

**Central Administrative Tribunal
Principal Bench**

OA No.2349/2017

New Delhi, this the 19th day of July, 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

1. Onkar Chahal, (ID No.A 239026),
Age 45 years, S/o Shri Surjit Lal,
Presently working as Director Director,
QMG's Branch, Canteen Services Directorate,
West Block-3, R.K. Puram, New Delhi-110 066.
2. Debashish Roy (ID No.A 240097),
Age 48 years, S/o Shri P.K. Roy,
Presently working as Deputy Director,
Directorate of Personnel Officers,
(PO-2)/AOP Branch,
Air Headquarters, Vayu Bhawan,
New Delhi-110 011.
3. Ashok Kumar (ID No.A.227834),
Age 46 years, S/o Shri N. Singh,
Presently working as Private Secretary,
MGO's Branch, ADG EM Secretariat,
Room No.208, A Wing, Sena Bhawan,
New Delhi-110 011.
4. Tapas Kumar Halder (ID No.A.218078),
Age 50 years, S/o Shri P.C. Halder,
Presently working as Deputy Director,
Directorate of Naval Training (Coord.),
Naval Headquarters, C-Wing,
Sena Bhawan, New Delhi-110 011.
5. Likhi Ram, Age 63 years,
S/o Shri Khushhal Chand,
Section Officer (Retired),
Retired from MGO's Branch,
Army Headquarters,
Presently resident of : House No.197-P,
Sector-52, Gurgaon-122 003 (Haryana).
6. Vinod Kumar (ID No.A.237811),
Age 46 years, S/o Shri Fakir Chand,

Presently working as Deputy Director,
MC (Budget), Room No.279, AOM Branch,
Air HQ, Vayu Bhawan, New Delhi-110 011.

7. Karunakar Mallik (ID No.A.220963),
Age 49 years, S/o Shri Hadibandhu Mallik,
Presently working as Deputy Director,
MGO/OS-5, Room No.99-A,
Army HQ, B-Block, Dalhousie Road,
New Delhi-11.
8. Ram Sagar (ID No.A-229081),
Age 46 years, S/o Shri Fulgen,
Presently working as Deputy Director,
ADG Strat Mov, Room No.212B, D-1 Wing,
Sena Bhawan, New Delhi-110011.
9. Saumyajit Mondal (ID No.A.240550), Age 49 years,
S/o Shri Ranajit Kumar Mondal,
Presently working as Deputy Director,
IHQ of MoD (Army)/RVC, QMG's Branch,
West Block-3, RK Puram,
New Delhi-110 066.
10. Madan Gopal Singh (ID No.A.244251),
Age 42 years, S/o Shri Sita Ram,
Presently working as Deputy Director,
Directorate of Training,
Directorate-General Resettlement,
West Block-4, R.K. Puram,
New Delhi-110 066.
11. Subhash Chand (ID No.A154763),
Age 52 years, S/o Shri Mahabir Singh,
Presently working as Deputy Director,
Directorate-General of Singnals (Sigs-4),
GS Branch, A Wing, Sena Bhawan,
New Delhi-110 011.
12. Dharam Vir Singh (ID No.A.148193),
Age 59 years, S/o Shri Girwar Singh,
Presently working as Section Officer,
DLP Air Headquarters,
Wing-1, 2nd Floor West Block-6,
R.K. Puram, New Delhi-110 066.
13. AFHQ SC/ST Employees Welfare Association,
Through its General Secretary,

Room No.30, Directorate of works,
IHQ, Ministry of Defence (Navy),
A-Block, New Delhi-110 011.

...Applicants

(By Advocates: Shri K.S. Chauhan, Shri Murari Lal and Shri
Ajit Kumar Ekka)

Versus

1. Union of India, Through its Secretary,
Ministry of Defence, South Block,
New Delhi-110 011.
2. Union of India,
Through its Joint Secretary (Estt. & CAO),
Ministry of Defence, E-Block, Dalhousie Road,
New Delhi-110 011.
3. National Commission for Scheduled Castes,
Through its Secretary,
5th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi-110 003.
4. Union of India, Through its Secretary,
Department of Personnel & Training,
Ministry of Personnel, Public,
Grievances and Pensions,
North Block, New Delhi-110 001.
5. Union of India, Through its Secretary,
Ministry of Law & Justice,
Shastri Bhawan, New Delhi-110 001.
6. Union Public Service Commission,
Through its Secretary,
Dholpur House, Shahjahan Road,
New Delhi-110 069.
7. Dr. B.K. Mishra Committee,
Through its Chairman,
Dr. B.K. Mishra, Additional Director,
(Directorate of Personnel),
DRDO Hqrs., Ministry of Defence,
DRDO Bhawan, Rajaji Marg,
New Delhi-110011.
8. Dr. B.K. Mishra,
The Chairman, BK Mishra Committee &

Additional Director (Directorate of Personnel),
Ministry of Defence, DRDO Hqrs., DRDO Bhawan,
Rajaji Marg, New Delhi-110 011.

