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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Original Application No.552/2011

Jodhpur, this the 27th day of September, 2013

CORAM

**HON'BLE MR. JUSTICE KAILASH CHANDRA JOSHI, MEMBER (J)
HON'BLE MS. MEENAKSHI HOOJA, MEMBER (A)**

1. Makhan Lal Vijayrania s/o Shri Shaker Ram, aged about 51 years r/o Quarter No. P-52/7, MES Colony, Bikaner.
2. Manohar Lal s/o Shri Chhot Mal, aged about 52 years r/o House No.27, Behind Marwar Motros, Tilak Nagar, Bikaner,

(Both the applicants are presently working on the post of Daftari and Peon in the office of GE (Noth), Bikaner).

.....Applicants

Mr. S.K.Malik, counsel for applicants

Vs.

1. Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. The Director General (Pers.), MES, Engineer-in-Chief's Branch, Army Headquarters, Kashmiri House, New Delhi.
3. The Chief Engineer, Western Command, Chandi Mandir, C/o APO 56
4. Chief Engineer, Southern Command, Pune-1
5. Chief Engineer, South Western Command, Jaipur
6. Sh. Gauri Shankar, LDC, C/o HQ CE, South Western Command, Jaipur
7. Sh. Sheo Karan, LDC, c/o GE (AF), Suratgarh, District, Sri Ganganagar.

...Respondents

Ms. K.Parveen, counsel for respondent Nos. 1 to 5

Mr Vijay Mehta, counsel for respondents No. 6

None present for respondents No. 7

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ORDER (ORAL)

Per Justice K.C.Joshi, Member (J)

The applicants have challenged the order dated 31.01.2011 (Ann.A/1), 14.2.2011 (Ann.A/2) and order dated 25.4.2011 (Ann.A/4) by which persons junior to them have been promoted ignoring claim of the applicants and, therefore, made the following prayers:-

- (i) by an appropriate writ order or direction impugned orders dated 31.1.11, 14.02.11 and 25.04.11 at Annx.A/1, Annx.A/2 & Annx.A/3 be declared illegal and be quashed and set aside qua the juniors of the applicants.
- (ii) By an order or direction respondents may be directed to consider the case of the applicants for promotion to the post of LDC w.e.f. the date persons junior to the applicant has been promoted with all consequential benefits.
- (iii) Any other relief which is found just and proper be passed in favour of the applicants in the interest of justice by the Hon'ble Tribunal.

2. Since the present application is against a common grievance of the applicants, therefore, the applicants are permitted to pursue the matter jointly in these pleadings.

3. Facts so far as relevant and as averred by the applicant are that the applicant No.1 was appointed on the post of Peon w.e.f. 21.3.1983 and thereafter promoted on the post of Daftri. Applicant No.2 was appointed on the post of Peon w.e.f. 13.10.1983. Both are working in the office of GE (North) Bikaner. A new command namely South Western Command Headquarter at Jaipur was raised and employees working under Western and Southern

Command were given option for South Western Command or to remain at Southern or Western Command. The applicants gave option for south Western Command vide letter dated 3.10.2006, it was provided that parent command concept should be adopted for two years and the issues like seniority, transfer, promotion, retirement, compassionate appointment etc. will be handled by the parent command. This system was to be continued till South Western Command becomes independent in two years' time frame. The applicants have stated that applicants as well as private respondents before giving option for South Western Command were working under respondent No.3, in Chief Engineer, Western Command where in the seniority list dated 20.2.2007 name of the applicant No.1 appeared at Sl.No.16 and that of applicant No.2 at Sl.No.71 whereas respondent No.6 and 7 are at 69 and 74 respectively. Respondent No.5 in CE, South Western Command also prepared seniority list of Group 'D' to LDC vide letter dated 9.6.2009 for the employees who opted for South Western Command and names of the applicants are shown at Sl.No.3 and 10 and that of respondent No. 6 at Sl.No.9. It has been further stated that respondent No.2 informed respondent No. 3, 4 and 5 that Manning establishment sanction for CE, South Western Command is awaited from MOD, therefore, parent CE's command concept as intimated vide letter dated 3.10.2006 will continue as cadre controlling authority and the action is to be implemented forthwith. The applicant made representation stating they it is learnt that panel for the post of LDC is being prepared and their names will not be considered since they are working under South Western Command and vide letter dated 26.4.2010 it was informed that no such panel is going to be

published. The applicants have further averred that vide orders dated 31.1.2011, 14.2.2011 and 25.4.2011 the respondents promoted junior persons to them on the post of LDC against 5% quota of matriculation, which is purely on seniority basis of the command and, therefore, filed the present OA praying for the reliefs as mentioned above.

