

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 1376/94

Date of Decision: 20-10-1999

A.S.D'Silva & Ors.

Applicant.

Shri V.S.Masurkar for Shri K.R.Yelwe

Advocate for  
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri M.I.Sethna

Advocate for  
Respondent(s)

CORAM:

Hon'ble Shri. D.S.Baweja, Member (A)

Hon'ble Shri. S.L.Jain, Member (J)

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to  other Benches of the Tribunal?

(3) Library

*D.S.Baweja*  
(D.S.BAWEJA)  
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO. 1376/94

Dated this the 20th day of October 1999.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

1. Augusto S.D'Silva
2. Pankaj M.Tamhane
3. Madan M.Shirwale
4. Tushar A.Dalvi
5. Narendra Y.Kawale
6. Anil R. Bhosale
7. Socorro Dias

All the above applicants  
are working as LDCs/Terminal  
Operators, Under Collector of  
Customs, New Customs House,  
Ballard Estate, Bombay.

...Applicants

By Advocate Shri V.S.Masurkar  
alongwith Shri K.R.Yelwe

V/S.

1. Union of India through  
Secretary,  
Ministry of Finance,  
Department of Revenue,  
New Delhi.
2. Collector of Customs,  
New Customs House,  
Ballard Estate,  
Bombay.
3. Additional Collector of  
Customs/Deputy Collector  
of Customs (Personnel and  
Vigilance)  
New Customs House,  
Ballard Estate,  
Bombay.

... Respondents

By Advocate Shri M.I.Sethna  
alongwith Shri V.D.Vadhavkar.  
Shri G.K.Masand for the Intervenors.

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ORDER

(Per : Shri D.S.Baweja, Member (A))

This application is filed jointly by seven applicants. The applicants are working as Lower Division Clerk/Terminal Operators (LDC/TO) under the Collector of Customs, Mumbai in the pay scale of Rs.950-1500. All the applicants except Applicant No. 1 were selected through the Employment Exchange. Applicant No. 1 was appointed against sports quota. As per applicants, the post of LDC/TO is born on the common cadre having a common seniority list with that of LDCs (Ministrial cadre) as will be seen from the seniority list dated 1.1.1994 brought on the record. The names of the applicants appear in this seniority list. The next promotional post in the channel of promotion for LDCs is Upper Division Clerk (UDC) in the pay scale of Rs.1200-1800. Thereafter, further promotion avenue to the posts of Deputy Office Superintendent, Preventive Officer and Examiner is also available. Upto now, LDC/TOs have been permitted to seek further promotion to the post of UDC and the applicants have also qualified in the test for promotion as UDC in 1990. The applicants have also been ~~confirmed~~ as LDC as per the order dated 7.8.1990. However, as per the circular dated 10.2.1993 issued by the Addl. Director of Customs in pursuance of the Ministry of Finance's letter dated 27.11.1992, LDCs/TOs have been redesignated as Data Entry Operators (DEO) Grade 'A' in the scale of Rs. 1150-1500 with effect from 11.9.1989. Further promotional channel has been provided as Data Entry Operator Grade 'B' Rs.1350-2200, Grade 'C' Rs.1400-2300 and Grade 'D' Rs.1600-2660. As

per para 3 of this circular, options were called from all those working as LDC/Typist/TO and LDC/TO in the Computer Cell for continuance as LDC/Typist or to come over as Data Entry Operator. The applicant's accordingly exercised option to continue on the post of LDC. However, subsequently as per order dated 8.7.1993, the earlier circular dated 10.2.1993 has been withdrawn without assigning any reasons. The applicants collectively made representations dated 8.2.1994, 21.2.1994, 28.2.1994 against the withdrawal of exercise of option as allowed as per circular dated 11.2.1993. Feeling aggrieved, the present OA. has been filed on 8.12.1994.

2. Subsequently, the applicants through an amendment application have brought additional facts on the record. The applicants state that as per order dated 17.1.1995 LDC/TOs and some other categories have been redesignated as Data Entry Operators and fixed in the pay scale of Rs.1150-1500 with effect from 11.01.1989. The applicants submitted a representation dated 24.1.1995 against the same stating that they are accepting the order dated 17.1.1995 under protest. A seniority list dated 17.2.1995 of the Data Entry Operators Grade 'A' was also issued in which the names of the applicants are included and the same has been also impugned.

