

Reserved
(On 05.09.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD

Dated: This the 04th day of October 2018

Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Rakesh Sagar Jain, Member (J)

Original Application Number. 330/01141 of 2011

1. Atul Kumar Singh, S/o Shri Ram Murti Singh, R/o J49/G, Larmal Bagh, Defence Colony, Cantt, District Kanpur Nagar
2. Davindra Kumar Ram, S/o Shri Fakir Ram, R/o Quarter No. 8/8, Type – I.G.T. Road, O.E.F. Colony, Kanpur – 208013.
3. Suraj Chaudhary, S/o Late Jagdish Chaudhary, R/o 12/7, Gold Course Colony, Cantt, Kanpur.

.....Applicants.

By Adv: Ms. Saumya Mandhyan

VE R S U S

1. Union of India, Through Secretary (Ministry of Defence), Ordnance Factory Board, New Delhi – 110001.
2. Chairman, Ordnance Factory Board, Kolkata – 700001.
3. General Manager, Ordnance Equipment Factory, Kanpur – 208004.
4. Anil Kumar, LDC, No. 70431, Ordnance Equipment Factory, Kanpur – 208004.
5. Surendra Singh, LDC, No. 70434, Ordnance Equipment Factory, Kanpur – 208004.
6. Hari Lal, LDC, No. 70455, Ordnance Equipment Factory, Kanpur – 208004.
7. Ramesh Kumar Pal, LDC, No. 70460, Ordnance Equipment Factory, Kanpur – 208004.
8. Sarvesh, LDC, No. 70459, Ordnance Equipment Factory, Kanpur – 208004.
9. Surya Dev, LDC, No. 70461, Ordnance Equipment Factory, Kanpur – 208004.

.....Respondents

By Adv: Shri Himanshu Singh

Alongwith

Original Application No. 330/01535 of 2011

1. Rajesh Kumar, Son of Late Panna Lal, R/o G – 2101, Awas Vikas Parishad Yojna Shankhya – 1, Kalyanpur, Kanpur Nagar.
2. Devendra Kumar Kotnala, S/o Shri Vinod Kumar Kotnala, R/o HO 38, OFM Estate, Murad Nagar, District Ghaziabad (U.P.).

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7. Ramesh Kumar Pal, LDC, Ordnance Equipment Factory, Kanpur.
8. Sarvesh, LDC, Ordnance Equipment Factory, Kanpur.
9. Surya Dev, LDC, Ordnance Equipment Factory, Kanpur.

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By Adv: Shri Himanshu Singh

O R D E R

By Hon'ble Mr. Gokul Chandra Pati, Member (A)

Since both the OAs have been filed with the common prayer for relief with same cause of action and since both the OAs were heard together, it will be decided by this common order with the OA No. 1141/11 being taken as the leading case for this order.

2. Reliefs prayed for in both the OAs being same, are as under:-

"i. to issue a suitable direction in the nature mandamus commanding the respondents to cancel the selection of

the candidates appointed on the post of Lower Division Clerk and Store Keeper in Pursuance of the advertisement shows as Annexure No. 1.

- ii. to issue a suitable direction in the nature of mandamus commanding the respondents to held a fresh examination for the post of Lower Division Clerk and Store Keeper against the vacancy shows as Annexure No. 1 and declare the result purely on the basis of merit.*
- iii. issue any other suitable writ, order or direction which this Tribunal may deem fit and proper in the circumstances of the case.*
- iv. Award the cost of this original application to the applicants."*

3. The brief facts in both the OAs are that the applicants are working on the post of Darwan, which is a Group 'D' post in the office of the Ordnance Equipment Factory (in short OEF) at Kanpur. According to rules 15% of the vacancy in the post of the Lower Division Clerk (in short LDC) and 25% of total vacancies of the post of Store Keeper are to be filled up by promotion by selection of the employees working on Group 'D' post. The promotion of the already recruited employees working on the post of Orderly, Darwan and Ward Boy is considered through departmental examination. Eleven posts of LDC and three posts of Store Keeper were advertised by the respondents vide advertisement letter dated 05.08.2010 (Annexure A-1) for filling up vacancies through limited competitive departmental examination (i short LDCE). 38 candidates appeared for the post of LDC and 32 candidates appeared for the post of Store Keeper. The written examination for both the post was held on 28.08.2010 and the result was declared on 30.08.2010 (Annexure A-3), in which 11 candidates were declared selected.

