

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 2584/2011
MA 1987/2011

Order reserved on: 21.10.2016
Order pronounced on: 3.11.2016

**Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)**

Shri Prodip Kumar Mondal
Aged about 35 years
S/o Late Shri Pitabas Mondal
R/o Plot No.302, Second Floor
Sector-5, Vaishali, Ghaziabad
U.P.-201010

....Applicant

(Through Shri L.R. Khatana, Advocate)

Vs.

1. Union of India
Through its Secretary
Ministry of Personnel, Public Grievances & Pensions
Govt. of India, North Block,
New Delhi
2. The Secretary,
Department of Personnel and Training
Govt. of India, North Block,
New Delhi
3. Union Public Service Commission
Through its Secretary
Shahjahan Road, New Delhi

....Respondents

(Through Shri R.N. Singh, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicant joined as direct recruit Assistant in the Central Secretariat Service (CSS). 50% of the posts of Section

Officer (SO) are filled up through Limited Departmental Competitive Examination (LDCE) conducted by the Union Public Service Commission (UPSC). The applicant appeared for the LDCE 2003. The Department of Personnel and Training (DoP&T) reported 255 vacancies to UPSC for SO Grade LDCE 2003.

2. Vide OM dated 14.09.2005, the DoP&T allocated finally recommended 243 (198=Unreserved, 38=SC, 7=ST) candidates to different cadre authorities. Thus, out of 255 vacancies reported, 253 candidates including the applicant qualified in the written examination but only 243 candidates were recommended for promotion as SO in accordance with the roster system. Ten selected candidates were not recommended, out of which seven were reserved for SC and three were for General category candidates. The applicant was one of the seven SC candidates, who could not get selected finally.

3. The grievance of the applicant was that in 2004, the respondents sent 400 vacancies but for the year 2003, they sent only 255 vacancies instead of 418, which were the actual vacancies for 2003. According to the applicant, if DoP&T had not committed this mistake of short reporting of vacancies, he could get selected in 2003. Aggrieved, the applicant filed OA 1433/2007.

4. In the meantime, on 14.09.2007, DoP&T declared total vacancies for select list year 2003 as 993, including 418 for

LDCE. The applicant's allegation is that this was never disclosed before the Tribunal or before the Hon'ble High Court by the respondents. On 26.10.2007, the applicant sought information from the DoP&T through RTI as to why only 255 vacancies were sent to UPSC. On 13.11.2007, the DoP&T replied that since complete vacancies for LDCE i.e. 418 meant for SO, were not received from the cadres participating in CSS within the stipulated time frame, therefore, these could not be intimated to UPSC in time for filing up the same.

5. The applicant states that he could not raise the issue of short reporting in OA 1433/2007 (supra). However, the Hon'ble High Court allowed the applicant to file a fresh OA. OA 1433/2007 was dismissed on the reasoning that SCs cannot be treated as unreserved candidates and hence, resultant repeat vacancies cannot be given to next SC/ST category including the applicant. Aggrieved by this order, the applicant filed CWP No.11941/2009 before the Hon'ble High Court of Delhi in September 2009. On 6.10.2009, the Hon'ble High Court dismissed the Writ Petition on the ground that records were already seen by the Tribunal. Thereafter, the applicant filed several RTI applications and obtained position of vacancies from the respondents and filed a Review Petition No.94/2011 with new information before the Hon'ble High Court of Delhi on 25.03.2011 for review of the aforesaid order dated 6.10.2009. The Hon'ble High Court referred the matter to this Tribunal for filing fresh OA.

6. Thereafter, in April 2011, the applicant sought information through RTI from DoP&T asking specific date on which total vacancies of 418 for Select List year 2003 for SO Grade was finally recalculated by DoP&T. It is alleged that the DoP&T has not provided this information and hence this OA has been filed seeking the following reliefs:

"8.a Direct the respondents to accommodate the aggrieved petitioner who could not be recommended finally in LDCE, 2003 due to short reporting of the vacancies by DoP&T – Respondent No.2 to UPSC – Respondent No.3;

b. Direct the respondents to grant all consequential benefits to the petitioner.

c. Direct the respondents to pay the cost of litigation to the applicant."

