

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

802

● OA 1969/94 & 1972 & 73/94

Review Apps Nos. 11/95 and 12/95

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE - 560 038.

IN

Dated: 17 APR 1996

APPLICATION NO. 1975 of 1994 and 1976 of 1994

APPDICANT(S) : Chikkannappa and M. Hanumantharayappa
V/s.,

RESPONDENTS : Deputy Secretary, Dept of Revenue,
M/o Finance, New Delhi and others
To.

1. Sri. C. R. Gowlay, Advocate
No. 318, Kurubarasangha Bldg,
First Main, Gandhinagar,
BANGALORE-9.

2. Sri. M. Vasudeva Rao, Addl. C.G.S.C.
High Court Bldg, Bangalore-1

Subject:- Forwarding of copies of the Orders passed by
Central Administrative Tribunal, Bangalore-38.

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A copy of the Order/Stay Order/Interim Order,
passed by this Tribunal in the above stated applicatio(s)
is enclosed for information and further necessary action.
The Order was pronounced on 12-04-96

For

Deputy Registrar
Judicial Branches.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

REVIEW APPLICATION NOS. 11/95 & 12/95
IN O.A.NOS. 1975/94 & 1976/94

FRIDAY THIS THE TWELFTH DAY OF APRIL, 1996

SHRI JUSTICE D.P. HIREMATH VICE CHAIRMAN
SHRI V. RAMAKRISHNAN MEMBER(A)

1. Chikkannappa,
S/o Doddaiyah,
aged about 50 years,
working as L.D.C.,
Office of the Collector
of Central Excise,
Air Cargo Complex,
Bangalore - 560017 Review Applicant
in RA 11/95

2. M. Hanumantharayappa,
aged about 48 years,
working as U.D.C.
Office of the Collector
of Central Excise,
Air Cargo Complex,
Bangalore - 560017 Review Applicant
in RA 12/95

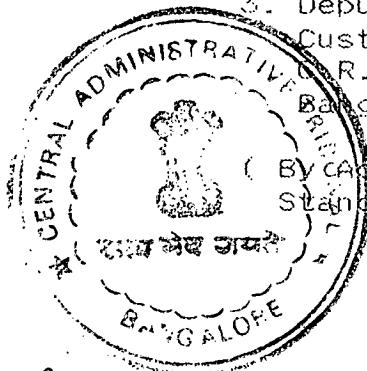
(By Advocate Shri R.U. Goulay)

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1. Deputy Secretary,
Government of India,
Ministry of Finance,
Department of Revenue,
Ad. II-A North Block,
New Delhi 110001
2. Collector,
Customs & Central Excise,
Central Revenue Building,
P.B.No.5400, Queens Road,
Bangalore - 560001
3. Deputy Collector (P&V),
Customs & Central Excise,
G.R. Buildings, Queens Road.

By CAGdL. Central Government
Standing Counsel Shri M.V. RAO

Respondents



O R D E R
SHRI V. RAMAKRISHNAN, MEMBER(A)

The review applicants in RA No.11/95 and RA 12/95 pray for a declaration that they should be taken as regularly appointed LDC and UDC respectively by reviewing our order dated 24.3.95 rendered in O.A.Nos.1975/94 and 1976/94. As the grounds urged in support of the RAs, both in the applications as also during the hearing are broadly the same, we propose to dispose of both the review applications by means of a single order.

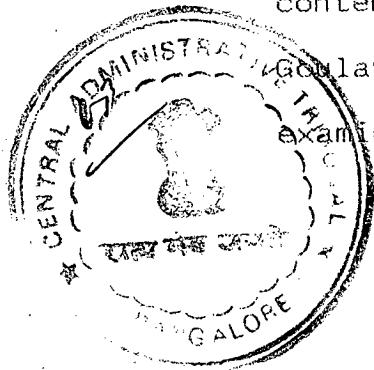
2. Heard Shri R.U. Goulay for the review applicants and Shri M.V. Rao for the respondents. Shri Goulay seeks a review of our order passed on 24.3.95, contending that as per the 1979 rules, the department was expected to hold competitive examination for Gr.IV category every year to fill up 10% of the vacancies. Such an examination was not held regularly. The department had not disclosed the marks obtained by the applicants in the examination. He further submits that the action of the department in reviewing the promotion earlier made on the basis of executive instructions which are contrary to 1979 rules and which were quashed by the Tribunal is not in order as the department had gone on the basis of 1983 examination the results of which were published in 1989 only.



