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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. No. 1139/91.

Dt. of Decision : 22.7.94.

Mr. A. Gopalakrishna Murthy

.. Applicant.

Vs

1. The Collector,
Customs & Central Excise,
Hyderabad.

2. The Collector,
Customs & Central Excise,
Guntur.

.. Respondents.

Counsel for the Applicant : Mr. S. Ramakrishna Rao

Counsel for the Respondents: Mr. N.R.Devarej, Sr.CGSC.

CORAM:

THE HON'BLE SHRI JUSTICE V. NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

J U D G M E N T

I as per Hon'ble Sri R.Rangarajan, Member(Administrative) I

Heard Sri S.Ramakrishna Rao, learned counsel for the applicant and Sri N.R.Devaraj, learned Standing Counsel for respondents.

2. The applicant herein is working as an Hawaldar from 23.12.1988, having joined as Sepoy on 2.8.1974 in the department of Central Excise and Customs, Guntur. The further channel of promotion for the Sepoys and Hawaldars is to the post of Lower Division Clerk. 10% of the vacancies arising in the post of Lower Division Clerk are reserved for promotion from the lower grade of Sepoys/Hawaldars. 5% out of the 10% of the posts are filled on seniority-cum-fitness basis and the other 5% on the basis of departmental qualifying examination. The Central Board of Excise and Customs had issued a circular bearing No.F.No.B.12017/6/90-Ad.III.B. dt. 14.11.1991 (Annexure-IV) which clarifies the method of maintaining of seniority list for filling up of the 10% quota of vacancies in the grade of L.D.C. The relevant portion of the clarification reads as under

"(i) persons appointed through earlier selection would be senior to those appointed through subsequent selection (thus) persons promoted on the basis of passing the Departmental qualifying exam. held earlier (even if they belong to the reserved list of that examination) will enbloc be senior to those promoted on the basis of subsequent examination.

(ii) Among those promoted through the same qualifying exam (without any merit list), the inter-se seniority will be fixed w.r.t. their seniority in the parent lower grade i.e. Gr.D subject to the condition that those holding higher scale of pay in Gr.D would rank senior to those in lower scale of pay"

3. The applicant contends that, though he is senior in both the modes of selection against the 10% posts earmarked for promotion to the post of L.D.C., he had been overlooked and his juniors were promoted. His representation to higher authorities did not bear any fruit. Hence, he has filed this O.A. praying for a direction to the respondents to consider his case along with other candidates for promotion to the cadre of Group 'C' (L.D.C.) in the ensuing D.P.C. meeting scheduled to be held on 13.12.1991.

4. An interim order had been passed in this O.A. directing the respondents that if any appointments ^{are} made with regard to the selection in question, the same will be subject to the outcome of the result in the O.A. The respondents may accordingly advise the said candidates.

5. The 10% quota of promotion to the cadre of LDC earmarked for Group 'D' employees in the category of Sepoys/Hawaldars are bifurcated into two portions - 5% of the posts is ^{are} filled on the basis of seniority-cum-fitness and the other 5% on the basis of a departmental qualifying examination.

6. As regards filling up of the 5% of the posts through a departmental qualifying examination, the instructions are clear and there is no ambiguity. Both parties submit that the persons appointed through earlier selection to the cadre of LDC through qualifying examination would be senior to those appointed through subsequent selection. Thus persons promoted on the basis of passing the departmental qualifying examination held earlier, (even if they belong to the reserved list of the examination) will enblock be senior to those promoted on the basis of a subsequent examination. Hence there is no need to further discuss this mode of promotion as there is unanimity in the views on both sides.

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7. In regard to the 5% quota ear-marked for promotion on the basis of seniority-cum-fitness, there is difference of opinion in fixing the inter-se seniority amongst those in the cadre of Sepoy/Hawaldar for promotion to the cadre of LDC. The learned counsel for the respondents submitted that the post of Hawaldar is filled by calling for volunteers from the category of sepoy and those who are willing are posted as Hawaldars. Hence, the post of Hawaldars though in the higher grade in Group 'D' compared to Sepoy, who are also in Group 'D', the Hawaldar's posts are considered as ex-cadre posts as they are filled by calling volunteers. Hence, the inter-se seniority for promotion to the grade of LDC is regulated by the inter-se seniority position in the category of Sepoys only. It was further stated in the reply affidavit that the Board's instruction issued in letter dt. 14.11.1991 convey the meaning that "seniority in the parent cadre (i.e. Sepoy) can never be changed for consideration to a higher post. It is further stated in the reply affidavit that the department will take into consideration the scale of pay of the applicant after he gets his promotion as LDC against the reserved quota and while fixing his seniority.". From the above, it will be clear that the respondents treat the promotion to the post of Hawaldar from the post of Sepoy as posting in an ex-cadre higher grade post whereas the applicant treats posting as Hawaldar as promotion in the normal channel from the category of Sepoys.