9. Shri Aaron Pamei,
[Member, Dr. B.K. Mishra Committee]
Director PC (PC Directorate),
Air Hqrs, Vayu Bhawan, Rafi Marg,
New Delhi-110 011.
 10. Dr. Arvind, Director (Training),
[Member, Dr B.K. Mishra Committee],
DHTI, B Block, O/o JS (Est & CAO),
Ministry of Defence, New Delhi-110 011.
 11. Shri AK Saha,
[Member, Dr BK. Mishra Committee]
Deputy Secretary (CS-II),
DOP&T, Lok Nayak Bhawan,
Khan Market, New Delhi-110 003.
 12. Shri Dalpat Singh,
Under Secretary D (Appointments),
[Member, Dr B K Mishra Committee]
Ministry of Defence, B Wing,
Sena Bhawan, New Delhi-110 011.
- ...Respondents

ORDER (ORAL)

Justice Permod Kohli, Chairman :-

This Original Application has been filed seeking the following reliefs:-

- “(a) Summon the original records of the case;
- (ii) Pass an appropriate order, direction or writ in the nature of mandamus or any other appropriate writ, directing the respondents to implement the order vide No.R-13/Defence-36/2014/SSW-1 dated 20.04.2015 passed by the

Respondent No.3, in the facts and circumstances of the present case; and in the interest of justice; and/or consequently;

- (iii) Pass an appropriate order, direction or writ in the nature of certiorari or any other appropriate writ, quashing the letter No.A/47947/NCSC/CAO/P-(A)/ 119/Def. Secy./2016 dated 27.12.2016 issued by the Respondents, in the facts and circumstances of the present case; and in the interest of justice; and/or consequently;
- (iv) Pass an appropriate order, direction or writ in the nature of certiorari or any other appropriate writ, quashing the Dr BK Mishra Committee Report vide letter No.A/47947/NCSC/CAO/P-1(A) dated 24.03.2017 by the respondent No.1, in the facts and circumstances of the present case and in the interest of justice; and / or;
- (v) Pass such other further order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.
- (vi) Awards an exemplary Costs in favour of the humble applicants."

2. The prayer at para (ii) is for implementation of the letter dated 20.04.2015 issued by the National Commission for Scheduled Castes. The relevant recommendations of the Commission are as under:-

"The matter discussed in detail. The Commission observed that as per the record presented, the AFHQ Admin had not reported any reserved vacancies meant for SC to the UPSC for the post

of Section Officers in the departmental exam (call LDCE) from the year 2002 onwards. The departmental authorities has accepted that they have no followed/maintained reservation rosters for the LDCE mode and therefore the SC vacancies to be filled up through the departmental examination could not be filled up. As per the recruitment rules, 2001, 273 post were earmarked for LDCE quota and out of which 40 posts are reserved for scheduled castes as per the reservation roster. Accordingly, the SC vacancies were required to be reported to the UPSC. On the other hand, the vacancies meant for general categories were filled up against the DCE-2002 and onwards.

The Commission took a serious view in the matter for not following the reservation rules and non maintenance of reservation rosters. Therefore, the M/o Defence is advised to prepare the reservation rosters of SO(LDCE) immediately and then fill up all the backlog vacancies from the year 2002 to till date by reporting the vacancies to the UPSC. The M/o Defence may also request to the UPSC for issuing of supplementary list of LDCE-2002 in respect of scheduled castes employees who full filled the eligibility criteria and may also consider for consequential benefits. This matter may also be brought to the notice of the Secretary, M/o Defence through a D.O. letter from the undersigned for filling of the backlog vacancies & maintenance of reservation rosters."