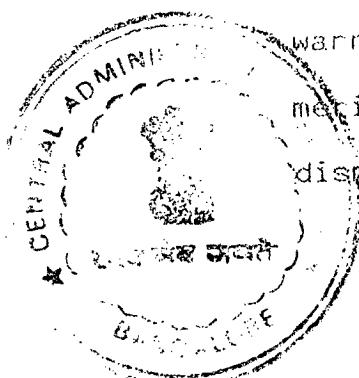
3. Shri M.V. Rao for the Department submits that what the review applicants want at this stage is virtually a re-appreciation of the earlier judgment. He also submits that 14 applicants had approached this Tribunal in the earlier cases of whom 12 are quite satisfied with the decision of the Tribunal. If the judgment is reversed it is possible that it might adversely affect the interest of other 12 applicants who are satisfied with the judgment and with whom the review applicants had chosen to prosecute the OAs jointly. He submits that these review applications have, therefore, to be dismissed on the preliminary ground that the necessary parties have not been impleaded.

Shri Rao also argues that whatever points have been urged have been gone into by the Tribunal and specific findings have been given on them and it is not open to the review applicants at this stage to agitate the same issue over and again by way of review applications.

4. We have carefully considered the contentions of both sides. The points which Shri Goulay urges at this stage namely that the examinations were not held regularly every year and



the results were published late were submitted by him even at the time of arguing the OAs as can be seen from para 7 of the judgment. These have been considered by the Tribunal along with the arguments putforth by the Standing Counsel and the Tribunal gave its finding after considering all these points. We do not, therefore, see any error apparent on the face of the records which can warrant review of the earlier order. We find no merit in the review applications and the same are dismissed. No costs.



sd-

MEMBER(A)

sd-

VICE CHAIRMAN

TRUE COPY

Shayam 17/4/96
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE - 560 038.

Dated: 28 MAR 1995

APPLICATION NO. 1969, 1972 and 1973 of 1994;

1971; and 1974 to 1978 of 1994;

APPLICANTS: 1984 to 1987 to 1994 and 1989/94.

v/s. Sh. G. D. Ramgondla and (13) Others v/s.

RESPONDENTS: Deputy Secretary, Dept of Revenue, N. Delhi
and two Others.

To

1. Sri. H. S. Ananthapadmanabha, Advocate, No. 108,
NHCS Layout, 3rd Stage, 4th Block, Basaveshwaranagar,
BANGALORE - 560079.
2. Sri. C. R. Goudar, Advocate, No. 318, First Main,
Kumbharasangha Bldg, Gandhinagar, Bangalore-9.
3. Sri. M. Venkateswara Rao, Addl. CGSC,
High Court Bldg, Bangalore-560001.

Subject:- Forwarding copies of the Orders passed by the
Central Administrative Tribunal, Bangalore-38.

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Please find enclosed herewith a copy of the Order/
Stay Order/Interim Order, passed by this Tribunal in the above
mentioned application(s) on 24th March 95.

Issued on
28/03/95

O/c

for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

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CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

ORIGINAL APPLICATION NOS. 1969/94 & 1972 &
1973/94, 1971/94 & 1974 TO 1978/94, 1984
TO 1987/94 AND 1989/1994

FRIDAY, THIS THE 24TH DAY OF MARCH, 1995

SHRI V. RAMAKRISHNAN .. MEMBER (A)

SHRI A.N. VIJJANARADHYA .. MEMBER (J)

1. G.D. Ramegowda, S/o Dasappa,
aged 37 years, L.D.C., 0/o A.C.C. Ex.,
Bangalore I Division, S.C. Road, Gandhinagar,
Bangalore -560 009.