4. It is the case of the applicants that photocopies of the questions in hand written were distributed and the examinees had to answer it on that very sheet just below the question and no separate answer sheets were provided. The applicant No. 1 made a complaint to the authority

on 03.09.2010 (Annexure A-4) and also he made a complaint to the General Manager, but no heed was paid to his complaint. Out of 11 selected candidates, there were many candidates whose marks can be compared in both the examination in which they appeared for their appointment to the post of LDC and Store Keeper.

5. It is further submitted in the OA that there was no cut-off marks fixed for the qualifying on the post. The Director General, Ordnance Factory issued an instruction dated 05.08.2011 (Annexure A-6) alongwith the SRO for the process of selection for the candidates of LDC (E), a post similar to the LDC, which is the dispute in the present OA. The said SRO for LDC (E) contains the eligibility, selection, number of vacancies.

6. It is further submitted that the answer books of some of the selected candidates were changed and cutting was made. The applicants have also appeared and failed as applicant No. 1 obtained 101 marks for the post of LDC and 76 marks for the post of Store Keeper, applicant No. 2 obtained 94 marks for the post of LDC and 25 marks for the post of Store Keeper, applicant No. 3 obtained 73 marks for the post of LDC and 28.5 marks for the post of Store Keeper.

7. The official respondents have filed the counter affidavit (in short CA) in which it is stated that the examination for the post of LDC and Store Keeper was conducted in a smooth and fair manner. The General Manager (respondent No.3) had constituted the Board of Officers for setting the question papers and to oversee conduct of written examination. A committee for evaluation of answer sheets was also constituted. It is further stated that the applicants cannot

challenge the examination after appearing in the examination and failing to qualify. The law on this point is well settled that the failed candidates have no right to challenge the selection process. As per SRO, 15% posts of LDC and 25% post of Store Keeper are to be filled up by appointment of educationally qualified Group 'D' employees having at least five years of service in the grade by promotion through Limited Departmental Competitive Examination (in short LDCE). The mode of selection to the post of LDC and Store Keeper was the written examination and merit of marks secured by them. The question papers for LDC and Store Keeper both were subjective and objective.

8. It was further stated in the counter affidavit that all 38 candidates including the applicants, appeared in the written examination of LDC and out of 32 only 29 candidates appeared in the written examination for the post of Store Keeper, but the applicants never raised any objection before the respondents and appeared in the examination without protest. It is further submitted that the question papers of LDC were typed both in English and Hindi and the question papers of Store Keepers were typed in English but the Hindi version was hand written. The candidates who appeared in the written examination were supplied separate answer book for writing answer. It is further submitted that if the applicants had any grievance they ought to have raised the same before appearing in the written examination, but they appeared in the written examination without any protest. It is asserted that no complaint has been received by the respondents as it does not bear the official seal for receipt of respondents' organization. It is further submitted that there is no requirement to fix cut-off marks in the LDCE as the selection of the candidates were purely on the basis of the marks obtained by the candidates. The evaluation of the answer

sheets / marking system was based on merit and as per the rules. No unfair means has been reported as the selection was done by the Board of Officers as per rules and guidelines on the subject.

9. The applicants have filed the rejoinder affidavit reiterating the stand as taken in the OA. It is stated that two questions of the question paper were doubtful. In question No. 4 of General Studies, which State of India is richest in minerals and in the Hindi version of the same question the 'mineral' was written as 'Khadyan' which means food grain. In the answer sheet, the correct answer in the English version is Jharkhand, the richest State in mineral, but it is not richest in production of food grains. It is further submitted that any candidate who had answered as Punjab in Hindi version would not get any marks. The applicant had asked under RTI Act, 2005 for copy of the answer keys which were furnished to him vide letter dated 23.09.2011 (Annexure RA-1) in which it is shown defective answer. In question No. 37 in General Studies, a question in English was regarding who wrote the Indian National Song, whereas in Hindi it was shown as 'Rashtriya Gaan'. It is clear that 'Rashtriya Gaan' is known as 'National Anthem' and National Song is known in Hindi as 'Rashtra Geet'. It is further submitted that cases of over writing of the answers of some of the candidate and that the evaluation of the answer sheet in case of one of the selected candidate (copy of which is enclosed with the rejoinder) was defective as he was given higher marks for some of the questions. The photocopy of the answer booklet of Arvind Kumar is enclosed as Annexure RA-2. There are instances where some of the candidates were given lesser marks and some other candidates were given more marks on same question although the answers were same. It is further submitted that the candidate who had actually

obtained more than the lowest marks of the selection was not given appointment and has not been placed in the select list as his total marks were wrongly calculated intentionally.

