

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

**Original Application No. 67/2010 & 450/2012**

Jodhpur, this the 21<sup>st</sup> day of March, 2014

**CORAM**

**Hon'ble Mr.Justice Kailash Chandra Joshi, Member (Judicial)  
Hon'ble Ms Meenakshi Hooja, Member (Administrative)**

Om Prakash S/o Shri Megh Raj, aged 49 years, peon in the office of Executive Engineer, Central Ground Water Board, Division-II, Jodhpur, R/o K-25, Sanjay Gandhi Colony, Pratap Nagar, Jodhpur.

.....Applicant

By Advocate: Mr Vijay Mehta.

**Versus**

1. Union of India through the Secretary to the Government, Ministry of Water Resources, Shram Shakti Bhawan, Rafi Marg, New Delhi-1.
2. Director (Administration), Central Ground Water Board, National High Way-IV, Faridabad – 121 001.
3. Administrative Officer, Central Ground Water Board, National High Way-IV, Faridabad – 121 001.

.....Respondents

By Advocate : Ms K. Parveen.

**ORDER (Oral)**

We are deciding both OAs by a common order because both the OAs are filed by the same applicant i.e. Shri Om Prakash against the common respondents, in the inter-connected matter having common facts regarding his promotion to the post of LDC by Limited Departmental Competitive Examination (LDCE). By way of OA No.

67/2010, the applicant has challenged the legality of OM No. 20-77/2009-Estt dated 14.01.2010 by which provision of exhausting previous panel of successful candidates of LDCE for considering the promotion to the post of LDC has been done away. By way of OA No. 450/2012 the applicant has challenged the legality of letter dated 17.09.2012 by which applications from eligible candidates for LDCE in the respondent-department have been invited, and also challenged the letter dated 19.10.2012 by which schedule of LDCE for the post of LDC has been circulated.

2. The short facts of the case as averred by the applicant in OA No. 67/2010 are that he is working on the post of peon in the respondent-department. Respondent-department held Limited Departmental Competitive Examination (LDCE) on 04.02.2009 for filling up of five posts of LDC and the applicant appeared in the same and he was at no. 06 in the merit of successful candidates for promotion to the post of LDC from Peon. The applicant could not be promoted by the respondent-department as only 5 vacancies to be filled up by promotion from LDCE were available though 2 vacancies were available due to promotion of 22 LDC to the post of UDC and the applicant ought to have been granted promotion or a panel for promotion ought to have been prepared. The applicant submitted a representation to the respondents to prepare panel for the said promotion by virtue of LDCE held on 04.02.2009 but the same has been rejected by the respondent No. 3 vide order dated 14.01.2010 (Annex. A/1). It has been averred in the application that this Hon'ble

Tribunal directed the respondents vide its order dated 13.11.1998 to keep the panel arising out of LDCE held in March 1992 pending and to first exhaust the panel before any fresh panel is prepared and it has been further averred in the application that the respondent-department has now amended the Recruitment Rules vide order dated 25.01.2010 whereby the educational qualification for promotion to the post of LDC from Class IV has been changed from Secondary to Senior Secondary and the applicant has been made ineligible for promotion. It has further been averred that had the panel been prepared and kept pending the applicant would have been promoted, therefore, the applicant has been illegally deprived from future promotions. Thus, the applicant has filed OA No. 67/2010 for the main relief that

**"the order Annex. A/1 may kindly be quashed and the respondents be directed to prepare panel amongst the candidates who were declared successful vide order Annex. A/2 and thereafter grant promotion to the applicant with all consequential reliefs. Any other order, as deemed fit, giving relief to the applicant may also be passed. Costs may also be awarded to the applicant"**

3. Later on during the pendency of above OA, the applicant filed OA bearing No. 450/2012 further averring that the respondent-department after a period of 2 years promoted Shri Sukhveer in pursuance to LDCE held on 04.02.2009 and Shri Sukhveer stood at S.No. 6 in the merit list of successful candidates for promotion against

the 05 vacancies. It has been averred in OA No. 450/2012 that DoPT vide its OM dated 08.02.1982 has laid down that when suitable persons, on declaration of result of the LDCE, are available and selection is based on merit, such persons are required to be given promotion first in preference to others who may be selected thereafter and when selected candidates are awaiting appointment further recruitment should be postponed till all selected candidates are accommodated. It has also been averred that Hyderabad Bench of Central Administrative Tribunal vide its order dated 08.10.2010 passed in OA No. 1034/2009 has held that DoPT OM dated 08.02.1982 is still in force and applicable in the respondent-department for granting promotion on the basis of LDCE and this OA was challenged by the respondent-department in the Hon'ble Andhra Pradesh High Court by way of writ petition and the same was dismissed. Subsequently SLP filed in the Hon'ble Apex Court had also been dismissed. It has further been averred that despite availability of 02 vacancies and the applicant having been placed at 7<sup>th</sup> position in the merit arising out of LDCE dated 04.02.2009, the applicant filed OA No. 67/2010 in this Tribunal for his promotion which is pending decision. But despite these facts, the respondent-department with the approval of competent authority issued order dated 17.09.2012 (Annex. A/1 in OA No. 450/2012) mentioning that it intends to hold LDCE for filling up 06 vacancies of LDC from the year 2009-10 to 2012-

13. Thereafter schedule of LDCE has been declared vide order dated 19.10.2012 (Annex. A/2 in OA No. 450/2012). Therefore, the applicant after learning about both the orders submitted representation dated

30.10.2012 to the respondent-department to postpone the holding of LDCE till disposal of OA No. 67/2010 but since there are holidays and restricted holidays from 10.11.2012 to 18.11.2012, therefore the applicant has filed OA No. 450/2012 for the following relief(s) that :