2. Malla, S/o Late Sri Ningappa, Aged 43 years,
L.D.C., 0/o the ACC, ICD, Bangalore.

3. B.V. Bhaskaramurthy, S/o Late Sri B. Venkatesh,
aged 44 years, L.D.C., 0/o the ACCE, Attavara,
Mangalore.

(Applicants in O.A.Nos.1969/94 & 1972 & 1973/1994)

4. P. Eshwara, S/o Puttabenavaiah, aged 43 years,
Working as L.D.C., Central Excise and Customs,
Queens Road, Vth Division, Seshadripuram, Bangalore-20.

5. Chandrasekher, S/o Munichennappa, aged 45 years,
working as L.D.C., 0/o the Asst. Collector of
Excise, III Division, Infantry Road, Bangalore-560 001.

6. Chikkannappa, S/o Doddaiyah, aged 44 years,
working as L.D.C., 0/o Collector of Central Excise,
Air Cargo Complex, Bangalore - 560 017.

7. M. Hanumantharayappa, aged about 48 years,
working as U.D.C., 0/o the Collector of Central
Excise, HQrs., Queens Road, Bangalore - 560 001.

8. M. Narayana, aged about 46 years, working as L.D.C.,
0/o the Asst. Collector of Central Excise,
III Division, Infantry Road, Bangalore - 560 001.

9. C. Munikrishnappa, S/o Chikkanna, aged 44 years,
Working as L.D.C., 0/o Collector of Central Excise,
Air Cargo Complex, Bangalore - 560 017.

(Applicants in O.A.Nos.1971/94 & 1974 TO 1978/1994)

10. K.C. Gangaiah, S/o Chikkathappa, aged 44 years,
Working as L.D.C., 0/o the Collector of Central
Excise and Customs, Queens Road, C.R. Buildings,
Bangalore - 560 001.

(Applicant in O.A. Nos.1984 TO 1988/1994) ... Applicants



11. S.K. Seenappa, aged 44 years, working as L.D.C., O/o the Collector of Central Excise and Customs, Queens Road, C.R. Buildings, Bangalore - 560 001.

12. R. Danial Satya Sheela, S/o Late S.P. Rathna, aged 48 years, Working as U.D.C., O/o the Collector of Central Excise and Customs, Queens Road, C.R. Buildings, Bangalore-560 001.

13. N. Yalakappa, aged 44 years, working as L.D.C., O/o. the Collector of Central Excise and Customs, Queens Road, C.R. Buildings, Bangalore - 560 001.
(Applicants in O.A. Nos.1984 TO 1988/1994)

14. B. Shivaiah, S/o Byraiah, aged 44 years, Working as L.D.C., O/o the Asst. Collector of Central Excise, Vth Division, Seshadripuram, Bangalore - 560 020.
(Applicant in O.A. No.1989/1994) ... Applicants

(By Advocates S/shri H.S. Ananthapadmanabha for applicants at Sl.Nos. 1 to 3 and C.R. Goulay for applicants at Sl. Nos. 4 to 14)

Vs.

1. Deputy Secretary,
Government of India,
Ministry of Finance,
Department of Revenue,
Ad.II A North Block,
New Delhi - 110 001.
(In O.A.Nos.1969/94 & 1972 & 1973/94)

2. Collector,
Customs & Central Excise,
Central Revenues Building,
P.B.No.5400, Queen's Road,
Bangalore - 560 001.

3. Deputy Collector (P&V),
Customs & Central Excise,
Central Revenues Building,
P.B.No.5400, Queen's Road,
Bangalore - 560 001. ... Respondents

(By Advocate Shri M. Vasudeva Rao,
Addl. Central Govt. Stg. Counsel).

O R D E R

Shri V. Ramakrishnan, Member (A):

As the issues involved in these applications and reliefs sought for are ^{the} same, we propose to dispose of all these applications by a common order.

2. The applicants are employees of Central Excise Collectorate, Bangalore. All the applicants except Shri Danial Satya Sheela (applicant in O.A.No.1986/94) and Shri M. Hanumantharayappa (applicant in O.A.No.1976/94) are presently holding the job of Lower Division Clerks and were aggrieved by the action of the department in seeking to revert them to Group 'D' posts such as Havildars/Sepoys. As regards S/Shri Danial Satya Sheela and M. Hanumantharayappa, they are presently functioning as Upper Division Clerks and have challenged their proposed reversion as Lower Division Clerks.

