

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 322 of 2013

Original Application No. 674 of 2013

Thursday, this the 6th day of August, 2015

CORAM:

Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member

Hon'ble Mrs. P. Gopinath, Administrative Member

1. Original Application No. 322 of 2013 :

1. Joseph Rolent Padua, Sepoy, Air Customs,
International Airport, Thiruvananthapuram.

2. K.V. Manoj Kumar, Sepoy,
Central Excise Range Office, Angamaly,
Ernakulam District.

..... **Applicants**

(By Advocate : Mr. C.S.G. Nair)

V e r s u s

1. Union of India, represented by its Secretary,
Department of Revenue, North Block,
New Delhi – 110 001.

2. Chief Commissioner of Central Excise & Customs,
Central Revenue Buildings, I.S. Press Road,
Cochin – 682 018.

3. Commissioner of Central Excise & Customs,
Central Revenue Buildings, I.S. Press Road,
Cochin – 682 018.

4. Additional Commissioner of Central Excise & Customs,
Central Revenue Buildings, I.S. Press Road,
Cochin – 682 018.

5. P.V. Joy, Lower Division Clerk,
Office of the Commissioner of Central Excise & Customs,
Central Revenue Buildings, I.S. Press Road,
Cochin – 682 018.

..... **Respondents**

**[By Advocates : Mr. Thomas Mathew Nellimoottil, Sr. PCGC (R1-4)
& Mr. Shafik M.A. (R5)]**

2. **Original Application No. 674 of 2013 :**

N.V. Rajesh, Sepoy of Central Excise,
Service Tax A Range, Central Excise Bhavan,
Kathrikadavu, Kochi – 682 017.

..... **Applicant**

(By Advocate : Mr. C.S.G. Nair)

V e r s u s

1. Union of India, represented by its Secretary,
Department of Revenue, North Block,
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Office of the Commissioner of Central Excise & Customs,
Central Revenue Buildings, I.S. Press Road,
Cochin – 682 018.

..... **Respondents**

[By Advocate : Ms. Mini R. Menon, ACGSC (R1-4)]

These applications having been heard on 30.7.2015, the Tribunal on
06.08.2015 delivered the following:

ORDER

Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member -

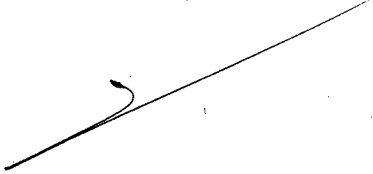
The two applicants in OA No. 322 of 2013 and the applicant in OA No. 674 of 2013 seek quashment of Annexure A19 order to the extent it relates to the promotion of the 5th respondent and for a direction to promote the applicants as L.D. Clerk with effect from 23.3.2013 and for

consequential relief.

2. Since the issue involved in both cases is the same both cases are considered together. Both sides agreed to have a disposal of the two cases by a common order.

3. The case of the applicants is stated as follows:

3.1. The applicants joined service on 7.6.1993 and 1.11.1995 respectively as Sepoys. Their next promotion is to the post of Havildar and Head Havildar/L.D. Clerk. As regards the post of L.D.C. it is cent percent promotion post. 50% posts are filled up by promotion from among Havildars, Record Keepers etc. and the rest 50% by promotion from Havildars/Sepoys who are matriculates and who passed the departmental qualifying test as evident from Annexure A1 Recruitment Rules. Annexure A1 also states that the candidates who qualify in the departmental examination at an earlier date are considered before those who qualify at a later date. Annexure A2 is the seniority list of Sepoys as on 1.1.2012 where the applicants figure at serial Nos. 36 & 57 respectively. The 5th respondent was promoted as Havildar with effect from 4.3.2010 who figures at serial No. 58 in the seniority list of Havildars as on 1.1.2012. Annexure A3 is the seniority list of Havildars. The applicants are matriculates and had passed the departmental qualifying test for the post of L.D. Clerk which was published on 22.3.2005 vide Annexure A4 in which 1st applicant figures at serial No. 10 and the 2nd applicant at serial No. 14. The applicants have also



passed typing test conducted on 27.9.2004 as evident from Annexure A5.

