

OA.No.170/00535/2017/CAT/Bangalore Bench
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00535/2017

DATED THIS THE 17th DAY OF DECEMBER, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V.SANKAR, MEMBER (A)

Smt.Manjula C.
W/o Shivaraj
Aged about 43 years
Working as Junior Store Keeper
Office of the Assistant Stores Officer
Stores Unit, Directorate of Purchase and
Stores, BARC/RMP
Rathanhalli Village, Yelavala Post
Hunsur Road, Mysore.Applicant

(By Advocate M/s.Subba Rao & Company)

Vs.

1. The Union of India
rep by Ministry of Atomic Energy
No.145 A, Parliament Street
South Block, New Delhi-110 001.
2. The Directorate of Purchases and Stores
Department of Atomic Energy
Vikram Sarabhai Bhavan
Anushakthi Nagar
Mumbai-400094.
3. Departmental Promotion Committee
Rep by its Chairman
O/o The Directorate of Purchases and Stores
Department of Atomic Energy
Vikram Sarabhai Bhavan
Anushakthi Nagar
Mumbai-400094.
4. The Joint Director
O/o The Directorate of Purchases and Stores
Department of Atomic Energy
Vikram Sarabhai Bhavan
Anushakthi Nagar
Mumbai-400094.
5. The Assistant Stores Unit
Directorate of Purchase and Stores

BARC/RMP
Rathanhalli Village
Yelavala Post
Hunsur Road
Mysore-570 001.

...Respondents

(By Advocate Sri K.Dilip Kumar)

O R D E R

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The applicant has filed the present OA seeking the following relief:

“Issue Writ of Mandamus or any appropriate order or direction directing the respondents to consider the case of the applicant for promotion to the post of Store Keeper on the basis of the marks secured by her in the LDE held in the month of June 2014 and promote her to the post of Store Keeper from the date on which the candidates who have secured less marks than the applicant were promoted under 80% quota with effect from 21.4.2015 or in the alternative, if the applicant is not eligible for promotion with effect from 21.4.2015, consider her case for promotion to the post of Store Keeper at least from the next batch with effect from 5.9.2017 and grant applicant all consequential benefits such as arrears of salary, seniority, increment, pay fixation etc. which she is legally entitled to as if she is promoted to the post of Store Keeper”.

2. According to the applicant, she was selected and appointed to the post of Lower Division Clerk(LDC) in the Dept. of Atomic Energy at Mysore on 1.2.1994 on being forwarded by the Employment Exchange. It is submitted that the post of LDC in RMP was merged with Dept. of Purchase and Stores and it was re-designated as Stores Clerk and accordingly she was re-designated as Stores Clerk. During the year 2003, an examination was conducted under Limited Departmental Examination(LDE) quota for promotion from the post of Stores Clerk to Junior Stores Keeper in pay scale of Rs.4000-6000/- against merit quota. In terms of notification, the applicant submitted her application to appear for LDE under merit quota. In the examination held, she became successful and a merit list was prepared and published. Thereafter, vide office order dtd.15.3.2005(Annexure-A1) the applicant was promoted as Junior Stores Keeper and was posted to Indira Gandhi Atomic Research

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3. The applicant further submitted that vide circular dtd.23.8.2013(Annexure-A2), a notification was issued calling for applications for promotion to the post of Stores Keeper under LDE quota. In terms of the said notification, applicant and 115 other eligible candidates have submitted their applications to appear for the examination. Vide letter dtd.27.5.2014(Annexure-A3), the date of examination was intimated to all the candidates in which the applicant finds place at Sl.No.18 and was allotted with SC category and she was directed to appear for examination to be held on 21.6.2014 and 22.6.2014 at Mumbai. In terms of the same, she appeared for the examination. On the basis of marks secured by the candidates in the written examination, a select list was published and the candidates whose names finds in the said list were called to appear for interview vide letter dtd.20.1.2015(Annexure-A4). According to the applicant, based on the marks secured by her in the examination, her name finds place at Sl.No.1 in the merit list. She secured 62 marks out of 100 marks in paper-1 and 16 marks out of 50 in paper-2. She submits that marks secured in paper-2 will not be taken into consideration for determining the merit. Copy of LDE Marks Sheet is produced at Annexure-A5. After conducting the interview wherein the applicant participated, a select list dtd.21.4.2015(Annexure-A6) was drawn by the DPC wherein she did not find place. The applicant submitted a representation dtd.1.5.2015(Annexure-A7) to the 2nd respondent requesting to verify her case and consider her for promotion to the post of Stores Keeper. She submitted another representation dtd.13.6.2015(Annexure-A8) for which 2nd respondent informed vide letter dtd.27.8.2015 that the adhoc promotion to employees is based on the exigency of work and with the approval of the appointing authority. She was