7. The grounds for seeking these reliefs are primarily :

- (i) That had DoP&T reported the vacancies correctly i.e. 418, 7 candidates including the applicant who were not finally promoted due to non-availability of vacancies, would have automatically been promoted;
- (ii) The action of the DoP&T of adjusting 163 vacancies in 2004 exam is illegal and discriminatory;
- (iii) The respondents concealed the fact that in similar circumstances where the aggrieved candidates had filed petition pertaining to the

LDC Exam 2000 were given promotion against the unfilled vacancies of the said examination, which is not expected from welfare state and non disclosure of correct facts before the Court of Law gave rise to unwanted litigation;

- (iv) Earlier also same situation occurred wherein aggrieved persons Sanjeev Kumar and ors. were not given promotion even after qualifying in LDCE 2000 due to short reporting of vacancies. The said action of short reporting as done in the case of the petitioner was challenged before the Tribunal in OA No.3347/2002 as well as before the Hon'ble High Court and finally unreported/ unfilled vacancies were given to the qualified candidates for LDCE 2000, who were left out initially for want of vacancies;
- (v) The applicant could not know about the availability of vacancies and the promotion given to the similarly placed persons. He submitted application under RTI on 26.08.2010 to DoP&T. After receipt of the said application, the DoP&T – respondent no.2 gave wrong information regarding additional vacancies reported after the declaration of the LDCE 2000 final result and filling up the same by

available qualified candidates of the same year examination i.e. LDCE 2000;

- (vi) The applicant filed another application to UPSC on 24.01.2011 to get the same information. The UPSC replied vide letter dated 11.02.2011 and clearly admitted that the DoP&T – Respondent No.2 had intimated 6 vacancies of SC category to be filled up by the LDCE 2000. The said vacancies were intimated after the declaration of the result. It is strange that two authorities have given contradictory replies;
- (vii) The respondents had even stated wrong rule position while giving reply under RTI Act. The DoP&T – Respondent no.2 stated that there is no rule to report the vacancies after the declaration of the final result. Whereas in the case of Shri Sanjeev Kumar and ors., DoP&T- Respondent No.2 had intimated 6 additional/unreported vacancies after the declaration of the result to accommodate the available qualified candidates of the same year i.e. LDCE 2000. This resulted in gross discrimination to the applicant;
- (viii) In the case of Shri Sanjeev Kumar and others after the declaration of the final result vacancies were intimated by DoP&T –

Respondent No.2 to UPSC – Respondent No.3 for filling up the same by promoting the available qualified candidates of the same year i.e. LDCE 2000. It was discriminatory approach by respondents when they came up with an action adjusting unreported vacancies of 163 of LDCE 2003 in LDCE 2004 as it neglects the available qualified candidates for the LDCE 2003;

(ix) Limitation should not apply in the present case as it is just a technical plea and in this regard the learned counsel for the applicant relies on law laid down by the Hon'ble Apex Court in **Madras Port Trust Vs. Hymanshu International by its Proprietor Vs. Venkatadri (Dead) By L.Rs.**, (1979) 4 SCC 176;

(x) In **S.B. Bhattacharjee Vs. S.D. Majumdar**, (2007) 10 SCC 513, the Hon'ble Supreme Court has held as follows:

"13. Although a person has no fundamental right of promotion in terms of Article 16 of the Constitution of India, he has a fundamental right to be considered therefor. An effective and meaningful consideration is postulated thereby....."

8. The sum and substance of the applicant's claim is that had the DoP&T reported the correct vacancies, the applicant would have been selected.

9. Per contra, the respondents have argued that first of all, this OA is barred by limitation as it has been filed on 18.07.2011 whereas the cause of action arose in 2003. It is prayed that this OA may be dismissed on this ground itself. It is also argued that in the order dated 25.03.2011, the Hon'ble High Court had not made any specific direction that limitation is waived and it has been made clear by the Hon'ble High Court in its order that it would be for the Tribunal to decide the same in accordance with law. It is, therefore, contended that law of limitation is applicable in this case and the OA is liable to be dismissed. The learned counsel further stated that all the unfilled vacancies of 2003 were filled based on the comprehensive review undertaken by the government. Therefore, if the prayer of the applicant is allowed, many applicants would come up seeking similar demands thereby opening a Pandora Box and the entire select lists of 2003 onwards in the grade of SO and lower grades would go haywire. It is stated that subsequent LDCE 2004, 2005, 2006, 2007 and 2008 have been conducted by the UPSC and candidates appointed out of these LDCEs. In case, the vacancies are to be reworked, the merit list as well as the final list of all these LDCEs will undergo changes. Some of the SOs who were appointed on the basis of LDCE 2004 have already filed an OA No.1083/2007 before this Tribunal, which is *sub judice*.

