

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

OA/310/00794/2015

Dated Thursday the 7th day of June Two Thousand Eighteen

PRESENT

HON'BLE MS. BIDISHA BANERJEE, Member(J)

&

HON'BLE MS. B. BHAMATHI, Member (A)

V.Vijayanand,
S/o. D. Venugopal,
8/60, Thulla Arumugam Street,
Puliyakulam,
Coimbatore 45.Applicant

By Advocate M/s. Giridhar & Sai

Vs

1.The Registrar,
Debts Recovery Tribunal,
1670, Kaveri Complex,
Trichy Road,
Coimbatore 641045.
2.Union of India,
rep by Secretary to Government,
Government of India,
Ministry of Finance,
Department of Financial Services,
Jeevan Deep Building,
10, Parliament Street,
New Delhi.Respondents

By Advocate Ms. Shakila Anand

ORAL ORDER

(Pronounced by Hon'ble Ms. B. Bhamathi, Member(A))

The applicant has filed this OA under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

“8. i. To direct the respondents to promote the applicant to the post of Lower Division Clerk (LDC) with effect from 24.09.2012 with all consequential benefits.

ii. to awards costs, and pass such further and other orders as may be deemed and proper and thus render justice.”

2. It is submitted that the applicant was appointed as a Peon in the Debt Recovery Tribunal (DRT), Coimbatore and he was promoted to the post of Process Server. His next avenue of promotion is to the post of LDC which is a Group C post in the PB 1 with GP Rs. 1900/-. Under the Recruitment Rules for the post of LDC dated 09.09.2002, 90 % of the vacancies are to be filled by Direct Recruitment, 5% by Departmental qualifying exam among Group D staff and 5% by seniority cum fitness of Group D employees who possess Matriculation or equivalent qualification. The applicant is the senior most Group D employee as per seniority list. dt. 22.08.2012 and he had passed SSLC in the year 2009. He made representations for promotion dt. 24.08.2011 and 28.03.2012 which was forwarded and recommended vide file noting dated 05.06.2012 further certifying that he was duly qualified under the Recruitment Rules. Subsequently, DPC was held on 24.09.2012 and the applicant was found to be

qualified for promotion to the post of LDC. However, a member of DPC, ie., Member – DRAT (Southern Region) vide his letter dated 09.01.2013 to the 1st respondent observed that the Recruitment Rules were amended on 04.08.2010 which provide for educational qualification of 12th Class Pass and as such the process of promotion to the applicant had to be re-examined, if needed, Ministry of Finance may be consulted. It is alleged that due to this observation, his promotion has been stalled since three years. It is pointed out that as per Recruitment Rules dated 04.08.2010 the educational qualification of 12th Pass would apply only to Direct Recruits and does not apply for the promotees. It is submitted that the vacancy arose prior to the amended Recruitment Rules ie., from the year 2002 and it would not be right if the amended Recruitment Rules dt. 04.08.2010 would be applied on the applicant as Supreme Court has held in several cases, including that of *Y. V. Rangaiah* case that if the vacancies arose prior to the amendment of rules, then they would have to be filled in accordance with the pre-amended rules. It is submitted that as per extant DOPT instructions, vacancies would have to be filled every year by year-wise panels. However, while several candidates had been absorbed under the DR quota, the promotional quota had not been filled.

3. It is submitted that the first respondent had addressed a letter to

the Finance Ministry dt. 07.08.2014 seeking recommendations of the Ministry which received no response from the 2nd respondent. Meanwhile, the applicant made representation dated 27.02.2015 regarding his promotion to which he received a reply from the 1st respondent stating that the decision of the Finance Ministry regarding the same was awaited. It is also submitted that other candidates similarly situated as the applicant were promoted in other DRTs including one Mr. Govindan who is alleged to be junior to the applicant. Hence, the applicant has approached this Tribunal.

4. The respondents have filed their reply statement contesting the claim of the applicant. It is submitted that the applicant is a matric pass and as per amended Recruitment Rules dated 04.08.2010 he has not qualified 12th Standard or equivalent. Therefore, the DPC held on 24.09.2012 did not consider the applicant eligible for promotion to the post of LDC. Since the applicant has passed 10th standard only in July 2009, he was eligible for the post only from July 2009 based on the pre-amended rules. Further, the applicant could be considered only for the 5% quota meant for Group D employees based on seniority cum fitness basis. Further, under the 5% quota, the applicant would be eligible for consideration for promotion only against the 20th replacement vacancy of LDC post. The applicant's case was referred to the Ministry of Finance for clarification and the Ministry, by letter

dated 29.08.2013 had sought further information on the subject and the same was provided. As of now, the decision of the Ministry is awaited and the same was intimated to the applicant. It is further submitted that the applicant was not denied promotion but he would be considered once the respondents receive a decision / clarification from the Ministry. As alleged by the applicant regarding the promotion of Shri. Govindan at DRT, Madurai, it is submitted that separate rules are framed and maintained for each DRT and the posts are not interchangeable or transferable.

5. The applicant has filed a rejoinder to the reply of the respondents reiterating the averments made in the OA. It is submitted that the applicant was eligible for promotion as LDC for the vacancy which arose on 31.08.2009 as per Recruitment Rules, 2002 which were under force on that date and it stipulated minimum qualification as SSLC.

6. Heard both the learned counsels and perused the materials on record.

7. It is not in dispute that the applicant has passed SSLC examination in July 2009 and in the DPC conducted in the month of July, 2012 the applicant was assessed as "Fit" as per the Draft Minutes of DPC. However, the draft minutes of DPC remitted by one of its members to re-examine / process the case of the applicant keeping in

mind the requirement of 12th standard pass as an essential educational qualification and if required, the consultation of Ministry of Finance be taken. It is also not in dispute that the 1st respondent had sought clarification from the Ministry of Finance vide letter dated 07.08.2014 and the 1st respondent is awaiting response from the Ministry. As such, the matter is pending before the 2nd respondent i.e., Ministry of Finance. Admittedly, no impugned order of competent authority has been passed.

8. In view of the above circumstances, we deem it appropriate to direct the 2nd respondent i.e., Ministry of Finance to submit its clarifications in accordance with law by a reasoned and speaking order to the 1st respondent with regard to the applicant's educational qualification for consideration of his case for promotion to the post of LDC within a period of eight weeks from the date of receipt of a certified copy of this order under communication to applicant. Applicant is at liberty to approach this Tribunal, in case his grievance persists.

9. OA is disposed of with the above directions. No order as to costs.

(B.Bhamathi)
Member (A)

(Bidisha Banerjee)
Member(J)

07.06.2018

SKSI