

Central Administrative Tribunal
Principal Bench

OA No.3605/2013

Reserved on:10.08.2015
Pronounced on: 08.10.2015

Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Dr. B.K. Sinha, Member (A)

Kuldeep Singh Ranga
S/o Sh. Jai Bhagwan,
R/o 685/1, Udhanpana,
Narela, Delhi – 110 040.

...Applicant

(By Advocate: Shri Yogesh Sharma)

Versus

1. National Human Right Commission
Through the Secretary,
Faridkot House, Copernicus Marg,
New Delhi.

2. The Under Secretary (Estt.),
National Human Right Commission,
Faridkot House, Copernicus Marg,
New Delhi.

...Respondents

(By Advocate: Sh. R.N. Singh)

O R D E R

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

The instant Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 against the action of the respondents in not issuing an offer of appointment to the applicant to the post of Lower Division Clerk (LDC) on the basis of panel prepared on 01.02.2013 (Annexure A-4) in spite of the fact that the post of LDC against general quota as well as SC quota remain vacant.

2. The applicant has prayed for the following main relief:-

“That the Hon'ble Tribunal may graciously be pleased to pass an order declaring to the effect

that the whole action of the respondents not issuing the offer of appointment to the applicant on the basis of select panel for the post of LDC against the available vacant posts of LDC is illegal, arbitrary and discriminatory in the eyes of law and consequently, pass an order directing the respondents to consider and to issue the offer of appointment to the applicant against the available post of LDC against SC reserved quota as well as unreserved quota immediately with all consequential benefits.”

3. The facts of the case, in brief, are that the applicant, a member of Scheduled Caste Community, was appointed as LDC on *ad hoc* basis in the office of the respondents on 04.07.2008 where he served till 19.10.2010 to the entire satisfaction of his seniors. There were a total number of 40 LDC posts sanctioned in the respondent organization out of which 10% (4 posts) were to be filled up by promotion and remaining 80% (36 posts) by Direct Recruitment (DR). Of these, 36 DR posts, 18 were unreserved, 10 were reserved for OBC, 5 for SC and 3 for ST. An advertisement was issued in January, 2011 and number of posts were revised to 18 [UR-6, OBC-8, SC-2 and ST-2]. It is the claim of the applicant that out of 285, only 9 candidates, including the applicant were declared qualified and included in the panel for appointment to the post of LDC. As per the applicant, the following 7 candidates were given offer of appointment:-

UR Category

Roll No.	Name	Father's name
551030303	Sh. Deepak Kapoor	Sh. Yashpal Kapoor
551060123	Sh. Vinay	Sh. Vijender Singh
551120464	Sh. Rakesh Kumar	Sh. Balbir Singh

551070248	Sh. Sachin Kumar	Sh. Kishore Kumar
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OBC Category

Roll No.	Name	Father's name
551110960	Sh. Chetan Kumar Prasad	Sh. Sh. Nand Kumar Prasad

SC Category

Roll No.	Name	Father's name
551090199	Sh. Arun Kumar	Sh. Kartar Singh
551100594	Sh. Vishal	Sh. Satya Prakash

Of the above 7 candidates, who have been given offer of appointment, 2 unreserved category candidates namely Deepak Kumar and Rakesh Kumar did not join leading to cancellation of their appointment. Another SC vacancy became available as a consequence of promotion of one Ashok Kumar to the post of UDC vide order dated 03.05.2013 [Annexure A-3]. It is the contention of the applicant that instead of filling up of this post by another SC candidate from the reserved panel, the respondents filled it up by unreserved candidate one Dhyan Singh Bisht on *ad hoc* basis. The applicant claims that the life of panel was for a period of 18 months and he should have been appointed against the SC post which became available on 03.05.2013 by way of promotion of said Ashok Kumar to the post of UDC. The applicant relied upon the decision in *R.S. Mittal V/s. Union of India* [1995 (Supp) (2) 230 to contend that he has a right to consideration; and *Director SCTI for Med. Sci. & Tech. & Anr. V/s. M. Pushkaran* [JT 2007 (13) SC 315 (para 18)] to contend that application of law would depend upon the facts of each

case. It is the contention of the applicant that since the vacant post has not been re-notified to this date, the applicant has a vested right to be promoted against the same.

4. The respondents have filed a counter affidavit admitting the factual matrix of availability of 40 posts out of which 36 were earmarked for direct recruitment of which, as per the recruitment rules, 10 posts (27%) were reserved for OBC; 05 for SC (15%), 03 for ST (7.5%) and 18 posts were of unreserved category. The applicant was appointed to the post of LDC on *ad hoc* on 04.07.2008 initially for one year which was further extended for 2nd and 3rd year till 03.07.2011. On 20.07.2011, he was re-appointed afresh on sympathetic consideration for a period of three months which ended on 19.10.2011. Thereafter, the applicant filed OA No. 4181/2011, which was dismissed by this Tribunal, vide order dated 04.07.2012. The respondents admit to have advertised 4 vacancies [UR-1, OBC-3] for the post of LDC. Subsequently, 10 anticipated vacancies [UR-5, OBC-4 and ST-1] were also advertised due to possible absorption of regular LDCs in other departments where they had been serving on deputation, on the basis of no objection issued to borrowing departments. Thus, it is the case of the respondents that no post in SC category was advertised initially even for anticipated vacancies. However, at the time of preparation of merit list based on written/skill test, the actual vacancies were re-assessed to 20 (UR-7, OBC-9, SC-2

and ST-2] including 4 actual vacancies advertised in 2010. The 16 vacancies other than the 4 actual vacancies occurred due to promotion of regular LDCs within the Commission and absorption of regular LDCs in other departments. The respondents also state in their counter affidavit that 55% marks have been fixed for General category candidates, 50% for OBC and 45% for SC/ST/PWD. The respondents further submit that only 9 candidates (OBC-4, SC-5] were qualified for selection to the post of LDC in the following manner:-