10. Learned counsel for the respondents further argued that the case of LDCE 2000 and OA No.3347/2002 quoted by the applicant is completely different from the present OA. It differs from the earlier OA No.3347/2002 mainly on two grounds (i) the said OA was filed by the applicants immediately after the result of LDCE 2000 were declared by the UPSC and was filed within the period of limitation. (ii) Though the backlog vacancies of LDCE 2000 of SC category were carried forward to LDCE 2001, they were not filled up as per the interim order of the Tribunal in OA No.3347/2002 filed by Shri Sanjeev Kumar and ors. Vs. UOI. Once the OA was allowed and the case was decided by the Court of Law, these vacancies were available for filling up, unlike in the present case, where all the unfilled vacancies have been carried forward and filled up. Therefore, the present Application cannot be made comparable with the case of Sanjeev Kumar and ors. Vs. UOI.

11. Explaining the background of the matter, the respondents counsel stated:

(i) That the Government had set up a Committee on Cadre Restructuring of CSS in February 2001. One of the Terms of Reference of the Committee was to assess the magnitude of stagnation in the Assistants' Grade of CSS and suggest remedial measures. The report of the Committee was considered by the Union Cabinet in October 2003

and it was decided inter-alia to increase the sanctioned strength of SOs from 2362 to 3000. Out of these 2362, 767 were working as in-situ Under Secretaries. Therefore, the net strength in the grade of SO was only 1595 (2362-767). The increase of 1405 posts included 638 newly created posts and 767 posts to be vacated by in-situ Under Secretaries. Accordingly, the sanctioned strength of the SOs Grade in each cadre unit was revised and intimated to all the cadre units.

- (ii) That the Grade of SO is a decentralized grade of CSS. The reservation rosters are maintained by the cadre units. Presently it consists of 41 cadre units. It is the responsibility of cadre units to report the number of vacancies in the SO grade to be filled up through Direct Recruitment and Promotion (on the basis of departmental exam as well as seniority-cum-fitness) category-wise (Gen., SC and ST) having regard to the reservation roster being maintained by them. The size of the Select List for various years is finalized on the basis of vacancies reported by different cadre units.
- (iii) That at the time of approval of the Cabinet on 3.10.2003 for the restructuring of CSS, the LDCE 2003 was already under way and category-wise

vacancies (Gen., SC and ST) were to be reported to UPSC urgently. As the compilation of vacancies from all cadre units was virtually out of question, 40% of the newly created posts in terms of the CSS Rules, 1962 and Regulations made thereunder (40% of 638 = 255) was reported to UPSC for filling up through LDCE, 2003.

12. Thereafter, on compilation of information, vacancies for Select Lists 2003, 2004 and 2005 for LDCE quota and others were comprehensively reviewed by the government and all the vacancies were filled up accordingly. There are no vacancies left now. Subsequent Select Lists of 2006, 2007 and 2008 have also been issued and the results of LDCE 2006, 2007 and 2008 declared by the UPSC. The Select Lists in the feeder grades are also in place.

13. We have heard the learned counsel for the parties, gone through the pleadings available on record and written statement filed by the learned counsel for the applicant.

14. The claim of the applicant basically is that due to wrong reporting of vacancies, he could not be appointed due to vacancies not being available. The respondents have explained in detail the circumstances under which they had reported 255 vacancies. Only after comprehensive exercises from all the units, they could gather that the number of vacancies was higher

and after this comprehensive analysis, vacancies have been filled up through LDCE upto 2008. There is absolutely no malafide or illegality committed by the respondents. The vacancies arose due to large scale restructuring undertaken by the government and the government tried to fill up all the vacancies, as a result of which not a single vacancy now exists. Unfortunately, the applicant could not make it in LDCE 2003 as he was not high enough in the merit list.

15. Apart from the fact that the OA does not succeed on merit, we are also in agreement with the learned counsel for the respondents that the applicants have filed this OA after long delay and, therefore, it is time barred being hit by the provisions of Section 21 of the Administrative Tribunals Act 1985. Moreover, once the appointments have been granted upto LDCE 2008, reopening of this matter would lead to large scale chaos. Had the applicant approached this Tribunal immediately after LDCE 2003, there would have been justification for examination of the matter.

16. We are, therefore, of the opinion that the OA does not succeed and is hence dismissed. No costs.

(Raj Vir Sharma)
Member (J)

(P.K. Basu)
Member (A)

/dkm/