8. The question now arises as to whether the post of Hawaldar is a promotional post to Sepoys and it is in the direct channel of promotion to the category of Sepoys? or GY

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Whether the post of Hawaldar is an ex-cadre post and whether those Sepoys who exercise their option to come to the post of Hawaldar will get any extra benefit by way of seniority though it is in the higher grade in Group 'D', compared to the post of Sepoy which is also in Group 'D', for promotion to the post of LDC against the 5% quota earmarked for promotion on the basis of seniority-cum-fitness.

9. In order to examine the above, we called for the recruitment rules for promotion to the post of Hawaldars. An extract of the recruitment rules which gives the rules of promotion to the Hawaldars was submitted by the learned Counsel for the respondents. From this extract of the recruitment rules it is seen that the post of Hawaldar is a non-selection post and the mode of filling up this post under column -12 reads as under:-

"By promotion from the grade of Sepoy with 3 years service in the grade."

10. The above mode of promotion to Hawaldars as can be seen from the recruitment rules does not indicate that the post of Hawaldars are filled by calling for willingness from the category of Sepoys. It only states that the Sepoys with 3 years of service in the grade of Sepoys are promoted. Thus, it is clear from the recruitment rules that the post of Hawaldars are in the direct channel of promotion for Sepoys and those possessing the necessary qualifying service in the grade of Sepoys will be promoted and posted as Hawaldars though both the categories of Sepoys and Hawaldars are in Group 'D' cadre, the post of Hawaldars having been placed in higher grade. Hence, it can be said with certainty from the recruitment rules that the posts of Hawaldars are promotional

posts to Sepoys and those working as Hawaldars are senior to the Sepoys while drawing the inter-se seniority list for promotion to the post of LDC against the 5% quota to be filled on the basis of seniority-cum-fitness.

11. From the above, the following inferences are drawn -

- (i) Appointment to the 5% quota ear-marked for promotion to the cadre of LDCs on the basis of passing the departmental qualifying examination is to be regulated ~~by~~ treating those passed in the exam. held earlier, even if they belong to the reserved list of the examination, as enblock senior to those promoted on the basis of the subsequent examination.
- (ii) Those appointed against the 5% quota, ear-marked for promotion on the basis of seniority-cum-fitness, the interse seniority amongst them shall be fixed with respect to their seniority in the parent lower grade i.e. Group 'D' subject to the condition that those holding higher scale of pay in Group 'D' would rank senior to those in the lower scale of pay. This would mean that the post of Hawaldars is not an ex-cadre post but only a cadre post to be filled from the category of Sepoys who had put in 3 years of service in the grade of Sepoys. The Hawaldars being in the higher grade in Group 'D' are senior to Sepoys and they will be promoted to the post of LDC first on the basis of their date of entry into the category of Hawaldars and the inter-se seniority amongst the Hawaldars will be regulated by the date of entry into that category.
- (iii) If an employee is eligible for promotion both through the departmental qualifying examination and on the basis of the seniority-cum-fitness, ^{his case has to be considered} ~~he can choose any~~ *of the basis* one of the mode of promotion to the post of LDC whichever is beneficial to him.

The learned counsel for the respondents fairly submitted that the above inference is acceptable to him.

To

1. The Collector,
Customs and Central Excise,
Hyderabad.
2. The Collector,
Customs and Central Excise,
Guntur.
3. One copy to Mr.S.Ramakrishna Rao, Advocate, CAT.Hyd.
4. One copy to Mr.N.R.Devraj, Sr.CGSC.CAT.Hyd.
5. 3 copies to Library, CAT.Hyd.
6. One copy to D.R.(J)CAT.Hyd.
7. Copy to All Reporters as per standard list of CAT.Hyd.Bench.
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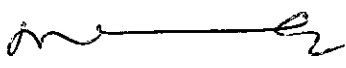
The present case in question is to be decided on the above lines.

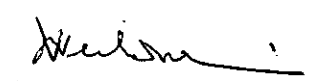
12. In the result, the following direction is given:-

The applicant is to be promoted on the basis of his seniority in the combined seniority list of Sepoys and Hawaldars. He being an Hawaldar, will rank senior to Sepoys in the combined seniority list and his place in the category of Hawaldars has to be fixed on the basis of his entry into that grade. He should be considered for promotion as LDC on the basis of seniority-cum-fitness in accordance with the above combined seniority-list. It is stated that he had qualified in the departmental qualifying examination in the year 1987 and hence he is eligible for promotion against this quota also. ^{His case should be considered on the basis of} ~~He should be given choice to choose to any one~~ of the modes of promotion to the post of LDC. If his junior in the ~~chosen~~ mode is already promoted as LDC, he should also be given the consequential benefits such as fixation of pay from the date of promotion of his junior and arrears of pay when promoted to the post of LDC.

13. Time limit for compliance of this order is four months from the date of receipt of a copy of this order.

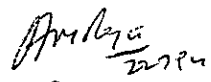
14. The OA is ordered accordingly. No costs.

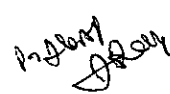

(R. Rangarajan)
Member (Admn.)


(V. Neeladri Rao)
Vice Chairman

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Dated 22 July, 1994.

Grh.


Deputy Registrar (J) CC


22/7/94