Sl. No.	Name	Roll No.	Marks secured in written test	Typing speed	Remarks
OBC Category					
1	Sh. Deepak Kapoor	551030303	141.75	40.48	The candidate was placed in the UR category as per his own merit as he obtained more than 55% marks.
2	Sh. Vijay	551060123	134.25	40.26	-do-
3	Sh. Rakesh Kumar	551120464	115.00	39.34	-do-
4	Sh. Chetan Kumar Prasad	551110960	107.00	50.32	He was placed against his own category
SC Category					
1	Sh. Sachin Kumar	551070248	144.75	45.96	The candidate was placed in the UR category as per his own merit as he obtained more than 55% marks.
2	Sh. Arun Kumar	551090199	111.00	41.16	He was placed against his own category.
3	Sh. Vishal	551100594	105.75	51.90	-do-
4	Sh. Deepak Kumar	551120614	94.50	40.62	Waiting list (cannot be placed in UR category due to obtaining less than 55% marks (in the written test)

5	Sh. Kuldeep Singh Ranga	551120303	90.00	45.14	-do-
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Accordingly, as per the existing Government instructions, offers of appointment were issued to the following candidates:-

Offers issued against UR vacancies:

Roll No.	Name
551030303	Sh. Deepak Kapoor (from OBC category)
551060123	Sh. Vinay (from OBC category)
551120464	Sh. Rakesh Kumar (from OBC category)
551070248	Sh. Sachin Kumar (from SC category)
<u>Offers issued against OBC vacancies:</u>	
551110960	Sh. Chetgan Kumar Prasad
<u>Offers issued against SC vacancies:</u>	
551090199	Sh. Arun Kumar
551100594	Sh. Vishal

The respondents state that despite the fact that no vacancy had been advertised for SC category initially and in anticipated vacancies also, only 02 vacancies were re-assessed in this category at later stage and the candidates available at the top of the merit from SC category were appointed and 02 left over SC category candidates were placed in a panel in the following manner:-

SC Category Panel		
Roll No.	Name	Remarks
551120614	Sh. Deepak Kumar	Waitlist-1
551120303	Sh. Kuldeep Singh Ranga	Waitlist-2

5. It is the case of the respondents that both the SC category waitlisted candidates including the applicant were not eligible to be considered against UR category vacancies due to obtaining less percentage of marks in the written test. Both the candidates selected against SC category Arun Kumar and

Vishal have joined their post and, hence, there is no vacancy remaining for the waitlisted candidates.

6. The respondents admit that on promotion of the said Ashok Kumar, LDC to the post of UDC, one vacancy in the SC category arose w.e.f. 03.05.2013. However, as per the Staff Inspection Unit (SIU), Ministry of Finance, Govt. of India Report dated 30.01.2013, out of 40 sanctioned posts, 20 posts had been recommended to be abolished (Annexure R-2). The respondents further submit that as more than 20 regular LDCs have already been working in their organization, it is neither appropriate nor justifiable to appoint a LDC on regular basis against these vacancies in the backdrop of the SIU recommendations and, hence, no candidate from the panel could be considered for appointment to the post of LDC.

7. The applicant has filed a rejoinder wherein he has repeated that 2-UR candidates namely Deepak Kumar and Rakesh Kumar have not joined and one more vacancy had arisen due to promotion of one Ashok Kumar.

8. We have carefully gone through the pleadings of the rival parties and perused the material on record. We have also patiently heard the arguments advanced by the learned counsel for the parties. The only issue to be determined in this case is that whether there are vacancies in the SC

category or other un-reserved category against which the applicant could have been appointed.

9. The vacancy position has already been stated in the recruitment rules. The report of the SIU on the staffing requirement of the respondent organization has been annexed by the respondents as Annexure R-2. For the sake of clarity, relevant portion of the Report is reproduced as under:-

Sl.No.	Name of Post & Scale of Pay	Number of sanctioned posts	Number of posts assessed by SIU
	xxx xxx	xxx	
49	Lower Division Clerk Rs.5200-20200+G.Pay Rs.1900	40	20

10. The post occupied by the said Ashok Kumar had been vacated on account of his promotion to the post of LDC w.e.f. 03.05.2013. However, by virtue of reduction of posts, there is no post available against which the applicant could have been appointed as more than 20 LDCs are already in place. Therefore, we find no merit in the instant OA and the same is accordingly dismissed with no order as to costs.

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

(Syed Rafat Alam)
Chairman

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