The 5th respondent had failed in typing test. His name appears at serial No.

11. But again he appeared for departmental test on 7.12.2005 as evident

from Annexure A6 in which he appears at serial No. 2. Several

representations were given by the applicants as they were not granted

promotion under the examination quota. While so the 4th respondent issued

Annexure A19 order promoting the 5th respondent as L.D.C. 5th respondent

had passed the departmental qualifying examination only during 2006 as

can be seen from Annexure A6 whereas the applicants have passed the

departmental examination in 2004 as evident from Annexures A4 & A5.

Therefore, the 4th respondent has violated the mandatory provision while


promoting the 5th respondent overlooking the applicants. Hence, the

applicants filed these OAs praying for the reliefs as stated earlier.

4. Respondents filed reply statement inter alia contending that with regard to the available vacancies for promotion, the vacancies have to be allocated in accordance with the roster points available for SC/ST and also those vacancies have to be fitted in accordance with the Recruitment Rules in to the selection quota following the 1st channel of promotion and into the examination quota following the 2nd channel of promotion. For the current vacancy year there were 3 vacancies available for promotion in the L.D.C. cadre. The vacancies were available under the general category in the roster points. Out of the 3 vacancies two were allocated for selection quota and one was allocated for examination quota. The vacancy allocated under the

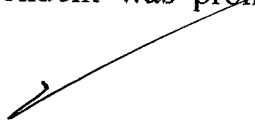
examination quota was further allocated in the ratio 60:36:1:1 among Sepoys, Havildars, Record Keeper and Gestetner Operators. As per the vacancy roster the single vacancy that was available under the examination quota was allotted to Havildar cadre during the year 2012-13. The 5th respondent was the senior most Havildar who had passed the examination for L.D.C. and hence he was promoted correctly. The applicants who were Sepoys have not been included for promotion because of the reason as vacancies were not available for Sepoy cadre in examination quota in the current vacancy year. As per the new Recruitment Rules for L.D.C. 50% is by promotion from among Havildars and 50% is from Sepoys/Havildars who have passed the departmental qualifying test. The reply given to the applicants under RTI Act, that employees qualifying at an earlier examination are considered for promotion before those who qualify at a later examination is only a reply of general nature given in response to a general question. It has nothing to do with the allocation of quota for promotion and its consideration. The Havildar can be promoted to L.D.C. in examination quota if he possesses 5 years of service and has passed the departmental test. As such the respondents contended that the application lacks merit and is only to be dismissed.

5. A rejoinder was filed by the applicants stating that since 6.3.2013 there are no Sepoys in Central Excise but only Havildars as per the order issued by the Central Board of Excise and Customs vide Annexure A20. Since 6.3.2013 there is no Sepoy and as such the ratio should have been amended as 96:1:1:1. The applicants who had passed the examination



earlier than the 5th respondent should have been given promotion as L.D.C. in preference to the 5th respondent. As per the Recruitment Rules 1st vacancy should have been given to the Sepoy instead of a Havildar. In as much as the posts of Sepoy and Havildar merged together the applicants who have passed the departmental examination earlier than the 5th respondent should have been promoted. Allotting the single vacancy available under examination quota to a Havildar who had passed the examination much later than the applicants is illegal.

6. The 5th respondent filed a reply statement refuting all the allegations made by the applicants. The applicants are only Sepoys working under the respondents and their chance for promotion is under the 50% quota for Havildars/Sepoys. The 5th respondent was also a Sepoy. He competed in the departmental examination conducted for promotion of Group-D to L.D.C. held on 7.11.2003 and has passed in two papers vide Annexure R5(a). The 1st paper was cleared in the departmental examination conducted on 7.2.2005. He has also passed the typewriting test in the examination conducted on 26.12.2006, the result of which was published in July, 2007 as evident from Annexure R5(c) and as such the 5th respondent was fully qualified and eligible to be appointed as L.D.C. on passing the typewriting test. While so he was promoted as Havildar as per order No. 27/2010 which is evident from Annexure R5(d). He passed the typing test on 26.12.2006 and hence he stood qualified to be promoted with effect from that date. The DPC by which the 5th respondent was promoted was conducted for the



vacancies that arose in the year 2012-2013.