3. The facts in brief are as follows:-

There is a quota available for Group 'D' staff for appointment as LDCs in the Central Excise Department. In accordance with the Recruitment Rules (RRs for short) in 2nd June, 1979, 10 percent of vacancies of the LDCs in a year had to be filled up from the Group 'D' staff with at least 5 years of service in Group 'D' service and having the prescribed educational qualifications by selection through a departmental examination confined to such Group 'D' staff. The department, accordingly, was making appointments to the cadre of LDCs from Group 'D' staff against this quota. Subsequently, the Central Board of Excise and Customs issued executive instructions on 9.12.1982 bifurcating the 10 percent quota into two parts, i.e., 5 percent to be filled up on the basis of seniority subject to rejection of unfit and the remaining 5 percent on the basis of an examination. The Board, subsequently clarified that for the 5 percent examination quota, the seniority of the candidates declared successful in the examination ~~are~~ to be determined on the basis of their seniority in the Group 'D' cadre and not on the basis of marks obtained in the qualifying examination and that the candidates who qualified in the earlier examinations should be considered first for appointment before



those who qualified in the later examinations. This clarification was given on 24.12.1985, 30.7.1986 and 4.3.1987. As the Collectorate had earlier taken action to appoint some persons on the basis of marks obtained in the examination even though they were not senior, they sought to revert such persons as Sepuys. The affected officials approached the Tribunal through O.A. No.1645 and 1690/1988. The Tribunal disposed of these applications on 14.2.1989 and held that executive instructions which were issued by the Board on 9.12.1982 could not supersede the statutory rules, as no action was taken to amend the relevant Recruitment Rules of 1979 to give effect to the new policy. The Tribunal also quashed the order of the Collector reverting applicants in that O.A., but observed that it did not prevent the Collector and other authorities from re-examining the whole matter re-adjusting the promotions and reversions in conformity with law and the observations made in that order. The department says that they were considering the matter to implement the directions of the Tribunal but meanwhile one Shri Govinda who was recruited as a Sepu~~y~~ and appointed as L.D.C. as per the 1979 Rules, had moved the Tribunal for giving proper seniority in the cadre of L.D.C. and to promote him to the level of U.D.C. on the basis of refixing the seniority. The Tribunal, while disposing of the O.A. No.386/1990 on 10.10.1991, gave the following directions:

"..(para 6)(i) We direct the respondents for re-adjusting the promotions and reversions and refix the seniority of the applicants in the cadre of LDCs in accordance with law and in the light of the observations made by this Tribunal in its order dated 14.2.1989 in applications No.1645 and 1690/88.

(ii) If on such re-fixation, the applicant becomes entitled to be appointed as LDC from the earlier date, he should be awarded consequential benefits in respect of pay and allowances including arrears.

(iii) To consider the case of the applicant for promotion to the grade of UPPER DIVISION CLERK on such re-fixation and to promote him, if he is otherwise

suitable for such promotion, with effect from the date his immediate junior in the refixed seniority list of LDCs came to be promoted as Upper Division Clerk with all consequential benefits in respect of pay and allowances including arrears. In case he is promoted from a retrospective date as Upper Division Clerk, that period will also count for eligibility for further promotions."

While the department was taking action to revise the seniority, the recruitment rules of LDCs were amended with retrospective effect from 9.12.1982 vide CSR 589 dated 19.10.1991 and Shri Govinda adversely affected by the retrospective amendment of the rules approached this Tribunal in O.A. No.98/93. This Tribunal struck down the notification dated 19.10.1991 in so far as it sought to give retrospective effect to Rule 2(a) and further directed the department to implement the directions contained in the Tribunal's order dated 10.10.1991 which called for a review of seniority at the level of LDCs in accordance with law and the statutory rules.