3. On the basis of the aforesaid recommendations of the Commission, the Government constituted a Committee comprising of following Officers:

- “(i) Dr. B.K. Mishra, Director (DRDO HQs) : Chairman
- (ii) Sh. Aaron Pamei, Director PC, Air HQs: Member
- (iii) Dr. Arvind, Director (DHTI), MoD: Member
- (iv) Sh. A.K. Saha, DS(CS.II), DOP&T: Member
- (v) Sh. Onkar Chahal, Dy. Director: Petitioners’ representative”

4. The Committee held its proceedings from time to time and as many as six meetings were conducted. The terms of reference of the Committee are reproduced hereunder:-

"6. The Committee was given following terms of reference vide Ministry of Defence Note No.A/47947/NCSC/CAO/P-I(A), dated 26.05.2016:-

- (a) Whether the issues raised by the AFHQ SC/ST Employees Welfare Association in the year 2014 against non-allocation of SC vacancies for filling up through Limited Departmental Competitive Examinations (for SOs) 2002 to 2008 has a merit for examination of this belated stage since LDCE is no more a stream of appointment in SO grade since 2011.
- (b) If yes, whether there was actually any backlog in SC quota in the Section Officer grade, as observed by the Hon'ble NCSC, based on the then Cadre strength when vacancy projections were made for LDCEs 2002 to 2008.
- (c) If Any backlog or shortfall comes to notice, whether it is administratively expedient at this stage to act as per the Hon'ble NCSC's observation vide their earlier order dated 20.04.2015 to request the UPSC for issuing supplementary list of SC candidates based on the original results of LDCEs 2002 onwards.
- (d) If any backlog or shortfall comes to notice, whether any action as per para 4(c) above would not be discriminatory and unjust to the other eligible SC candidates who could not appear for the LDCEs 2002 to 2008.

(e) In any case, whether the shortfall, if any, can be filled up by a mode of appointment which is no more in existence in the statutory Service Rules; or, by the mode(s) which is/are available in the existing statutory rules.

(f) Whether the Department is adhering to the laid down DOP&T guidelines on reservation and provisions of existing statutory rules while filling up the vacancies."

5. The terms of reference noted hereinabove were answered by the Committee with its conclusion and findings which are as under:-

Terms of Reference

(a) Whether the issues raised by the AFHQ SC/ST Employees Welfare Association in the year 2014 against non-allocation of SC vacancies for filling up through Limited Departmental Competitive Examinations (for SOs) 2002 to 2008 has a merit for examination of this belated stage since LDCE is no more a stream of appointment in SO grade since 2011.

(b) If yes, whether there was actually any backlog in SC quota in the Section Officer grade, as observed by the Hon'ble NCSC, based on the then Cadre strength when vacancy projections were made for LDCEs 2002 to 2008.

Committee's finding

(a) : In Committee's opinion, the Association has raised this issue quite belatedly. However, the Committee has examined the case on merit without being bound by the delay in raising the case.

(b) : As per the records, there was no backlog in SC quota in SO grade. On the contrary, after scrutiny of records, the Committee has reached to the conclusion that there was over-representation of SC officers in the SO grade who were appointed on virtue of reservation that had led to non-reporting of vacancies to this category in LDCEs 2002 to 2008 and correspondingly in Direct Recruitment. This was consistently applied to all modes of appointment in SO grade during the period. Once

the over-representation was adjusted, reservation was duly given to this category for filling up through available modes in terms of Recruitment Rules.

(c) If Any backlog or shortfall comes to notice, whether it is administratively expedient at this stage to act as per the Hon'ble NCSC's observation vide their earlier order dated 20.04.2015 to request the UPSC for issuing supplementary list of SC candidates based on the original results of LDCEs 2002 onwards.

(c) & (d): As stated above, there was no backlog or shortfall in SC category.

(d) If any backlog or shortfall comes to notice, whether any action as per para 4(c) above would not be discriminatory and unjust to the other eligible SC candidates who could not appear for the LDCEs 2002 to 2008.

(e) In any case, whether the shortfall, if any, can be filled up by a mode of appointment which is no more in existence in the statutory Service Rules; or, by the mode(s) which is/are available in the existing statutory rules.

(e): The point does not seem to be relevant in view of above.

(f) Whether the Department is adhering to the laid down DOP&T guidelines on reservation and provisions of existing statutory rules while filling up the vacancies.