7. We have heard the learned counsel appearing for the parties and have gone through the documents/Annexures produced by the parties.

8. Annexure A19 is under challenge. The 5th respondent Shri P.V. Joy was promoted under departmental examination quota in the cadre of L.D. Clerk. That order was passed on 23.3.2013. The main thrust of the argument advanced by the learned counsel or the applicants is that Annexure A1 Recruitment Rules clearly states that employees qualifying at an earlier examination are considered before those qualify at a later examination. For a better understanding the relevant portion relating to the promotion to L.D.

Clerk is quoted as under:

“(i) 50 per cent of the vacancies shall be filled up by promotion from amongst Havaldars on the basis of seniority-cum-fitness who possess Matriculation or an equivalent qualification as per recognized Board or University and have rendered 5 years’ regular service in the grade, without any age limit.

(ii) 50 per cent of vacancies shall be filled up by promotion from amongst Sepoys and Havaldars who possess Matriculation or an equivalent qualification as per recognized Board or University and have rendered 5 years’ of service in the grade of Sepoy, Havaldar and feeder cadres thereto on the basis of a Departmental qualifying examination with typing test with minimum speed of 30 words per minute in English typewriting or 25 words per minute in Hindi typewriting.

Note:(a) The maximum age limit for eligibility for examination is 45 years. (50 years for the Scheduled Caste/Scheduled Tribe);

(b) the unfilled vacancies pertaining to a particular year under clause (ii) shall not be carried over.

(c) If more of such employees than the number of vacancies available under clause (ii) qualify at the said examination such excess number of employees shall be considered for filling the vacancies arising in the


subsequent years so that the employees qualifying at an earlier examination are considered before those who qualify at a later examination."

9. The argument proceeds on the footing that the applicants had passed the departmental examination in 2004 itself whereas the 5th respondent could pass the examination only in 2005 and so the 5th respondent should not have been promoted. It is further contended that as per Annexure A20 even since 6.3.2013 there are no Sepoys in the Central Excise Department but only Havildars. Annexure A20 has been pressed into service to contend that if the promotion was to Havildar quota even then the applicants should have been treated as Havildar because Annexure A19 order was passed only 23.3.2013. That argument also does not hold good in view of the fact that the promotion of the 5th respondent was for the vacancy year 2012-2013 in which case the vacancy must have arisen much prior to year of vacancy. If the vacancy had arisen prior to Annexure A20, the applicant cannot press into service the amendment brought into force by Annexure A20. Following the Supreme Court decision in Y.V. Rangaiah v. J. Sreenivasa Rao, 1983 (3) SCC 284 it was held by the Supreme Court in State of Rajasthan v. R. Dayal & Ors. - 1997 SCC (L&S) 1631 that the vacancies which occurred prior to the amendment of the rules would be governed by the original rules and not by the amended rules. The relevant portion is quoted as under:-

"8. This Court has specifically laid that the vacancies which occurred prior to the amendment of the Rules would be governed by the original Rules and not by the amended Rules. Accordingly, this Court had held that the posts which fell vacant prior to the amendment of the Rules would be governed by the original Rules and not the amended Rules. As a necessary corollary, the vacancies that arise subsequent to the amendment of the Rules are required to be filled in, in accordance with the law existing as on the date when the vacancies arose....."