4. The department states that they undertook a review of the appointments made in the grade of LDCs from 1982 onwards against the 10 percent quota reserved for Group 'D' staff. As per the supplementary notes submitted by the respondents, the department states as against 24 vacancies of LDCs earmarked for Group 'D' staff, a number of persons were recruited of whom 10 will get adjusted as per the review conducted by the department in compliance with the directions of the Tribunal. There are 14 persons who were not entitled for such appointment as LDCs as brought out by such a review. The applicants excepting S/Shri Danial Satya Sheela and M. Hanumantharayappa fall in this category. As regards these two, according to the department, they are eligible to be appointed as LDCs only with effect from 1991 which will result in loss of their seniority and as such the promotion given to them as UDCs on the basis of the earlier incorrect seniority has to be revised and they are to be brought down as LDCs. The department, therefore,



proceeded to issue notice dated 22.12.1993 to the applicants asking them to show cause as to why they should not be reverted. The applicants responded to this show cause notice, but, after consideration of their reply, the department issued orders on 20.5.1994 enclosed as Annexure to the O.M. reverting them to the lower posts. Aggrieved by this order, the applicants moved the Tribunal in O.A. No.873/1994. This was disposed of on 17.8.1994 where the applicants were directed to exhaust the right of appeal available to them. The Tribunal further directed that pending disposal of such appeal the impugned order of reversion would be stayed and shall not be operated. The applicants accordingly filed an appeal which was rejected. They have filed the present applications challenging the action of the department including the rejection of the appeal by the Collector of Central Excise by order dated 11.11.1994 enclosed as annexure to the O.A. They have also got a stay against the order of the reversion.

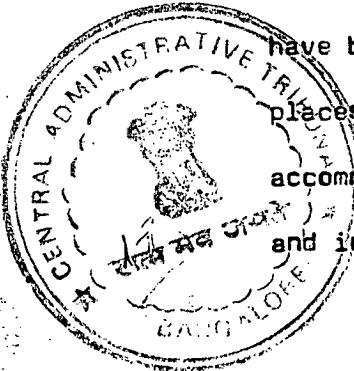
5. We have heard Shri H.S. Ananthapadmanabha for the applicants in O.A. Nos.1969/94 and 1972/94 & 1973/94 and Shri C.R. Goulay for the other applicants, as also Shri M.V. Rao, the learned standing counsel for the department. We have also perused some of the notings and correspondence pertaining to this matter made available to us by the Department.

6. Shri Ananthapadmanabha submits that the action of the department is clearly unsustainable. He states that while issuing show cause notice, the Deputy Collector had not referred to any rule or authority which gave him power for effecting reversion. The learned counsel further contends that the earlier procedure followed by the department on the basis of executive instructions was in order and the Tribunal had not directed that the applicants should be reverted. According to him, the applicants were selected as LDCs

hold the examination was sent only to persons working in the Head office and not marked to other offices and this has resulted in depriving the eligible and qualified persons of a reasonable opportunity to appear in the examinations. Shri Goulay contends that in the light of all these factors, the present action of the department in seeking to revert the applicants is illegal.

8. Shri M.V. Rao for the respondents submits that the reversions have become necessary in order to implement the directions of the Tribunal. The authorities had issued the show cause notice before seeking to revert the applicants as the Tribunal had specifically directed them to re-adjust the promotions and reversions and refix the seniority in the cadre of LDCs in accordance with law and in the light of the observations made by the Tribunal. The Tribunal also had quashed the executive instructions which were inconsistent with the statutory rules of 1979 and had also struck down the retrospective effect given to the revised Recruitment Rules of 1991. The learned counsel submits that as has been held by the Tribunal, the executive instructions can supplement, but cannot be inconsistent with the statutory rules and as such, the earlier procedure followed by the department which was contrary to the statutory rules was not in order. In order to comply with the directions of the Tribunal, the department undertook a comprehensive review to ascertain as to what would have been the position if they had followed the 1979 Recruitment Rules from 1982 upto 1991. In the process, it was found that some of the officers (including the present applicants) who were actually appointed during the period from 1983 to 1991 would not

have been appointed as per the Recruitment Rules 1979 and in their places, some others would have been appointed. It is necessary to accommodate the rightly entitled persons at various points of time and in order to achieve this, it has become necessary to revert the



applicants. Shri Rao further contends that the fact that the applicants were selected by a proper DPC at the relevant time is not material when the very basis of promotion as per the executive instructions issued from 1982 onwards has been struck down by the Tribunal. The Standing counsel also denies the allegation of any discriminatory treatment.