10. We have heard Ms. Saumya Mandhyan, learned counsel for the applicants. Written submission was also filed by her at the time of hearing. Her arguments were directed towards irregularities alleged to have been committed in the LDCE and the following points were highlighted :-

- (i) The entire selection process from the examination till joining of selected candidates on 01.09.2010 was completed in just four days.
- (ii) A complaint filed by applicant No.1 on 03.09.2010 was not filed and stamped by the respondents intentionally and no action on it was taken. No inquiry was conducted on the complaints.
- (iii) The cut off mark was not declared for the examination and such cut off mark was compulsory. Respondent No.9, a ST candidate was selected with very low marks as there was not cut off marks. The candidate securing higher than the lowest mark of selected candidate has been denied appointment.
- (iv) There has been some serious mistake in cheeeking of the answer sheets. For question No.4 and 37, the applicants were not given any marks whereas selected candidates were given marks for these questions. The applicants were given less marks due to unfair cheeeking.
- (v) Provision of SRO dated 05.08.2011 was not followed in the selection process, which is in violation of the rules.
- (vi) As per the judgments of Hon'ble Apex Court in the following cases, if glaring illegalities have been committed by Government in the

selection process or if a candidate is discriminated, then they can be challenged in the court of law :-

- (a) Raj Kumar & others Vs. Shakti Raj & others – 1997 Vol.IX SCC 557.
- (b) Deepak Sibbal Vs. Punjab University and others – AIR 1989 SC 903.

11. Shri Himanshu Singh, learned counsel for the respondents was heard by us and he also submitted a written submission subsequently, mainly reiterating the averments in the pleading. It was submitted that the LDCE was conducted through different Committees constituted for setting the question, conduct of examination and evaluation of answer sheet. It was also submitted that as per the settled law, the failed candidates who could not qualify in the examination cannot challenge the examination subsequently. It was further submitted that 38 candidates including the applicants appeared in the examination for LDC and 29 candidates appeared for examination for Store Keeper. The applicants had appeared in the examination without any protest.

12. We have carefully considered the pleadings of the both the parties as well as the submissions by the learned counsels. Before we proceed to consider the merits of the case, it is seen that the MA No.2477/2011 under the rule 4(5) of the CAT (Procedure) Rules, 1987 is pending in OA No. 1141/2011. Since three applicants have sought same relief and the cause of action is same, we allow the MA No. 2477/2011 in OA No. 1141/2011. Similarly, the MA No. 3618/2011 in OA No. 1535/2011 is also allowed permitting two applicants to jointly pursue the OA as the cause of action and relief sought for are same for the applicants. The respondents have also filed deletion application to

delete the name of Secretary, Ministry of Defence from the array of the respondents as the matter in both the OAs is pertaining to the Ordnance Factory Board, which is under the Department of Defence Production, as noted vide this Tribunal's order dated 24.7.2014. Since, no follow up action was taken on order dated 24.07.2014, the respondent No.1 would be treated as deleted from the array of respondents in both the OAs.

13. The dispute in this case, is regarding holding of the LDCE for promotion of Group D employees to LDC and Store keeper against promotion quota through LDCE. It is seen that out of 38 candidates who appeared in the examination for the post of LDC, 5 candidates (i.e. the applicants in OAs no. 1141 and 1535 of 2011) submitted the complaint regarding the selection process vide the letter dated 1.9.2010 (Annexure A-4 to the OA) after declaration of the result of selection vide order dated 30.8.2010 (Annexure A-3). In reply to the averments of the applicants regarding submission of the complaint, the respondents in para 17 of the counter affidavit have averred that the complaint dated 3.9.2010 was not submitted by the applicants and it was fabricated and forged as an after-thought for personal gain. In the complaint dated 1.9.2010, the applicants have mentioned about the marks secured by the selected candidates in the examination for LDC and Store Keeper as mentioned therein. It is seen that vide the order dated 30.8.2010 declaring the result, the respondents have not disclosed the marks secured by the selected candidates. It is not disclosed by the applicants how within one day of the declaration of the result, the marks secured by the selected candidates were obtained by them. Further, it is seen from the complaint dated 1.9.2010 (Annexure A-4) that the applicants have not mentioned anything about the points like non-supply of printed question papers and writing on the hand-