informed that as far as APAR gradings are concerned, she has acknowledged the communication of full contents of APAR including overall grading w.e.f. 2010-11. She submits that in so far as the APAR for the periods 2011-12 to 2014-15 are concerned, it is very good and for the period 2015-2016 it is outstanding. Copies of APARs are marked as Annexure-A10 series. In spite of being fully eligible and entitled for promotion to the post of Stores Keeper under LDE quota, her case was not considered.

4. The applicant submits that the respondents have again issued a circular dtd.3.3.2017(Annexure-A11) calling for applications from the eligible candidates for promotion to the post of Stores Keeper under LDE quota for the existing and anticipated vacancies for recruitment to the year 2017-18 and in that they made clear in para-3 that the eligible candidates who have already empanelled shall not appear for ensuing examination and that the marks obtained by them in the earlier examination will be considered. The applicant did not make her application because she had already cleared the examination during the year 2015. Thereafter, examination was held on 22.4.2017 & 23.4.2017 and results of which was declared on 20.7.2017(Annexure-A12). The DPC held its meeting on 30.8.2017 and drew up a panel list on 5.9.2017(Annexure-A13) for empanelment of candidates for promotion to the post of Stores Keeper in which applicant's name is not included. Aggrieved by the same, applicant has filed the OA praying the relief as sought for.

5. The applicant further contended on the ground that as per Recruitment Rules, the post of Store Keeper is filled 80% by LDE and 20% by non selection. The applicant had applied for promotion to the post of Store Keeper against 80% quota by LDE. She was successful in the said

OA.No.170/00535/2017/CAT/Bangalore Bench examination and she has secured 62 marks out of 100 marks. She is No.1 in the Select List. She belongs to SC category. The APARs for the years 2010-11 to 2014-15 are very good and for the year 2015-16 it is outstanding. In spite of awarding APARs as very good and outstanding and highest marks secured in the written examination, she has been deprived promotion. In all respects, she is fully eligible and entitled for promotion to the post of Store Keeper. The candidates who have secured less marks than the applicant in the written examination have been promoted and she has been denied promotion without any basis. In fact the general instructions/guidelines issued by the DOPT have been completely ignored and overlooked by DPC while holding meeting and denied promotion to the applicant even for the second time also. Hence, the entire action of the respondents is illegal, unjust and in violation of Articles 14,16 and 21 of the Constitution of India.

6. The respondents have filed reply statement wherein they submit that the applicant was initially appointed as Stores Clerk and not as Lower Division Clerk in RMP, BARC, Mysore vide letter dtd.09.11.1993 and she accepted the offer and reported for duty as Stores Clerk on 01.02.1994. The Purchase and Stores Section in RMP, Mysore was transferred along with the posts to DPS vide order dtd.26.4.1994 and as such the statement of the applicant that she was re-designated as Stores Clerk is not correct.
7. The respondents further submit that in accordance with Circular dtd.22.11.2013, a Limited Departmental Examination(LDE) was conducted for the post of Store Keeper. Out of 172 eligible candidates, 116 candidates submitted their applications and 89 candidates appeared for the examination. The result of the written examination was declared on

