Central) through LDCE. The applicant has no locus standi to challenge as to why in the present Recruitment Rules, UDCs and Stenographers have also been given an opportunity to appear through LDCE and prove their merit to be selected as LEO(Central). This is a decision of the concerned authorities and just because the UDCs and Stenographers stand on a different footing from Office Superintendents there is no reason why they cannot be made to appear in the LDCE as laid down in a statutory frame work. The applicant has been repeatedly saying that in the process he has been denied promotion to the grade of LEO(Central). Such an allegation does not stand to reason. As Office Superintendent he has got two channels of promotion to be appointed as LEO(Central), as already explained above. He had earlier appeared at the LDCE in the year 2003 and 2004, but could not qualify in the said examinations. Therefore, it is to be noted that the applicant has participated in the process of selection in so far as LEOs under 80% quota is concerned. The reason that he has now advanced for not appearing LDCE 2011 mentioning that at that point of time he had already approached the Tribunal for relief is again highly unjustified. Since ⁱⁿ under the existing rules, he had appeared at the LDCE in the year 2003 and 2004 he also could have so appeared in the year 2011. He has submitted that the LDCE 2011 should not have been held and this should have

been postponed to a date after the finalization of the proposed amendment of the Recruitment Rules. Such a claim made by the applicant is highly irrational as it is not expected ~~of him~~ that the administration should run at his dictates and the authorities are within their rights to go ahead with the process of selection for filling up the vacancies in accordance with the extant Recruitment Rules,

Considering the fact that the Respondents have claimed that the amendment of Recruitment Rules for the post of LEO will be taken up only after the amendment of the Recruitment Rules in the feeder posts is completed, ^{The} applicant as an Office Superintendent working at present under the Respondents has got his promotional chance which he can utilize. However, he cannot make a claim that the entire wheel of governance will come to a halt so that his claim for promotion would receive the priority attention of the Respondents. His chance of promotion will depend on the Recruitment Rules which are in force subject to the condition that he also participates in the various ^{es} ^f process which have been laid down for the sake of selection. It is worth-noting that promotion is not a matter of right and conversely, consideration for promotion is a matter of right. In the instant case, we do not, however, come across any such eventuality whereby the right of the applicant for consideration for promotion to the post of LEO (Central) has been infringed by the Respondent-Department in any manner, whatsoever. Rather, the applicant, at his wish and will has missed the chance of being considered for promotion by his non-participation in the LDECE held in the year 2011.



9. The challenge thrown by the applicant to the extant Recruitment Rules in force and also the process of selection which has been followed in pursuance of the said Rules, is absolutely unfounded and baseless and therefore, the O.A. being devoid of merit stands dismissed, with no order as to costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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