Shri Rao also states that the contention that only confirmed Group 'D' staff should have been permitted to sit for examination is without merit as this would be contrary to the 1979 Recruitment Rules. These rules did not restrict the eligibility only to permanent staff but provided that all staff who are holding Group 'D' post on regular basis are eligible for consideration. All the candidates who were permitted to take the examination were holding Group 'D' posts on regular basis and this was in conformity with the relevant Recruitment Rules. These rules envisaged the examination to be "competitive" and not "qualifying". They did not provide for restricting the number of persons who could appear in the examination, if they are otherwise eligible. The learned counsel submits that the department had been holding the examinations regularly except in 1984 and 1986 when it could not be held due to administrative reasons. However, whenever the examinations were conducted, opportunity was provided to all the eligible candidates by issuing circul-lars before holding the examination. As regards the contention that marks secured by the candidates was not intimated to the candidates, this was because of the practice followed at that time. However, in the review which has been undertaken, the department had taken into account the marks obtained by the candidates while assessing their entitlement

for selection to the level of LDCs. The standing counsel also denies the allegation that the intimation regarding the examination was given only to the head office. He contends that these circulars were sent to all the formations of the collectorate and a number of Group 'D' staff from different lower formations had attended the examination.

9. We enquired from the learned standing counsel as also from the department's representative as to the magnitude of the problem. We are informed that the review undertaken by the Collectorate has revealed that 19 persons would be adversely affected as either they were not getting covered for appointment to the grade of LDC till 1991 as per the then existing Recruitment Rules or they would go down in the seniority list of L.D.Cs. Of them, one Shri V.C. Karigowder had already retired on invalid pension and hence no action can be taken against him. Another person, Shri Abdul Wazid had represented for refixation of the seniority in the grade of LDC and this matter is being separately dealt with. ^{for} Shri Akheel Ahmed ^{khur} was appointed as LDC against the 1986 vacancy, but, as per the review, he would be entitled for such appointment only in 1990. While, he loses seniority as LDC, he is not being reverted to the Group 'D' category. Of the remaining 16 officials, 3 persons viz., Shri K. Ramappa (who is not an applicant before us) and Shri Danial Satya Sheela and Hanumantharayappa (applicants in O.A. 1986/94 and 1976/94) will be entitled for appointment as LDCs from a later date than earlier what was given to them, i.e., in 1988 in the case of Shri Ramappa and 1991 in the case of the other two. They will



lose their seniority in the LDC cadre. They had been earlier promoted as UDCs on the basis of their incorrect seniority, but, now they have to be brought down to the level of IDCs. This leaves 13 persons (including one Shri S.R. Shirekar, who is not an applicant before us), who will not get covered for appointment as LDC till 1991 as per the 1979 Recruitment Rules.

As the revised Recruitment Rules had come into effect from 19.10.1991, the department was asked to indicate as to what difference it would make in the case of the applicants. We are informed that as per the new set of rules, Shri B. Shivaiah (applicant in O.A.No.1989/94), Shri C. Munikrishnappa (in O.A. No.1978/94) and Shri Gangaiah (in O.A. No.1984/94) are likely to be appointed as per the new rules from 1992 to 1994 subject to perusal of their records and vigilance clearance. As they had been holding the posts of LDCs so long, they can be taken to be fit and they will be entitled for such appointment as per their turn during the period from 1992 to 1994.

10. The position, therefore, is that there are 9 persons including Shri Shirekar who are liable to be reverted as Hawildars/Sepoys on the basis of the review undertaken by the department for the period till 1991 and by following the revised Recruitment Rules from 19.10.1991 onwards. In addition, three others (including Shri Ramappa, who is not an applicant) are liable to be brought down from the level of UDC to that of LDC.