**"order Annex A/1 and Annex. A/2 may kindly be quashed and the respondents may kindly be restrained from holding Limited Departmental Competitive Examination for granting promotion to the post of LDC on 15/11/2012 or any other adjourned date without first promoting the applicant. The respondents may kindly be directed to grant promotion to the applicant on the post of LDC with all consequential benefits including salary, allowances, seniority. Any other order, as deemed fit, giving relief to the applicant may also be passed. Costs may also be awarded to the applicant."**

4. By way of reply in OA No. 67/2010, the respondents have averred that the notification for filling up only 05 vacancies of LDC was issued during December, 2008 and result was declared during February, 2009 and till 31<sup>st</sup> March, 2009 only 05 vacancies pertaining to LDCE quota were available and the applicant stood at merit No. 6 in the said examination. The official submitted a representation to maintain the panel for the said examination from amongst those candidates who were declared pass in the LDCE held on 04.02.2009, but as per existing Recruitment Rules (RRs) for the post of LDC, there is no such provision to maintain the panel. Therefore, it was declined to maintain such panel. It has been further averred that as per earlier

RRs in force, notified vide No. 23-1/90-GW dated 22.12.1990, there was provision given in the Note 'B' under Col. 11 of these RRs, the employee qualifying at an earlier examination are considered before those who qualify at the later examination. Therefore, relying on this note some of the candidates filed a case in the CAT Jodhpur Bench to maintain a panel of the successful candidates. Keeping in view this provision in the RRs at that time, the CAT Jodhpur Bench passed direction to maintain the panel of all successful candidates vide order dated 13.11.1998 passed in OA No. 340/97. However, as per existing RRs for the post of LDC modified vide O.M. No. 23/2/2006 CGWB dt. 04.11.2008, the provision note 'B' notified in earlier RRs dated 22.12.1990 has been deleted as such there is no provision to keep the panel of passed candidates alive in the subsequent years.

5. By way of reply in OA No. 450/2012, the respondents have averred that the case of Shri Sukhbir Singh cannot be compared with the case of the applicant because after completion of LDCE held 04.02.2009, Shri Sukhbir Singh sought certain information under RTI regarding rechecking of the answer sheet of paper-II of the said examination and it was found that Shri Sukhbir Singh in fact got the merit but was inadvertently denied promotion. Therefore, Shri Sukhbir Singh was promoted to the post of LDC. The respondents further reiterated the fact that after coming into force the Rules of 2008, there is no provision for maintaining panel for the anticipated vacancies or of the vacancies which may arise in subsequent years. Therefore, the OM dated 08.02.1982 and 09.08.2010 are not having

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any implication in the present case. It has been averred that the facts of the OA No. 1034/2009 decided by the CAT Hyderabad Bench were totally different from the present case. The respondents have further averred that they are well within their rights to hold LDCE for filling up 06 vacancies from the year 2009-10 to 2012-13 and there is no reason to postpone the said examination and respondents prayed to dismiss both OAs filed by the applicant.

6. By way of rejoinder in OA No. 67/2010, the applicant reiterated the same facts as averred in OA.

7. Heard both the parties. Counsel for the applicant while relying upon the judgment of CAT Hyderabad Bench passed in OA No. 1034/2009 dated 08.10.2010 contended that the waiting list must remain functional or alive till the next examination and even before holding the next examination the entire panel should be exhausted. He further contended that the circular dated 08.02.1982 has been discussed in the judgment of Hyderabad Bench and CAT Jodhpur Bench judgment dated 13.11.1998 passed in OA No. 340/97 and he submits that circular of 08.02.1982 and further the office memorandum is still in force as per memorandum dated 09.08.2010 FTS-3178/Ad.B/2010 and it has been elaborately discussed by the CAT Hyderabad Bench. Counsel for the applicant further contended that applicant's right of consideration has been wrongly denied and he has been deprived from the consideration, therefore, the applicant

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has the right to have consideration for the post of LDC within the panel issued on 04.02.2009 by CGWB, NCR, Bhopal.

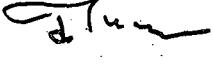
8. Per contra counsel for the respondents contended that the RRs have been changed vide notification dated 04.11.2008 and this examination was conducted on 04.02.2009 and result was declared on 16.02.2009 after the amendment vide notification dated 04.11.2008. Therefore, there was no requirement to prepare any panel of wait listed.

7. We have considered the rival contentions and also perused the judgment of Hon'ble CAT Hyderabad Bench passed in OA No. 1034/2009. In the judgment of CAT Hyderabad Bench, there is no reference of the notification dated 04.11.2008 and the learned Tribunal proceeded to decide the case simply on the basis of department circular dated 08.02.1982 and 09.08.2010 FTS-3178/Ad.B/2010. In our considered view the administrative instructions cannot override statutory rules although they can supplement the rules but they cannot have overriding effect on the statutory rules and as per amendment notification dated 04.11.2008 there is no provision for preparation of any panel of persons, therefore, the applicant is not entitled to have any relief because Annex R/1 (in OA No. 67/2010) notification dated 4<sup>th</sup> Nov., 2008 for amendment of rules does not provides for preparation of a panel and Note 'b' of the 1990 Rules regarding the panel stands deleted.

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8. In view of the discussions hereinabove made, the OAs are devoid of any force, therefore, the same are dismissed. Accordingly, OA No. 67/2010 and 450/2012 are dismissed with no order as to costs.

  
(MEENAKSHI HOOJA)  
Administrative Member

  
(JUSTICE K.C.JOSHI)  
Judicial Member

SS/

for. K. Branee.  
M. Farhat  
28/3

JK  
28/3