

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO.291/00147/2014

Order Reserved on : 7.12.2015

Date of Order:

11/12/2015

CORAM

**Hon'ble Mr. Justice Harun-Ul-Rashid, Judicial Member
Hon'ble Ms. Meenakshi Hooja, Administrative Member**

Jaideep Sharma S/o Shri B.C.Sharma, aged 40 years, resident of II/77, A.G. Colony, Bajaj Nagar, Jaipur presently working as LDC, Office of Salt Commissioner, Jaipur.

.....Applicant

(By Advocate Mr. Mahendra Shah)

VERSUS

1. Union of India, through the Secretary to the Government, Ministry of Commerce and Industry, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi.
2. The Salt Commissioner, Govt. of India, 2-A, Lawan Bhawan, Lawan Marg, Jhalana Doongri, Jaipur.

.....Respondents

(By Advocate Mr. S.S.Hassan)

ORDER

(Per Hon'ble Ms. Meenakshi Hooja, Member(A))

This OA has been filed by the applicant for quashing and to set aside the impugned order dated 18.12.2013 Annexure A/1, and order dated 30.01.2014 Annexure A/2 and seniority list of LDC's Annexure A/3, to the extent these operate

detrimental to the rights of the applicant and to further direct the respondents to provide seniority in accordance with the merit rank assigned by the SSC for Rajasthan zone for the vacancies of the 1996 and thereby provide all other consequential benefits.

2. The OA came up for consideration and hearing on 27.11.2015 (Part-heard) which was continued on 7.12.2015. When the matter came up for our consideration, the Ld. Counsel for applicant, with reference to the averments made in the OA, submitted that as may be seen at Annexure .A/4 that the Assistant Salt Commissioner (Adm), sent a requisition dated 16.01.1997 to the Regional Director, Staff Selection Commission, New Delhi for filling up 05 vacancies for Lower Division Clerk (LDC's) including 2 for unreserved category. In this requisition at column No.3 the name of the office has been mentioned as Office of the Salt Commissioner, Ministry of Industry, Department of Industrial Policy and Promotion, in column No.5 Rajasthan has been mentioned as the State and in column No.6 Zone has been mentioned as Northern Zone. Ld. Counsel for applicant also submitted a copy of the earlier requisition dated 25.08.1995 (which was kept on record for reference) sent by the same office, and has been referred in column 7 of the requisition dated 16.01.1997. In the requisition

dated 25.08.1995 at Para 4(b) the place of posting has been given as Jaipur and Jodhpur in the State of Rajasthan. By referring to these documents and Annexures, counsel for applicant contended that there is clear evidence that a common requisition has been sent for the posts of LDC's at Jaipur and Jodhpur both falling within the state of Rajasthan.

3. Counsel for applicant further submitted that in pursuance to these requisitions, the Staff Selection Commission (SSC) selected 04 persons including the applicant vide letter dated 07.06.1998 (Annexure A/5) wherein the name of the applicant is at Sl. No.2, in order of merit and in the directions of the SSC (enclosed with this letter) para IV makes it very clear that the seniority of the candidates should be fixed on the basis of rank of the candidate in the examination and not on the basis of their date of joining. Thereafter, as may be seen from Annexure A/6, Memorandum dated 10.07.1998 of the office of the Salt Commissioner, the applicant received an offer of appointment for the post of LDC in the Salt Department under the Ministry of Industry (Department of Industrial Development). The applicant vide his letter dated 24.07.1998 (Annexure .A/7) offered his acceptance subject to being posted at Jaipur because of his parents' ill-health. As mentioned in the OA, the applicant was orally assured of being posted at Jaipur later after a year,