11. We have carefully considered the contentions of both sides. As pointed out by the standing counsel,

the department's action in issuing show cause notice was as a result of the review undertaken by them which they were directed to take up by the Tribunal. The contention that the Deputy Collector had no power to issue show cause notice or that he cannot act in a manner contrary to the recommendations of the Selection Committee which had recommended the applicants for selection as LDCs earlier does not have much force for the reasons brought out by the standing counsel. We also do not agree with the contention of Shri Goulay that only confirmed Group 'D' staff should be taken as having been "borne on the regular establishment" as laid down in the Recruitment Rules. In any case, the department now states that all the candidates who are being considered for vacancies from 1982 onwards were confirmed prior to the date of examinations.

12. We, however, have to observe that certain acts of omission and commission by the department had resulted in complicating the issue. Firstly, the department acted on the basis of executive instructions disregarding 1979 Recruitment Rules which continued to be in force. The bifurcation of the 10 percent quota available for Group 'D' staff into 5 percent by seniority and 5 percent by examination was done through the executive instructions issued in December, 1982. We are also informed that for the period from 1982 to 1985, the examination quota was filled from among eligible persons on the basis of the marks secured by them in the examination. From 1986 onwards, the examination quota was filled ^{up} from among those who passed in the qualifying examination held in



1983 (i.e., the first examination) in the order of their seniority irrespective of the marks obtained by them. The Recruitment Rules then in force provided for the entire 10 percent to be filled up on the basis of selection through a departmental examination and as per relevant instructions (O.M. dated 20.3.1970,) in such cases the examination should be taken to be competitive and candidates are to be selected in the order of merit and not on the basis of seniority. After getting various directions from the Tribunal, the department undertook a review so as to conform to the Recruitment Rules of 1979 and found that a number of persons who were actually appointed as LDCs with effect from various dates from July, 1986 to December, 1991, were not entitled to be so appointed and now seek to revert them. It may be stated here that the revised Recruitment Rules bifurcating the 10 percent quota into two, viz., (a) 5 percent on the basis of seniority cum fitness and (b) 5 percent on the basis of a qualifying examination come into force with effect from 19.10.1991 on its publication in the gazette. The department has issued a further direction that for the purpose of reckoning seniority, those who had been appointed as Havildars will rank en bloc senior to those who are appointed as Sepoys. Earlier, the department had gone on the basis of date of entry as Sepoy for the purpose of determining seniority.

13. The lapse on the part of the department in acting on the basis of executive instructions from 1982 to 1991 which were inconsistent with the statutory rules and the mistake in treating the examinations as qualifying when the 1979 rules envisaged that they should be competitive in nature are being rectified by the review undertaken at present. As regards the seniority in the grade of Group 'D', the present stand of the

Department that Hawildars who are drawing the higher pay scale of Rs.800-1150/- will rank enbloc as senior to Sepoys in the scale of Rs.775-1025/- is in order.

14. However, it is relevant to state that the irregularity committed by the department in not following the proper procedure has been going on from 1983 onwards as the appointment to the level of LDCs on the basis of the irregular procedure ^{committed} from 1983. It will be very harsh to penalise the government officials for the administrative lapse of the department when they were ^{DL} tied to believe that they have been appointed to the higher grade on a regular basis and after following the proper selection process, particularly, when they have been holding such posts for a number of years at present. At the same time, we have to safeguard the legitimate rights of persons who are rightfully entitled to appointment as per the statutory rules in force. We do not wish to do anything which will adversely affect the interests of such rightfully entitled persons.

15. We are informed by the department that Shri B. Shivaiah becomes due for appointment as LDC in 1992 and S/Shri Munikrishnappa and Eshwara in 1993 and Shri K.C. Gangaiah in 1994 in accordance with the revised Recruitment Rules of 1991 which had taken effect from 19.10.1991. They may be appointed on regular basis accordingly as per their turn and their earlier service as LDCs prior to their regular appointment will be treated as adhoc which will not give them any right for seniority in the LDC cadre. Such of the Group 'D' officials who are appointed as LDC, for the reason that they are found entitled to



such appointment as per the review undertaken by the department for the period 1982 to 1991 will rank senior to these applicants in the LDC cadre. We direct accordingly.