3. With the above facts, the applicants have sought the following reliefs :-

- (a) To set aside the order dated 8.7.1993.
- (b) to direct respondents to give effect to the order dated 10.2.1993 through which the options have been called.
- (c) to direct the respondents to allow the applicants to exercise option in pursuance of the circular dated 10.2.1993.
- (d) to set aside the orders dated 17.1.1995 and 17.2.1995.

4. The applicants have sought the above reliefs advancing the following grounds :-

- (a) By the impugned redesignation of the applicants as DEO, Grade 'A', the applicants are deprived from being considered for the promotion in the Ministerial cadre. Their acquired vested right has been taken away and therefore the action of the respondents is without authority and illegal.
- (b) There is denial of principles of natural justice in as much as the applicants have not been given any opportunity to represent before passing the impugned order.
- (c) There is violation of Articles 14 & 16 of the Constitution of India as the applicants have been discriminated.

5. The respondents have opposed the application through the applicants written statement. The respondents submit that all were recruited as LDC/TO in the grade of Rs.260-400 with allowance of Rs.20/- (Revised to Rs.950-1500 plus Rs.40/- as allowance) against the specific posts sanctioned for computerisation of Import and Export customs operations. For the cadre of Data Entry Operators (DEO) Recruitment Rules were issued on 3.4.1992. As per clause 5 of the Rules, initial constitution of the cadre is to comprise of all persons appointed on regular basis as Key Punch Operators, Terminal Operators, Lower Division Clerks performing the duties of Terminal Operators before the commencement of these rules. There was no provision for calling options and therefore the order dated 10.2.1993 was contrary to the recruitment rules. When this mistake was realised, this order was withdrawn as per the order dated 8.7.1993. In view of this position, the respondents state that there can be no claim of estoppel against the law. The respondents further add that there is no violation of Articles 14 & 16 of the Constitution of India as the applicant had no right to exercise option to continue as LDC and entitled for promotion in the cadre of Upper Division Clerks (UDC).

6. No rejoinder reply has been filed by the applicants to the written statement of the respondents.

7. A Misc. Application No. 530/99 was filed by Mumbai Customs Ministerial Staff Association through its Secretary jointly along with 5 other applicants with a prayer to implead them as party respondents with the plea that if the reliefs prayed for in the present OA. are allowed, the members of the Association will be seriously prejudiced. This application was vehemently opposed by the applicants. However, the counsel for the applicants conceded that intervenor's counsel may be allowed to argue on the matter but should not <sup>be</sup> allowed any further time to file written statement. In the interest of justice, the official respondents were allowed time for filing reply if any for the M.P. No. 530/99. However, the official respondents did not file any reply. The intervenors were however allowed to argue their case through the counsel.

8. Heard the arguments of Shri V.S.Masurkar, the learned counsel for the applicants, Shri M.I.Sethna for the official respondents and Shri G.k.Masand on behalf of the intervenors as brought out earlier.

9. Based on the rival contentions on the controversy involved in the present OA., the following questions need to be answered :-

(a) Whether the applicants initially appointed as LDC/TO are subsequently treated as belonging to cadre of LDC, i.e. cadre of LDC and LDC/TO is common?

(b) Whether order dated 8.7.1993 withdrawing the earlier order dated 10.2.1993 as per which options were allowed is legally sustainable?

10. Taking the first question, from the rival averments and Ex. 8 & 9 (of the written statement) brought on the record, it is undisputed fact that the applicants were recruited and appointed as LDC/Terminal Operator in the scale of Rs.260-400 with Special allowance of Rs.20 (Revised to Rs.950-1500 + special allowance of Rs.40/-). It is also noted that posts of LDCs/TOs were specifically sanctioned for computerisation of the Import Cargo ~~Clearing~~ operations at Sahar Airport and applicants have been appointed against these posts. Now the case of the applicants is that LDCs/TOs are borne on the common cadre of LDCs. The applicants have advanced three grounds in support of this submission namely (a) The applicants have been confirmed as LDC as per letter dated 7.8.1990 though recruited as LDC/TO. (b) Their names are shown in the seniority list of LDCs issued on 10.11.1994 and (c) LDCs/TOs have been permitted to seek promotion to the post of UDC and further promotions thereafter. The applicants have also appeared in the ~~test~~ for promotion to the post of UDC in 1990 and qualified in the same. There is no specific denial of these grounds brought out in paras 4.1 to 4.4 of the OA. by the respondents. In view of this, on the face of it, there appears to be merit in the claim of the applicants. However, on little reflection on the various documents brought on

