

Central Administrative Tribunal
Principal: New Delhi

OA No.2242/2013

Reserved on: 23.12.2015
Pronounced on:07.01.2016

Hon'ble Dr. B.K. Sinha, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

1. Anil Kumar s/o Sh. Bhagwat Prasad
R/o L-123, Sector – 9,
New Vijay Nagar, Ghaziabad (UP).
2. Krishan Bahadur s/o Sh. Man Bahadur,
R/o B-4/220, Nand Nagri,
Delhi – 110 093.
3. Rajender Kumar s/o late Sh. Aman Singh
R/o Village Inder Garhi, PO Adhyatmik Nagar,
Ghaziabad (UP).
4. Madan Pal s/o Sh. Dal Chand
R/o H.No. 28, Ambedkar Colony,
Khera Khurd, Delhi-110 082.

...Applicants

(By Advocate: Mr. S.K. Gupta)

Versus

1. The Secretary to the Govt. of India,
Ministry of Commerce & Industry,
Department of Commerce,
Udyog Bhawan, Maulana Azad Road,
New Delhi – 110 011.
2. Director General of Foreign Trade,
Ministry of Commerce & Industry,
Department of Commerce,
Udyog Bhawan, Maulana Azad Road,
New Delhi – 110 001.
3. The Additional Director General of Foreign Trade,
Central Licensing Area (CLA)
'A' Wing, Indraprastha Bhawan,
I.P. Estate, New Delhi-110002.
4. The Secretary to the Government of India,
Department of Personnel & Training,
North Block, New Delhi – 110 001.

...Respondents

(By Advocate: Mr. Rajeev Kumar)

O R D E R

By Dr. B.K. Sinha, Member (A):

In the instant Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicants are aggrieved by the action of the respondents in not filling up the vacancies of Lower Division Clerks (hereinafter referred to as LDC) that had occurred after the year 2002 under the Import and Export Trade Control Organization (Lower Division Clerk) Recruitment Rules, 1988 [hereinafter referred to as 1998 Rules] and instead filling up of such vacancies under the Import and Export Trade Control Organization (Lower Division Clerk) Recruitment Rules, 2011 [hereinafter referred to as 2011 Rules] which have been notified on 23.09.2011 prescribing higher qualification of 12th class pass or equivalent for promotion to the 10% quota of vacancies .

2. The applicants have prayed for the following relief(s):-

- “a) *To quash and set aside the ‘Directorate General of Foreign Trade (Lower Division Clerk) Recruitment Rules, 2011’ as being discriminatory, arbitrary, unfair, unreasonable, inequitable apart from being in violation of the guidelines issued by the DoPT vide their OM dated 31.12.2010.*
- b) *to direct the respondent 1 & 2 to review and modify the ‘Directorate General of Foreign Trade (Lower Division Clerk) Recruitment Rules, 2011’ and to incorporate a ‘NOTE’ for ‘Retention of existing eligibility service’ in Col.11 of the Schedule to these rules in accordance with the guidelines issued by respondent no.4 i.e. DoPT on 31st December, 2010, which specifically provides that where the eligibility service for promotion prescribed in the existing rules is being enhanced (to be in conformity with the guidelines issues by this Department) and the change is likely to affect adversely some persons holding the feeder grade posts on regular basis, a note to the effect that the eligibility service shall continue to be the same for persons holding the feeder posts on regular basis on the date of notification of the revised rules, is to be included in the revised rules.*

- c) *to direct the respondent 1 & 2 to remove the glaring anomaly and contradiction in the 'Directorate General of Foreign Trade (Lower Division Clerk) Recruitment Rules, 2011' inasmuch as these rules have raised the educational qualification from 'Matriculation or equivalent' to '12th Class pass or equivalent' while allowing promotion to employees who are illiterate/without formal education.*
- d) *to direct the respondent 3 to identify the vacancies in the Grade of LDC in the zonal/regional officers in the Northern Zone (CLA) under the Directorate General of Foreign Trade which have occurred in the 10% promotion quota after the last DPC held for promotion to the Grade of LDC and to fill up these in accordance with the provisions of the 'Import and Export Trade Control Organization (Lower Division Clerk) Recruitment Rules, 1988;*
- e) *To direct respondent 3 to withdraw and not to take further action on the Circular No.5(58)/2011/CLA-Admn/962804 dated 15.02.2013 whereby it is intended to fill up 10% vacancies in the Grade of LDEC by Departmental Examination from amongst MTS having 12th standard or equivalent qualification as per the new 'Directorate General of Foreign Trade (Lower Division Clerk) Recruitment Rules, 2011' and be restrained from operating the 'Directorate General of Foreign Trade (Lower Division Clerk) Recruitment Rules, 2011' until these are reviewed and modified;*
- f) *Any other relief which the Hon'ble Tribunal may deem fit in the circumstances of the case."*

3. The case of the applicants, in brief, is that they are the employees of the Directorate General of Foreign Trade (hereinafter referred to as DGFT), who were initially recruited as Peons/Messengers (Group 'D' posts') in the zonal/regional offices and are presently holding the post of Multi Task Service (hereinafter referred to as MTS), the next higher post of promotion being that of LDC. Until 21.09.2011, promotions were being made to the post of LDC in the ratio of 90:10 for direct recruitment and promotion on seniority-cum-fitness basis from amongst the Group 'D' employees. The case of the applicants is that the requirement for promotion under the 1998 Rules was that of Matriculation while under the 2011 Rules this qualification was enhanced to 12th pass or equivalent

qualification. It also prescribes that 10% of the posts will be filled up from Group 'D' staff while 5% on seniority-cum-fitness on the basis of Limited Departmental Competitive Examination (hereinafter referred to as LDCE).