5.8.2014. Out of 89 candidates, 86 candidates were declared qualified. A total of 108 candidates were called for interview including the candidates who had qualified in the previous exam. Interview was conducted in Mumbai from 9.3.2015 to 13.3.2015. The out station candidates were called on alternate days depending on the availability of accommodation in BARC Guest House at Mumbai. Per day 22 candidates were called for interview, out of which the candidates belonging to reserved category(SC/ST) were called first followed by OBC and general candidates. Applicant's name appeared first in the list of candidates called for interview since she was an out station candidate belonging to SC category and as per her employee number. The contention of the applicant that she was placed at Sl.No.1 in the interview list due to her securing highest marks in written examination is not correct and is a mere misconception on her part. A panel was drawn by the DPC taking into consideration the marks in the written examination, APAR grading and interview marks and the applicant did not find place in the Select Panel. The applicant along with many other non-empanelled candidates represented against the same. All the representations were considered together and a common reply was given to all the Heads of Units of DPS vide dtd.20.5.2015. The applicant again represented on 13.6.2015 for which a reply was given on 27.8.2015 saying that the eligible candidates who have already cleared their written exam earlier but could not be empanelled, if not appearing for the ensuing exam, then the marks obtained by them in the earlier written examination will be considered. In case, they wish to appear for improvement or betterment of marks they will have to also appear and qualify for English paper as is applicable for fresh candidates. However, in such cases, the marks that are higher will only be considered. From this it is clear that the applicant

OA.No.170/00535/2017/CAT/Bangalore Bench had a chance to improve her marks by again appearing in the LDE against circular dtd.3.3.2017. In fact, the applicant's case was considered by the DPC held on 30.8.2017 but she could not be empanelled as marks obtained by her were not within the cut off marks set by the Committee, by taking various parameters into consideration. The applicant's contention that she could not appear for the exam due to para-3 of the circular dtd.3.3.2017 is not correct. Her contention that she is fully qualified and entitled for promotion based on the marks secured by her in the written examination is baseless. A panel was drawn by the DPC after following due procedures/guidelines prescribed by the DOPT and after taking into consideration the marks in the written examination, APAR grading and interview marks of the candidates. Therefore, the statement of the applicant that the general instructions/guidelines issued by DOPT have been completely ignored/overlooked by DPC while holding meeting is not correct. The assertion of the applicant that the several juniors/candidates who have secured less marks than the applicant have been promoted to the post of Storekeeper is not correct and hence, there is no violation of Articles 14, 16 and 21 of the Constitution of India. Therefore, the OA being devoid of any merits may be dismissed with cost.

8. The applicant has filed rejoinder wherein she submits that the contention of the respondents that she was not selected and appointed to the post of LDC is false as she was selected to the post of LDC in RMP. Though her selection was for the post of LDC, at the time of issuing appointment order, she was appointed as Stores Clerk. A copy of intimation letter dtd.8.11.1993 is enclosed as Annexure-A14. The applicant denied the contention of the respondents that the interview was conducted by taking into consideration a preference to the out station candidates. She submits

that the interview was held on the basis of merit. The respondents have not announced the result of the written examination. But based on the marks secured by the candidates, a merit list was prepared. The recruitment rules do not provide for the marks for interview. Therefore, the promotion to the post of Stores Keeper is required to be done only on the basis of the marks secured by the candidates in the LDE examination. The contention of the respondents that the applicant could not be empanelled as marks obtained by her were not within the cut off marks set by the Committee is without any basis. Either in the notification or in the recruitment rules, what is the parameters for promotion to the post of Stores Keeper has not been stated. The Committee has no power or authority to fix the cut off marks for promotion. It is the power of Appointing Authority to fix the cut off percentage for promotion. What is the cut off percentage has neither stated in the notification nor in the recruitment rules, the competent authority for promotion is the appointing authority and the appointing authority has not prescribed any such procedure. The respondents adopted their own procedure in utter contravention of the rules and considered the case of the persons of their choice, thereby deprived the promotion opportunity to the applicant. The respondents have not produced any documents to show that they laid down the guidelines while considering the case of the candidates for promotion. Therefore, the DPC cannot adopt their own procedure when the field is occupied by the rules. The respondents with a view to deny the promotion to the applicant followed certain procedure contrary to rules. The rules stipulate that, 80% of posts are filled by holding LDE examination. Therefore, the marks secured by the candidates in the LDE alone to be taken into consideration for promotion. There cannot be any other mode. The respondents have not