written question paper during the examination held on 28.8.2010 (as mentioned in para 4.12 and 4.13 of the OA) in the complaint of the applicants to the respondents. Hence, the applicants did not consider the grounds mentioned in para 4.12 and 4.13 to be serious enough to be included in their initial complaint which mentioned only about the discrepancy in marks and hasty declaration of results within two days of holding of the written examination.

14. The applicants in the OA have mentioned about different marks obtained by some of the selected candidates in LDC and Store Keeper examination, pointing to irregularity in evaluation of the answer sheets, which has been denied by the respondents. We are also not convinced that just because a candidate secured different marks in two different examinations held on the same day, will *prima facie* imply mistakes or irregularity in evaluation of answer sheet unless some specific evidence is furnished. No such evidence is furnished in the OA, for which the allegations of these irregularities as mentioned in the OA, which have been explained by the respondents in the counter reply, have no force. Further, it is noticed that although the applicants have sought to get the selection process cancelled entirely, they have not specifically impugned the order dated 30.8.2010 (Annexure A-3) in which the names of 11 candidates found to be successful in the LDCE was notified by the respondents although the prayer for cancellation of the entire selection process has been made in the OA.

15. However, it is seen that some specific cases of mistakes in the questions set in English and Hindi version and marks awarded to the applicants in both the OAs have been mentioned in paragraphs 8, 9, 13, 14, 16, 18, 20 and 22 of the Rejoinder affidavit filed by the applicants, which could have affected the marks obtained by some of

the applicants in the LDCE. It is seen that in the Rejoinder, the applicants have not mentioned any discrepancy in marks obtained by the selected candidates, except in para 7 in which the low marks secured by the respondent no. 9 who is one of the selected candidates belonging to ST, was mentioned. But in this case also no specific mistake in evaluation of his answer sheet was pointed out by the applicants. Other candidates for whom specific discrepancies in marking have been mentioned in the Rejoinder, are neither the applicants in both the OAs nor they are the selected candidates. Hence, the discrepancies in respect of these candidates, who are not before the Tribunal, cannot be taken into account while deciding the present OAs.

16. We take note of the fact that in spite of specific complaints showing *prima facie* mistakes in the questions or in the answer sheets of the applicants in some of the paragraphs of the Rejoinder as mentioned above, the respondents have not furnished any reply to these specific allegations through pleadings, since these could have altered the result for the applicants, if these allegations of mistakes in question or evaluation are true.

17. In view of the discussions above and taking into account the facts and circumstances of the case as placed before us, we are of the considered opinion that the allegations of large scale irregularities in the selection process as averred by the applicants do not have any force as such allegations are by and large unsubstantiated in the OA. Further, the applicants have not specifically impugned the order dated 30.8.2010 notifying the names of successful candidates, including the private respondents. We also note the fact that the applicants have cited specific instances of discrepancies in two questions and mistakes

in evaluation in respect of some questions answered by the applicants in both the OAs, as mentioned in paragraphs 8, 9, 13, 14, 16, 18, 20 and 22 of the Rejoinder affidavit filed by the applicants, which, if true, could have altered the result of some of the applicants and no reply on these specific averments regarding mistakes in evaluation has been filed by the respondents. Hence, we direct the respondent no. 2 to get these specific allegations regarding evaluation mistakes mentioned in paragraphs 8, 9, 13, 14, 16, 18, 20 and 22 of the Rejoinder affidavit inquired through a senior officer, who should be an employee or ex-employee of OEF, Kanpur and was not associated in any manner in the examination/LDCE in question and to take necessary follow up action, if required, as per law, on receipt of the report of such inquiry. The outcome of the inquiry and the follow up action, if any, taken on the aforesaid inquiry report, shall be communicated to the applicants within four months from the date of receipt of a certified copy of this order. Both the OAs are disposed of with directions as mentioned above. There will be no order as to costs.

(Rakesh Sagar Jain)
Member (J)

(Gokul Chandra Pati)
Member (A)

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