4. The principal ground adopted by the applicants is that the vacancies should have been filled up under the Rules in force at the time of occurrence of the vacancies. Instead, the respondents have not made any recruitment for the last ten years and then proceeded to fill up the vacancies under the new Recruitment Rules that being the 2011 Rules with changed qualification.

5. Per contra, the contention of the applicants has been denied by the respondents in para 4.6 of their counter affidavit which reveals that 15 Group 'D' employees were promoted to the post of LDC against 10 vacancies against 10% Group 'D' quota on the basis of the DPC held on 10.05.2002. Out of the 87 sanctioned posts, vacant posts in CLA zone, the respondents admit that recruitments were made by the new recruitment rules of 2011 out of which 8 posts of LDC were available against the 10% quota with changed qualification. The learned counsel for the respondents made no further submissions and confined himself to para 4.6 of the counter affidavit.

6. We have carefully gone through the pleadings of either side and also patiently heard the arguments advanced by the learned counsel for both the parties. The other facts being admitted, the only issue to

be decided by us is that whether the recruitments should have been made under the Rules when the vacancies had occurred or under the new rules with changed qualification after it came into force on 21.09.2011 when the DPC was held.

7. This issue, to our mind, has been well settled by the Hon'ble Supreme Court in *Y.V. Rangaiah & Ors. Vs. J. Sreenivasa Rao & Ors.* [1983 (3) SCC 284] wherein the petitioners, who were working as LDCs and stood to be promoted to the next higher post from amongst the approved list prepared which should have been prepared as on 01.09.1976 for appointment to the post of Sub Registrar Grade-II by transfer. The grievance of the petitioners in that case was that a list of approved candidates was not approved as on 01.09.1976 whereas it was drawn up only in 1977 when the amendment to the rules had done away with the provisions for consideration of LDCs and instead appointment was to be made amongst the UDCs. The contention of the appellants in that case was that by the time the list came to be prepared in May, 1997, the rules had undergone a change and that there was nothing wrong in preparation of the approved list in this manner. The Hon'ble Supreme Court held thus-

"9. Having heard the counsel for the parties, we find no force in either of the two contentions. Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Registrar Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than the respondents Nos. 3 to 15 would not have been deprived of their rights of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the

post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the Statewide basis and therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules."

This issue has been further considered by this Tribunal in a series of decisions, namely, *Brijesh Kumar & Ors. Vs. Union of India & Ors.* [OA No.845/2014 decided on 26.05.2015]; *Awadesh Prasad Tripathi Vs. Union of India & Ors.* [OA No.4167/2012 decided on 29.10.2013]; *Sh. Shiv Kumar & Anr. Vs. Director General, ESIC & Ors.* (OA No. 3669/2013 decided on 21.04.2015] wherein the decision of the Hon'ble Supreme Court in *Y.V. Rangaiah & Ors. Vs. J. Sreenivasa Rao & Ors.* (supra) had been relied upon and quashed the orders impugned in these cases directing the recruitment to be made under the rules under which the vacancies occurred. This leaves no doubt in our mind that the case in consideration is squarely covered by the aforementioned earlier decisions.

8. It is to be noted that the applicants have prayed for quashing of the Import and Export Trade Control Organization (Lower Division Clerk) Recruitment Rules, 2011 with a direction to the respondents to revise these rules while incorporating a note for retention of existing eligibility service in Column no.11 of the Schedule to these rules as per the guidelines issued on 31.12.2010. We are constrained to hold that the case of the applicants, as it was argued during the course of the oral submissions, is that their promotion should be considered under the rules and qualifications existing at the time when the

vacancies had occurred. It is to be noted that the revised rules came to existence on 23.09.2011. The DoP&T Circular dated 31.12.2010 provided revision of guidelines for framing/amendment/relaxation of recruitment rules. The earlier recruitment rules i.e. Import and Export Trade Control Organization (Lower Division Clerk) Recruitment Rules, 1988 provided the following educational qualification for selection to the post of LDC:-

- “(i) Matriculation or equivalent qualification from a recognized board or university.*
- (ii) Knowledge of typewriting at a speed of 30 words per minute in English or 25 words per minute in Hindi is essential...”*

The revised Recruitment Rules provide for the said post as under:-

- “(i) 12th Class or equivalent qualification from a recognized board or university.*
- (ii) A typing speed of 35 w.p.m. and 30 w.p.m. correspond to 10500 KDPH/9000 KDPH on an average of 5 key depressions for each words only on computer:...”*

Admittedly, the vacancies had arisen before issuance of the revised recruitment rules. Therefore, as per the decisions referred to above, the recruitment against the vacancies that had arisen before the revised recruitment rules coming into existence shall be governed by the earlier recruitment rules of 1988 and not by the revised rules. It is a well recognized general principle of law that such rules can only have the prospective effect and not the retrospective effect.

9. In view of the facts and circumstances of the case, we allow the instant OA with a direction to the respondents to consider the applicants for promotion to the post of LDC under the recruitment

rules under which the vacancies had occurred, within a period of three months from the date of receipt of certified copy of this order.

There shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Dr. B.K. Sinha)
Member (A)

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