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9. We have heard the Learned Counsel for the parties. The Learned Counsels for the applicant and the respondents have made submissions reiterating the factual position and their points as highlighted by them in the OA and the reply statements. Both the parties have filed their written argument notes. The respondents have produced the Assessment Sheet for promotion to the post of Storekeeper.
10. We have gone through the main contentions of the applicant and replies of the respondents in detail. We have also gone through the assessment sheet for promotion to the post of Store Keeper relating to the applicant for the relevant period. The list consists of names of 108 persons and the applicant is at Sl.No.90. We have gone through the list of selected candidates given at Annexure-A6 and find that none of the candidates who have been selected are below the applicant and in fact between the selected candidates and the applicant, there are many more persons belonging to the reserved category with higher marks not selected presumably based on the number of vacancies. As such it is clear that there is no merit in the contention of the applicant that persons with lesser merit than her have been selected.
11. The other contention of the applicant is that she did not appear for improving her performance in the examination because of paragraph-3 in circular dtd.3.3.2017 at Annexure-A11. The said para-3 is reproduced below:

3. English (paper II) will only be a qualifying paper. The marks obtained by the candidates in Subject paper I will only be considered for empanelment. The eligible candidates who have already cleared their written exam earlier but could not be empanelled if not appearing for the ensuing exam then the marks obtained by them in the earlier written examination will be considered. In case they wish to appear for improvement or betterment of marks, they will have to also appear and qualify for the English Paper as is applicable for fresh candidates. However, in such cases, marks that are higher will only be

considered.

12. It is clear from the above that any candidate who wish to appear for improvement or betterment of marks will have to appear and qualify once again and then the marks that are higher will be considered. This order is clear and unambiguous and it is only the fault of the applicant that she did not take up the improvement examination. Hence, there is no merit in the contentions of the applicant.

13. In view of the above, the OA is dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/00535/2017

Annexure A1: True copy of order of promotion dtd.15.3.2005
Annexure A2: True copy of circular dtd.23.8.2013
Annexure A3: True copy of letter dtd.27.5.2014
Annexure A4: True copy of letter dtd.20.1.2015
Annexure A5: True copy of LDE Marks Sheet
Annexure A6: True copy of Select List dtd.21.4.2015
Annexure A7: True copy of representation dtd.1.5.2015
Annexure A8: True copy of representation dtd.13.6.2015
Annexure A9: True copy of letter dtd.27.8.2015
Annexure A10: True copies of APARs of the applicant for the period 2010-11 to 2015-16
Annexure A11: True copy of Circular dtd.3.3.2017
Annexure A12: True copy of result of the examination dtd.20.7.2017
Annexure A13: True copy of Panel List dtd.5.9.2017

Annexures with reply statement:

Annexure-R1: True copy of letter No.RMP/ADM/REC.3/93 dtd.09.11.1993
Annexure-R2: True copy of joining report dtd.01.02.1994
Annexure-R3: True copy of BARC Office Order No.RMP/94/33 dtd.26.4.1994
Annexure-R4: True copy of DPS Note No.DPS/08005/Rectt./2014/1015 dtd.20.05.2015
Annexure-R5: True copy of DPS Note No.DPS/08005/Rectt./2015/2748 dtd.27.08.2015

Annexures with rejoinder:

Annexure-A14: True copy of the intimation letter dtd.8.11.1993
Annexure-A15: The extract copy of the presentation book issued to the candidate while writing examination for the post of APR

Annexures with the written arguments note filed by the respondents:

-NIL-

Annexures with the written arguments note filed by the applicant:

-NIL-