4. The official respondent Nos. 1 to 5 and private respondent No.6 have filed their separate replies and denied the right of the applicants. Respondent Nos. 1 to 5 by way of their reply have submitted that the applicants were not borne on the strength of Southern Command. They were borne on the strength of Western Command until they had exercised their option for transfer to newly raised South Western Command. Accordingly, CE Western Command was parent Command for those who have been transferred from HQ Chief Engineer, Bathinda Zone to CE South Western Command and CE Southern Command was parent Command for those who have been transferred from HQ Chief Engineer Jaipur Zone to CE Southern Command. The seniority, transfer, promotion, retirement, compassionate appointment etc. will be handled by parent Command concept and such parent Command shall continue as cadre controlling authority for Group-C and D staff till Manning establishment sanction for Chief Engineer, South Western Command is received or upto 31 March, 2010, whichever is earlier. It is further stated that HQ South Western Command has started functioning w.e.f. Aug. 2008. Hq CE, Western Command has not considered promotion of any official who were South Western Command Optee in the adv DPC for the year 2009-2010 and

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onwards. Hence, comparing their seniority for promotion with personnel of Western Command is not in order. The seniority list dated 20th February, 2007 was published by the HQ Chief Engineer Western Command before giving option by the applicant for newly raised South Western Command. Subsequently, on raising of HQ chief Engineer, South Western Command both the applicants exercised their option dated 29th Sept. 2007 for transfer to newly raised command and as a result HQ CE, Western Command ceased their seniority in the seniority list of Western Command. Private respondent No. 6 was on seniority list of Southern Command before giving his option for South Western Command. Therefore, he was considered by the DPC for promotion against vacancy of the year 2007-08 from Group-D to LDC as per rules. Since both the applicants originally belong to Western Command, therefore, comparison of seniority with an employee of CE, SE is not justified and respondent No.7 was permanent optee of Western Command working under Garrison Engineer (AF), Suratgarh

5. Heard the counsel for both the parties and perused the material available on record.

2. Counsel for the applicant contended that as per Annex. A/4, the parent command was required to promote employees of their command for 2 years from the date of creation of the new command i.e. from Oct, 2006 and further this period was extended for 2 years vide Annex. A/7 upto 31st March, 2010. He further contended that the parent command concept was applicable upto

31.03.2010 whereas, the respondents No. 3 issued promotion orders on 31.01.2011 and 14.02.2011 which was after the applicability date of parent command concept. The respondent No. 4 issued promotion order on 14.02.2011 but for the vacancy years 2004-05 to 2008-09, therefore, the candidature of the applicant should have been considered as per Annex. A/8 and respondents without considering the candidature of the applicant in the Western Command which was the parent command of the applicant issued the promotion order to the junior persons. Counsel for the applicant contended that by denying consideration of candidature of the applicant and promoting junior persons to the post of LDC by Annex. A/1 to A/3, the respondents No. 3 has infringed the right of the applicant, therefore, the applicant is entitled to be considered for the post of LDC from the date on which his juniors were considered and promoted.

6. Per contra counsel for the respondents contended that promotion orders were issued as per policy decision.

7. Counsel for the respondents No. 6 contended that the applicant in this OA, persons promoted vide Annex. A/1 to A/3 have not been arrayed as respondents, therefore, Annex. A/1 to A/3 cannot be quashed without giving them an opportunity of hearing to these concerned persons.

8. We have considered the rival contentions of all the parties. From reply it is well established that the concerned persons were promoted for the

vacancies for the year 2004-05 to 2008-09 and the applicant's case was not considered by the parent command i.e. Western Command, however, the respondent No. 3 was under obligation to consider the case of the applicant for promotion to the post of LDC on the date on which his juniors were considered and promoted to the post of LDC. Therefore, applicant is entitled to get the relief.

9. Looking into the entire facts and circumstances of the case, the respondent No. 3 is directed to consider the case of the applicant for promotion to the post of LDC from the date on which his juniors were considered and promoted, within 3 months from the date of receipt of this order and the applicant may be promoted to the post of LDC from the date on which his juniors were promoted, if otherwise found suitable, with all consequential benefits. There shall be no order as to costs.


[Meenakshi Hooja]
 Administrative Member


[Justice K.C.Joshi]
 Judicial Member