

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A NO. 39 OF 2009

Friday, this the 17th day of July 2009.

CORAM:

**HON'BLE Ms. K. NOORJEHAN, ADMINISTRATIVE MEMBER
HON'BLE Dr. K B SURESH, JUDICIAL MEMBER**

1. V.K.Deendayal, Seaman,
Customs Preventive Divisional Office,
Central Revenue Buildings,
Mananchira, Kozhikode.
2. A.Kamalesh, Seaman
Customs Preventive Divisional Office,
Central Revenue Buildings,
Mananchira, Kozhikode.

.... Applicants

(By Advocate Mr. CSG Nair)

versus

1. Union of India rep.by its Secretary
Department of Revenue
North Block, New Delhi.
2. The Chairman,
Central Board of Excise & Customs,
North Block, New Delhi.
3. Chief Commissioner of Central Excise & Customs,
Central Revenue Building
IS Press Road, Cochin.
4. Commissioner of Central Excise,
Central Revenue Building
IS Press Road, Cochin.
5. Commissioner of Central Excise,
Central Revenue Buildings, Mananchira
Kozhikode.
6. Commissioner of Customs (Preventive),
Central Revenue Buildings
IS Press Road, Cochin.
7. Assistant Commissioner of Customs,
Customs Preventive Division
Central Revenue Buildings, Mananchira
Kozhikode.

.... Respondents

(By Advocate Mr P.A.Aziz, ACGSC)




This application having been finally heard on 13.07.2009, the Tribunal on 17.07.2009 delivered the following:

ORDER

HON'BLE DR. K.B.SURESH, JUDICIAL MEMBER

Brief facts of the case as stated by the applicants are that they joined in the Marine Wing of the respondents department as Lascars on 8.9.97. While working as Lascars they were directed to perform the duties of LDCs in the Special Customs Preventive Divisional Office vide Annx.A1 and A2 respectively and they are working as such since 19.11.2001 and 15.2.2002 respectively without interruption. While working as LDCs they submitted representations to the 4th respondent to promote them as LDCs. The case of the applicant is that while performing the duties as LDCs, the respondents invited application from matriculate Group-D employees for departmental examination for promotion to the cadre of LDC during 2002. The applicants also applied for the same which was rejected by the authorities on the ground that they were not entitled to appear for such tests. Aggrieved by the rejection of their applications the applicants filed OA 45/2003 before this Tribunal. By way of an interim measure on 21.3.2003 this Tribunal allowed the applicants to take part in the examination provisionally. The applicants were declared passed in the said examination vide Annx.A6 and A7. The said OA was dismissed on the ground that the applicants' cadre is excluded from the feeder cadre for promotion as LDC and that they have other channel of promotions. This order was challenged before the Hon'ble High Court in WP (C) No.2101/2006 which was closed on the basis of an assurance by the Assistant Solicitor General to the effect that if a representation is received it will be considered and a reply will be given.



2. The case of the applicant is that in terms of the earlier Recruitment Rules of 1979 for LDCs, all Group D staff who passed the departmental qualifying tests were entitled for appointment as LDCs but the Recruitment Rules were changed in the year 2002 by which only Sepoys, Havildars and Record Keepers are eligible for promotion as LDCs is arbitrary and without any valid reason. The change affected the aspirations of other Group-D staff including the applicants who were already working as Lower Division Clerks and have passed the departmental qualifying examination.

3. On the other hand the respondents have controverted the contentions of the applicants and submitted that Lascars are not eligible for promotion to the post of LDC as per new RR GSR 377 dated 9.9.2002. The applicants had been allowed to appear for the Departmental Examination in obedience to the direction in the interim order dated 21.2.2003 in OA 45/03. They further contended that the new RR came into force w.e.f 9.9.2002 is applicable in their case whereby 100% posts of LDCs are to be filled by promotion subject to Annx.10 & 11 and that promotion to the post of LDC is exclusively to be done from Sepoys, Havildars and Record Keepers. The applicants merely performing an administrative job in a particular cadre or passing qualifying examination does not entitle them for changing of Cadre from Marine to Ministerial.