(f): In so far as the present case is concerned, the Department followed the instructions contained in the DOP&T O.M. dated 02.07.1997 and other relevant orders regarding post-based reservation system. It is pertinent to mention that the plotting in the roster was made on the basis of the then select panels, as there was no seniority list available in the grade of ACSO (now Section Officer) due to protracted litigation on inter se seniority. It is also recorded in the file (original DPC file for panel year 1998) containing the said roster that prior to switching over from Vacancy based Reservation system to Post based Reservation system, the

manner of roster preparation had been discussed with the then Director (Res.)/DOP&T in a meeting held on 18.11.1997, minutes of that discussion, however, could not be traced. Further, there was delay in updation of reservation rosters due to unsettled panel position pending count cases. It is however seen that once court cases were settled and upto date select lists were drawn in 2011-12, the Department duly prepared post based reservation rosters and filled up reserved quotas vacancies in terms of extant Govt. instructions. Since LDCE ceased to exist as a mode of appointment in SO grade, no separate roster was prepared for the same. However, on direction of NCSC, separate reservation roster for LDCE stream was prepared and submitted to NCSC.

6. From the report of the Committee, we find that the Committee has taken note of the profile of service in question, quota meant for departmental promotions and direct recruitment, amendments carried out in the Recruitment Rules from 1968 onwards, and also the claim of the reserved category candidates, and came to the conclusion that there were over-representation of SC officers in the SO grade who were appointed by virtue of reservation that had led to non-reporting of vacancies to SC category in LDCEs 2002 to 2008. The validity of this report has also been challenged.

7. Dr. K.S. Chauhan, learned counsel appearing for the applicants submits that the findings are incorrect. With a view to rebut the findings, the applicants are required to place on record relevant material giving the data as to the cadre strength, the reservation already provided in the promotional quota and so on. No such material has been placed on record. Reference is made to the information sought under Right to Information Act, 2005. In the RTI query the information sought has been replied as under :-

Query under RTI application	Answers to the query
(f) How many posts are reserved for SC and ST candidates in the Section Officers grade?	The number of posts authorized for SC and ST in SO grade is 102 and 51 respectively.
(g) Please specify whether separate reservation roaster is followed in the modes of recruitment of Section Officers. If not how the reserved posts of SC/ST candidate were filled during the last 10 years.	Yes, separate reservation roasters are followed for each mode of appointment in SO grade.

8. Based upon the aforesaid information, it is sought to be impressed upon the Tribunal that the number of vacancies available for Scheduled Castes and Scheduled Tribes have not been filled up. We are not inclined to accept this submission. The information sought by the applicant was as to how many posts are reserved for SC and ST candidates, and the respondents in their reply have given the number as

102 for SC and 51 for ST. The second query was whether any separate reservation roster is followed in the modes of recruitment of Section Officers. The answer is very categorical that separate reservation rosters are followed for each mode of appointment for SO grade. Merely giving the number of reserved vacancies does not mean that these vacancies are available to be filled. These are the total vacancies earmarked for SC and ST categories and the reservation rosters having been followed, the findings of the Committee cannot be faulted with. Reference is also made to another information provided to the applicant vide communication dated 07.03.2012. The query and answer is as follows:-

“Query under RTI application

(c) How many Scheduled Castes candidates have been selected/recommended by UPSC on the basis of LDCEs from 2002-2008 against vacancies reserved for Scheduled Castes candidates? Kindly give year-wise details of candidates selected from Scheduled Castes category.

Year of SOs Gr. LDCE	Total No. of vacancies	No. of vacancies for SC	No of SC candidates recommended	No. of vacancies for ST	No. of ST candidate recommended
2002	41	Nil	Nil	03	03
2003	40	Nil	Nil	03	03
2004	34	Nil	02	02	03
2005	45	Nil	Nil	04	05
2006	31	Nil	03	01	01
2007	46	Nil	Nil	02	02
2008	60	Nil	07	05	03

9. The information supplied indicates that there were no reserved vacancies for SCs during the period 2002-2008 under LDCE quota. It further indicates that 2,3, and 7 SC category candidates recommended during the years 2004, 2006 and 2008 respectively were against the general category vacancies and not against the reserved vacancies. The recommendation of twelve SC candidates against the general vacancies, seems to be on the basis of their merits in the said selections. This information does not belie the report of the Committee comprising of five senior officers of the Government. Apart from this no other detail, data or material has been placed on record to rebut the findings of the Committee. It is settled law that this Tribunal cannot act as an investigating agency to interfere in the executive action which is based upon detailed examination. We do not find any ground to interfere in the findings of high level committee.

10. No merit. OA is dismissed.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/vb/