therefore in supersession of his earlier letter, gave his acceptance to the terms and conditions in offer of appointment vide letter dated 31.07.1998 (Annexure A/8). Thereafter, Annexure A/9 dated 19.08.1998 appointment order was issued, posting the applicant as LDC in the office of the Assistant Salt Commissioner, Jodhpur. Thereafter, after joining at Jodhpur in the Assistant Salt Commissioner office, Jodhpur in the year 1998; the applicant made a request for transfer to Jaipur vide application dated 07.01.2000 (Annexure A/11), but the same was denied vide letter dated 21.08.2000 (Annexure A/12) and in the meanwhile 2 newly selected candidates joined at Jaipur. Then again the applicant requested for transfer to Jaipur and with reference to his letter dated 28.07.2004 he was informed by letter dated 13.01.2005 (Annexure A/13) that "in the above context you are advised whether you are willing to be made junior most LDC of Headquarter, in case your request is considered", to which the applicant agreed for transfer to Headquarter office, Jaipur and gave his consent to be the junior-most amongst LDCs at Headquarter office vide his letter dated 13.01.2005 (Annexure A/14). Thereafter, order dated 14.03.2005 (Annexure A/15) was issued transferring him to Headquarters office Jaipur, and being made the junior-most amongst the LDCs of Headquarters office, on joining in the Head Quarter office, Jaipur. Counsel for the applicant contended that

this order assigning the junior-most seniority amongst the LDCs to the applicant at the Headquarter office is ab-initio void and the applicant was literally compelled to give his consent to the junior most seniority because of his special circumstances and family problems of parents' ill health. In fact the applicant was second in merit in the list of SSC dated 07.06.1998 and he has to be assigned the seniority on the basis of rank in the examination (as per the clear directions of SSC) and in no circumstances can he be given the junior most seniority on transfer and joining at Headquarter office. Ld.counsel for applicant contended that the requisitions of the department i.e. Annexure A/4 dated 16.01.1997 and earlier requisition dated 25.08.1995 themselves make it clear that SSC was asked to select candidates for the posts of LDC at Jaipur and Jodhpur of the same office and appointing authority is also the same and, therefore, it is a case of simple transfer, and not of any deputation, where willingness of the applicant is required. The applicant was assigned the junior most seniority amongst LDC's of Headquarter office vide order dated 14th March, 2005 in a most illegal manner and his representation dated 07.11.2013 and 18.12.2013 have been rejected vide Annexure A/1 dated 18.12.2013 and A/2 dated 30.01.2014 on grounds which are contrary to law, because the applicant was selected by the SSC for post of LDC, for Jodhpur and Jaipur office and merely on the

basis of a transfer, his seniority which is assigned on the basis of merit in the SSC selection list, cannot be lowered. Counsel for the applicant further contended that there is also no basis for keeping separate seniority for Jaipur and Jodhpur office, when the selection has been made by a common requisition and common examination and there is no Rule or order which provides for maintaining separate seniority for LDC's in these office. Therefore, seniority of the applicant needs to be maintained as per the SSC selection list (letter dated 07.06.1998 (Annexure A/5) and orders fixing his seniority as at Annexure A/3 in the list of LDC's at Headquarter at Jaipur and Memorandums dated 18.12.2013 (Annexure A/1) and 30 January, 2014 (Annexure A/2) deserve to be set aside and applicant is required to be given seniority in accordance with his merit and selection by the SSC and the order of appointment which was issued on 19.08.1998 (Annexure A/9) with all consequential benefits. Counsel for the applicant also reiterated the points made in the rejoinder to the reply, and his written submission and prayed that the OA be allowed.

4. Per contra, the counsel for respondents submitted that the applicant himself requested for his transfer to Hqrs. office at Jaipur and vide letter dated 10.01.2005 (Annexure R/5) it was made clear that in case Shri Jaideep Sharma's request for

transfer to Headquarter is considered, he will be made Junior most amongst the LDC's of Headquarter, and his consent was sought accordingly. The applicant gave his consent vide his letter dated 13.01.2005 as at Ann. R/6 (also filed by the applicant as Annexure A/14) and therefore orders were issued on 14.3.2005 as at Annexure R/7 (also filed by the applicant as Annexure A/15) wherein he was transferred from office of the Assistant Salt Commissioner, Jodhpur to the Headquarters office at Jaipur stating that he will be junior most amongst the LDC's of Headquarter office on joining in the Headquarter office, Jaipur. Counsel for respondents contended that when the applicant was transferred as per order dated 14.03.2005 (Ann.R/7) he did not challenge these orders, he did not even challenge the seniority list issued in 2009 and he has only sent applications on 07.11.2013 and 18.12.2013 regarding seniority in Headquarters office which have been correctly decided by Memorandum dated 18th December, 2013 (Annexure A/1) and Memorandum dated 30th Jan, 2014 (Annexure A/2), wherein it has been clearly mentioned that separate seniority is maintained for Headquarter office, Jaipur and Regional Offices in respect of LDC's and that the applicant had given his consent in writing to be the junior-most amongst LDCs of Headquarter office Jaipur. Thus the applicant did not choose to challenge his seniority for a very long time. Counsel for the respondents further clarified that