4. The case of the applicants is that they have to be governed by the re-structuring Cadre Rules of 2002 which came into force subsequently. Both the applicants have joined the present duty as LDC vide Annx.A1 and Annx.A2 respectively. Apparently satisfied by their progress in their work the higher authority vide Annx.5 dated 24.9.2002 itself had reported their eligibility



and suitability for appointment as LDC.

5. The case of the applicant is that but for the amended recruitment rules their attempt to appear for the departmental examination could not have been denied by the department. The applicants contended that while successfully holding the post of LDC, even on a working arrangement they have acquired some rights in reverse to the operation of the doctrine of sit back and also a legitimate expectation that they may be confirmed in their post. The fact remains that at the time of joining vide Annx.A1 and A2, they also belonged to the feeder category which was subsequently changed only with prospective effect. The applicants would therefore contend that they are to be governed by recruitment rules prior to 2002 and not the amended rules.

6. We have heard both sides extensively and perused the documents. We are persuaded by the fact that a Division Bench of the Andhra High Court in a similar matter held that in such circumstances as detailed above, the pre-existing rule have a prime role and acceptability rather than subsequently enacted rules. Following this judgment another coordinate Division Bench of the High Court of Andhra Pradesh had in Writ Petition No.2378/2005 and Writ Petition No.45/2005 dated 07.03.2005 held in paragraph 3, 4 and 5 are as under:

"3 It is the grievance of the petitioners that consequent on the publication of the Rules in the Gazette, restructuring of cadres came into force with effect from 5.5.2003. Therefore, any vacancies that arose prior to the commencement of new Rules have to be filled up under the Pre-amended Rules and the vacancies arising after 5.5.2003 have to be filled up by the new Rules. However, the case of the petitioners was rejected by the Tribunal.



4 An identical issue arose in respect of data entry operators in WP No.7963 of 2004 and batch, wherein, it was held by a Division Bench of this Court by order dated 2.3.2005 that in respect of the vacancies which arose prior to the commencement of new Rules, they shall be filled up under the old Rules.

5 Following the said decision, these writ petitions are allowed by setting aside the order of the Tribunal. However, it is made clear that promotions to the posts in the U.D cadre or Old Tax Assistant, as the case may be, shall be made in accordance with the Old Rules in respect of the vacancies which arose prior to 5.2003. Pursuant to the order of this Court, the authorities shall take action, in this regard, within a period of three months from the date of receipt of a copy of this order."

Therefore the situation and facts are as similar, we are in respectful agreement with the findings of the Hon'ble Andhra Pradesh High Court.

7. On discussion above it was pointed out that the Ministry of Finance, Department of Revenue, Central Board of Excise and Customs in F.No.A.32018/14/2008-Ad.III.A dated 6.2.2009 had accepted the ratio of the judgment cited above for promotion to the cadre of pre-restructure LDCs and other similarly placed cadre. Apparently similar matters have come before other Benches of the Tribunal and all these judgments were studied by the Govt of India and benefit of the judgment of Andhra Pradesh High Court was extended by this and other circulars to all concerned and therefore the matter has now a concluded situation.

8. It is not disputed that the applicants vide Annx.A6 and A7 had passed the qualifying examination and therefore they became eligible to be promoted as LDC in the Pre-existing Rules and therefore following the judgments cited above and the circulars issued by the government accepting

the same, we hold that the applicants are entitled to the following relief:

- a) The applicants are entitled to be promoted as LDCs with effect from the date they passed the departmental test and to be placed just above their juniors in the Annx.A6 and A7 lists in terms of seniority.
- b) The applicants are entitled to such additional remuneration for the period after their actual promotion if the said benefit had been extended to all other similarly situated and flowing from the judgment of the High Court of Andhra Pradesh. In such a situation; in accordance with the said judgment the applicants are also entitled to all additional remuneration and other benefits which may flow from such a decision.

c) The OA is, therefore, allowed.

In the circumstances of the case there shall be no order as to costs.

Dated 17th July 2009.


Dr.K.B. SURESH
JUDICIAL MEMBER


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER

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