the records and the recruitment rules laid down for the Data Entry Operators' cadre, we are of the opinion that stand of the applicants cannot be endorsed. The applicants have been recruited as LDC/TO against the specific posts sanctioned for the purpose of computerisation. They are ~~entitled~~ <sup>also</sup> for special pay which is not applicable to LDCs. The applicants have made no averments that through they were recruited as LDC/TO, but subsequently were utilised as LDC. If as per the applicants their cadre was common with LDCs, then seniors could have been posted as LDC/TO and given the benefit of special pay. In the absence of any such averment, it is to be taken that applicants were working as LDC/TO only. As regards reliance on seniority list dated 1.1.1994, it is noted that this seniority list was tentative and has been subsequently superceded by the seniority list dated 11.2.1995 wherein the applicants have been shown in the cadre of Data Entry Operators. Further with the issue of Recruitment Rules under GSR-164, on 3.4.1992 for the Data Entry Operators' cadre, the applicants who were working as LDC/TO got inducted into the cadre as initial constitution. The question of applicants being shown in the cadre of LDC after 3.4.1992 ~~should have~~ <sup>after 3.9.92</sup> not arisen as the tentative seniority list dated 1.1.1994 was not in accordance with the rules. It is also noted that the Recruitment Rules indicate the total initial cadre of Data Entry Operators Grade 'A' which comprises of all the listed categories which constitute the initial cadre implying thereby that the posts of LDC/TO are included in the cadre of Data Entry Operators. Further, all the categories listed in the recruitment

rules including the applicants have been also allowed the higher grade of DEO Grade 'A' from 1989 with payment of arrears. All these facts lead to the conclusion that the applicants were in the category of LDC/T0 at the time when the Recruitment Rules as per GSR-16 A were laid down and therefore answer to the first question is 'Yes'.

11. Now after recording our fundings on first question in affirmative, we will deliberate on the second question. As per the Recruitment Rules, the initial constitution of the cadre of the Data Entry Operators is governed by clause 5 as under :-

"Initial Constitution - All persons appointed on regular basis as Key Punch Operators, Terminal Operators and Lower Division Clerks performing the duties of Terminal Operators before the commencement of the rules will be deemed to have been appointed as Data Entry Operators Grade 'A' under these rules and they shall rank enblock senior to those appointed after the commencement of these rules."

From the above, it will be seen that there is no provision for giving option to the categories of the staff listed in the clause 5 to come over to the cadre of Data Entry Operators or continue to the present post or to choose the LDC cadre. This being so, the issue of letter dated 10.2.1993 calling for options was in violation of the rules. If the same is withdrawn subsequently by the letter dated 8.7.1993, the action of the respondents cannot be held to be without authority and illegal. The applicants' plea that the applicants cannot be debarred for being considered

for promotion in the Ministerial cadre and their acquired right being taken after redesignation as Data Entry Operators is therefore not tenable. The question of issue of show cause notice to the applicants before designating them as Data Entry Operators would also not arise in the present case. The applicants have also alleged discrimination stating that options to LDC/TO have been allowed in other offices and also produced some orders to support this submission. We are not persuaded to find any substance in this allegation. As stated earlier, the Recruitment Rules do not envisage any exercise of the option by the categories of the staff listed in clause 5 and reproduced earlier. Even if it is accepted that some other offices have allowed options, then such an action is against the rules. As held by the Hon'ble Supreme Court in the case of State of Haryana vs. Ram Kumar Mann, 1997 (1) SC SLJ 466, the Doctrine of discrimination is found on the existence of enforceable right. A wrong decision or action by the Government in violation of the rules does not give a right to enforce the wrong order and claim parity or equity. There is no invidious discrimination in such a case. Two wrongs can never make a right. In view of what is held by the Hon'ble Supreme Court, the plea of discrimination also deserves to be dismissed.

12. The applicant has cited the following judgements in support of his contentions :-

(a) Shankar Pandurang Jadhav & Ors. vs. Vice Admiral, Flag Officer, (1991) 16 ATC 470.



(b) K.Ravindra Nath Pai & Anr. vs. State of Karnataka & Anr., 1995 SCC (L&S) 792.

(c) Dr. Ram Raj Ram vs. State of Bihar & Ors., 1996 SCC (L&S) 1201.

We have carefully gone through these judgements and are of the considered opinion that ratio of what is held in these judgements does not apply to the facts and circumstances to present case as deliberated above.

13. In the result of above, we do not find merit in the OA. and the same is accordingly dismissed with no order as to costs.

*S.L.JAIN*  
(S.L.JAIN)

MEMBER (J)

*D.S.BAWEJA*  
(D.S.BAWEJA)

MEMBER (A)

mrj.