the seniority of LDC's of Headquarters and the Regional offices are maintained separately because as brought out in the reply the Salt Commissioner's Headquarters office, Jaipur is an attached office of the Ministry of Industry, Department of Industrial Promotion and there are Regional offices which are subordinate offices and the office of the Assistant Salt Commissioner comes under the Rajasthan Salt Region. Further there are separate Recruitment Rules for recruitment to Group C posts in Headquarters office and for the Regional offices. In this context he submitted a copy of Notification dated 07.01.1987 regarding Recruitment Rules 1986 for Salt Commissioners Headquarters Office Group 'C' (Ministerial) posts which are separate from Recruitment Rules, 1985 for the Salt Regions (Group C posts) and submitted the notification dated 01.5.1985 in this regard (Notifications kept on record for reference). Thus in view of the separate Recruitment Rules for Group C posts for Headquarter office and the Salt Regions, the seniority of Headquarters office at Jaipur and other Regional offices are maintained separately and as the applicant was appointed and posted as LDC at the office of Assistant Salt Commissioner Jodhpur, his transfer to Headquarter office at Jaipur, fixing his seniority as junior most amongst the LDC's of the Headquarter office, which is as per consent of the applicant, is legal and valid as per law. The applicant having accepted the order of

appointment dated 19.08.1998 (Annexure A/9), was transferred to Jaipur way back in March, 2005, but he never challenged the same and even did not challenge the 2009 seniority list. On all these grounds i.e. his consent to be posted as junior most LDC in Headquarter office in 2005, not challenging the order and as there are separate Recruitment Rules for LDC's at Head Quarter office and Regional office and therefore, separate seniority is maintained for Headquarter and Regional office in respect of LDC's, sustainable grounds are not made out to set aside the impugned orders Annexure A/1, A/2 and A/3 or to grant any relief to the applicant. He thus prayed for dismissal of the OA.

5. Considered the aforesaid contentions and perused the record. It is noticed that on being selected by the SSC the applicant was given offer of appointment as LDC in the Salt Department under the Ministry of Industry (Department of Industrial Promotion) vide Annexure A/6 order dated 10.07.1998 (also filed as Annexure R/3) and vide letter dated 31.07.1998 (Annexure A/8), which was given in supersession of his earlier letter dated 24.07.1998 (Annexure A/7), the applicant himself submitted his acceptance to the offer and accepted the terms and conditions laid down in the offer of appointment dated 10.07.1998 and his order of appointment as LDC was issued vide letter dated 19.08.1998 (Annexure A/9,

also filed as Annexure R/4) and he was posted in the Office of Assistant Salt Commissioner, Jodhpur. Thus it can be said that the applicant himself accepted his offer and order of appointment and posting in the Assistant Salt Commissioner office, Jodhpur. He requested for his transfer to Jaipur in 2000 which was declined and again he submitted an application requesting for transfer to Jaipur and thereafter vide letter dated 13.01.2005 (Annexure A/13), he was advised to inform 'whether you are willing to be junior-most amongst LDCs of headquarter, in case your request is considered', and he gave his willing consent vide letter dated 13.01.2005 (Annexure A/14, also filed as R/6) and thereafter the orders dated 14.03.2005 (Annexure A/14 also filed as Annexure R/7)) were issued transferring him to Headquarter office, Jaipur and being made junior-most amongst LDCs of Headquarter office on joining at Jaipur. Thereafter, the applicant joined at Jodhpur but never challenged the aforesaid order dated 14.03.2005 (Annexure A/14 also filed as R/7). He has only challenged the seniority list of Jaipur Headquarter office vide his application dated 07.11.2013 (Annexure A/16) which has been rejected vide Memorandum dated 18th December, 2013 (Annexure A/1) and his another representation dated 18.12.2013 which has been rejected vide Annexure A/2 Memorandum dated 30th January, 2014.