16. There are 8 applicants, viz.,

1. C.D. Ramegowda,
2. B.V. Bhaskarmurthy
3. Chikkannappa
4. S.K. Seenappa
5. Malla
6. M. Narayana
7. N. Yelakappa
8. Chandrashekhar

who are under the threat of reversion from the level of LDC to that of Hawildars/Sepoys as they are not getting covered for appointment to the grade of LDC till 1991 as per the review nor are they due for such appointment as per the revised rules during the period from 1991 to 1994. In their cases, we direct that the post of Sepoys/Hawildars to which they would have been reverted as per the review should be temporarily upgraded to the level of LDCs as personal to them and they should be allowed to continue as LDCs without liability for reversion to Group 'D'. This will form a separate block of LDCs over and above the normal cadre of LDCs. and these posts will not cut into the quota available for Group 'D' staff for selection to the level of LDCs. These posts will not be reckoned as forming part of such a quota. This is to ensure that the rightfully entitled Group 'D' staff will not be deprived of their opportunity to progress to the level of LDCs as per the Recruitment Rules. The services of the applicants as LDCs in the separate block by temporary upgradation of the Group 'D' posts will be treated as purely adhoc and will not confer on them any seniority in the cadre of LDCs. As and when they become entitled to be appointed as LDCs as per the rules, they will be appointed as such on regular

basis and on such regular appointment, in each case, the post of LDC held by the concerned applicant on personal basis will cease to operate.

17. We find that Shri S.R. Shirekar stands on the same footing as these 8 applicants, but as he has not moved the Tribunal, we are informed that he has been reverted to the Group 'D' cadre. Even though, he is not an applicant before us, it will only be fair that he should be treated at par with those applicants who are similarly situated like him. We direct the department to appoint him also as LDC on adhoc basis by upgrading the Group 'D' post held by him^{and to treat him} on the same lines as indicated for the 8 applicants in the preceding para.

18. As regards Shri Danial Satya Sheela (in O.A. No.1986/94) and Shri M. Hanumantharayappa (in O.A.No.1976/94) their position as stated by the respondents is that on the basis of the review conducted by the department to conform to the 1979 Rules, they would be appointed as LDCs in 1991 as against their earlier appointment in 1984 and 1986 respectively. They have been promoted as UDCs earlier on the basis of their incorrect seniority position as LDCs and the department contends that they are now to be reverted as LDCs in view of their revised seniority position in the LDC cadre. These two applicants were promoted as UDCs in 1991 by the department on a regular basis on the basis of their seniority as LDCs which has now been found to be incorrect. In their cases also, we would adopt the same principles as laid down in respect of the other applicants. We accordingly direct the department to temporarily upgrade

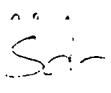
to the level of UDCs the posts of LDCs to which they would have been reverted as personal to them and they should continue at the level of UDCs purely on adhoc basis without any claim to seniority as UDCs. They will be considered for regular appointment as UDCs only according to their turn on the basis of their revised seniority in the cadre of LDCs.

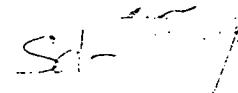
19. Shri K. Ramappa, was promoted as UDC in 1990 as he was earlier appointed to the LDC cadre in 1983. On the basis of the review undertaken by the department, he would have been appointed as LDC only with effect from 12.10.1988 and he, thus, loses seniority in the grade of LDC and as he is not an applicant before us and did not get any stay, he has been reverted to the level of LDC as per his revised seniority. Shri Ramappa is senior to S/Shri Danial Satya Sheela and Hanumantharayappa, as per the earlier procedure followed by the department as also on the basis of the review undertaken by the department in the cadre of LDCs. He is not an applicant before us, but, in the interest of fairness, his case should be treated on the same footing as the applicants S/Shri Danial and Hanumantharayappa. We direct the department to extend the same benefit to Shri Ramappa also.

20. All the applications are disposed off with the directions as contained in paras 15 to 19, above. No costs.

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Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore


(A.N. VUJJANARADHYA)
MEMBER (J)


(V. RAMAKRISHNAN)
MEMBER (A)