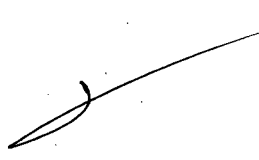
10. It is pointed out by the learned counsel for the official respondents that for the current vacancy year there were 3 vacancies available for promotion in LDC cadre and those vacancies were available under the general category in the roster points. It was further stated that out of the three vacancies two were allocated for selection quota and one was allocated for examination quota. The applicants claim is under examination quota. It is contended by the official respondents that the vacancy allocated under examination quota was further allocated in the ratio 60:36:1:1 amongst Sepoys, Havildars, Record Keeper and Gestetner Operator. It was clearly stated by the respondents that as per the vacancy roster the single vacancy that was available under the examination quota was allotted to Havildar cadre during the year 2012-2013. The 5th respondent was the Havildar who was the senior most among the Havildar who has passed the examination for LDC and so he was promoted. Therefore, according to the respondents there was nothing illegal or erroneous in the order of promotion so passed. Admittedly the applicants were only Sepoys. Annexure A20 amendment order cannot come to the rescue of the applicants since the promotion by examination quota was of the vacancy year 2012-2013.

11. For the vacancy year 2012-23 the crucial date for determining eligibility for promotion to the post of LDC from feeder cadres as prescribed in DOP&T's OM No. 22011/3/98-Estt.(D), dated 17.9.1998 is 1st January, 2012. It is also pointed out that out of the 3 vacancies two vacancies were allotted to selection quota and one for departmental



examination quota, as the last promotion was done from the departmental examination quota. It is also pointed out that the single vacancy allotted to departmental examination quota had to be filled by promotion from among Sepoy, Havildar, Record Keeper and Gestetner Operator, in the ratio of 60:36:1:1 as per the Recruitment Rules. The respondents would contend that in terms of the vacancy register maintained for promotion to the cadre of LDC against departmental examination quota, the aforesaid single vacancy had to be allotted to the Havildar and so on consideration of the same list of Havildars for the DPC held on 22.3.2013 was prepared on the basis of their date of passing the departmental qualifying examination as per clause 9(c) of note (I) of the Recruitment Rules. It is not disputed that the 5th respondent was the senior most in the cadre of Havildar and that he had passed the departmental qualifying examination. Therefore, the promotion of the 5th respondent is seen to be perfectly correct. He was promoted to the post of LDC against the vacancies that arose prior to 6.3.2013 and as such Annexure A20 can have no relevance to the issue involved. So much so the argument based on Annexure A-20 is found to be untenable. The applicant was admittedly a Sepoy and as such he could not be considered for promotion to the quota for Havildar slot and as such he was not considered in the Havildar slot for the vacancy year 2012-13. What have been said earlier would equally apply to applicants in both cases.

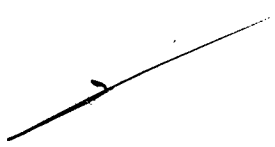
12. It is seen that the contentions were raised by the applicants on a misconception of facts. The fact that selection of the respondent was to the Havildar's slot was not borne in mind by the applicants. Similarly the fact



that Annexure A20 came into force only on 6.3.2013 whereas the vacancy arose long prior to 6.3.2013 was also not taken note of by the applicants.

13. As requested by the learned counsel for the applicants the two files relating to the DPC convened for promotion of the 5th respondent to the post of LDC was called for. We have gone through the file. It is clear that the 5th respondent was promoted in the quota allotted to Havildar cadre during the year 2012-2013. Since the 5th respondent had passed the examination for L.D.C. long prior to that date, there was nothing wrong in the respondents promoting the 5th respondent who was the senior most Havildar to the post of LDC. It is also not disputed that Havildar can be promoted to LDC in examination quota if he possesses five years of service and has passed the departmental test. He has satisfied the conditions as stipulated above.

14. As has been said earlier the learned counsel for the applicants was very much focussing on the fact that the applicants have passed the departmental examination in 2004, whereas the 5th respondent could pass the examination only in 2005 and so the applicant should have been considered for promotion as the 5th respondent could qualify only at a latter examination. That will not help the applicants in this case. The vacancy arose prior to the coming into force of Annexure A20. The rule as it then stood should naturally apply. The promotion was to the Havildar cadre of examination quota. The applicants can lay no claim over that post. As such



we find no merit in these applications and are hence, dismissed. No order as to costs.


(P. GOPINATH)
ADMINISTRATIVE MEMBER


(N.K. BALAKRISHNAN)
JUDICIAL MEMBER

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