6. Counsel for respondents has clearly brought to our notice that there are separate Recruitment Rules for Group-C posts in Salt Regions and Headquarters office as per notification dated 01.05.1985 and 07.01.1987 respectively. It has further been mentioned in the reply that the Assistant Salt Commissioner, Jaipur, being Head of Office is the Appointing Authority for LDC in the Salt Commissioner Office (Headquarters) and Deputy Salt Commissioner (Headquarter) in the office of the Salt Commissioner is the Appointing Authority of LDC in the office of the Assistant Salt Commissioner, Jodhpur. The Recruitment Rules, as notified for Group C posts including LDC at Headquarters office, which is an attached office with the Ministry, and for Regional offices which are the subordinate offices are different. Therefore, maintaining of separate seniority list appears to be in accordance with the Rules and the status of the offices. In view of the above position there appears to be no force in the contention of the counsel for applicant that just because in the requisitions dated 25.08.1995 and 16.01.1997 sent to SSC the place of initial posting has been mentioned at Jaipur and Jodhpur and the State as Rajasthan, and Zone as Northern Zone, the Headquarter office, Jaipur and office of the Assistant Salt Commissioner Jodhpur can be treated as one category and therefore, maintenance of separate seniority and making the applicant Junior-most amongst LDC's in the

Headquarter office is ab-initio void. Moreover, from the offer of appointment dated 10.7.1998 (Annexure A/9) itself it is clear from Para 1 clause (ix) that on accepting the offer the applicant is likely to be posted in any Salt Region under the Department and applicant vide his letter dated 31.07.1998 (Annexure A/8) had accepted the offer of appointment and he was accordingly appointed and posted vide order dated 19.08.1998 (Annexure A/9) in the office of Assistant Salt Commissioner, Jodhpur, which is a Regional Office and he joined there.

During the hearing, counsel for applicant also contended that the plea of the respondents in the reply that Jodhpur office was now under Ahmedabad Region and, therefore, seniority is to be maintained separately for Jaipur and Jodhpur office, is not correct, and in this context submitted one document regarding the jurisdiction of the Staff Selection Commission(SSC) wherein the entire State of Rajasthan is under one Regional office of SSC for the purpose of recruitment. This issue does not appear to be very pertinent because the question before us is not whether the office of the Assistant Salt Commissioner, Jodhpur comes under the Northern Zone or Ahmedabad Region, but whether separate seniority in respect of LDCs is required to be maintained for Headquarter office at Jaipur and other Regional Offices and our answer in this regard, with reference to the Recruitment Rules and status of the offices, is in the affirmative

i.e. separate seniority in respect of LDCs is correctly being maintained for Headquarters' office, Jaipur and other Regional Offices.

7. Further, the applicant himself requested for his transfer for Headquarter office Jaipur and after clearly being advised vide letter dated 10.01.2005 (Annexure R/5) that he will be Junior most amongst LDC's of the Headquarters, he gave his consent vide letter dated 13.01.2005 (Annexure A/14), and was therefore transferred at Headquarter office, Jaipur vide order dated 14.3.2005 (Annexure A/15) and he has never challenged the said order. The applicant only represented against the seniority list in 2013, and his representations dated 07.11.2013 and 18.12.2013 have been correctly decided vide Annexure A/1 and A/2 on the basis of the requirement of separate seniority of LDC's for Headquarter office, Jaipur, and Regional office at Jodhpur and the written consent of the applicant to his transfer, made way back in March, 2005 after being duly informed that he would be Junior most amongst LDC's at Headquarter, Jaipur. In view of the above position of Recruitment Rules, separate status of Headquarters office and Regional offices, and that separate seniority is required to be maintained for Headquarter office and Regional office with respect to LDC's, and the fact that the applicant gave his consent for his transfer to Headquarter office Jaipur on Junior

most seniority amongst LDC's at Headquarters office, Jaipur, and that the transfer order issued way back on 14th March, 2005 (Annexure A/15, also filed as Annexure R/7) was never challenged, there appears no grounds to consider and grant the relief as prayed for by the applicant in the OA. Accordingly the OA, lacking in merit, is dismissed with no order as to costs.


(MS. MEENAKSHI HOOJA)
MEMBER (A)


(JUSTICE HARUN-UL-RASHID)
MEMBER (J)

Adm/