

**Central Administrative Tribunal
Madras Bench**

OA/310/01741/2016

Dated 7th March Two Thousand Nineteen

P R E S E N T

**Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)**

R.Vinodhan
Peon,
Coimbatore Central Division,
Central Public Works Department,
Coimbatore. .. Applicant
By Advocate **M/s.Ratio Legis**

Vs.

1. Union of India rep by
The Director General,
Central Public Works Department,
M/o Urban Development,
Nirman Bhavan
Govt. of India, New Delhi.
2. The Dy.Director General,
O/o Special Director General,
Southern Region/CPWD,
Rajaji Bhavan, Besant Nagar,
Chennai 600 090. .. Respondents

By Adovacte **Mr.M.Kishore Kumar**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

This is an OA filed seeking the following relief:-

“to call for the records related to the selection call letter for the posts of Lower Division Clerks vide letter No.9/5/1/DDG(HQ)/SR/2016/553 dated 08.8.2016 and further to quash para III of the impugned portion which specifies minimum qualification of XII standard for incumbents appointed prior to the amendment and brought in the Multy Tasking list and to pass such other orders as this Tribunal may deem fit and proper and thus to render justice.”

2. The case of the applicant is that he entered the service of the respondents in the year 1999 as a Peon and at present he is working as MTS. The respondents had notified 10% of the post of LDC for selection through Limited Departmental Competitive Examination (LDCE) on 08.8.2016. As per the said notification, the qualification prescribed for applying was +2 or 12th Standard pass. According to the applicant, when he joined the service in the year 1999, only 10th Standard was the qualification for LDC and he is entitled to apply for the post as it was his legitimate expectation to get promotion to the post of LDC. The respondents had not considered his application for the post of LDC and he approached this Tribunal seeking an interim order to partake in the selection process that was held on 25.11.2016. This Tribunal as per interim order dated 22.11.2016 had permitted the applicant to write the Limited Departmental Qualifying Examination(LDQE). According to the applicant, he is also entitled to apply for the post of LDC and seeks to quash the impugned notification at Annexure A1 fixing the qualification as 12th Standard.

3. The respondents appeared and filed a detailed statement denying the averments in the application. According to them, the Recruitment Rules (RR) has prescribed the method of recruitment and eligibility to the post of LDC and the RRs are produced as Annexure R1. According to the respondents, the post of LDC have to be filled up as per the RR which came into force in the year 2012. As per the RR, 85% of the vacancies has to be filled up by Direct Recruitment and 10% vacancy by promotion from among Group C staff who possess 12th Standard pass with 3 years regular service in grade C on the basis of LDQE. There also exists 5% quota for promotion on seniority-cum-fitness basis from among the Group C staff. So, according to the respondents, the minimum required qualification for applying for LDQE is 12th Standard or equivalent with 3 years experience. The applicant is not having the requisite qualification and hence he is not entitled to appear for the examination. He was permitted to write the examination on the direction of the CAT, Madras Bench dated 22.11.2016.

4. The main contention put forward by the counsel for the applicant is that when the applicant entered into service of MTS in the year 1999, the then RRs provided for promotion to the post of LDC even for 10th pass candidates. So, he was under the legitimate expectation that he will also get promotion. According to the counsel for the applicant, the applicant was under a legitimate expectation to get promotion and hence he should be permitted to write the examination and get promotion.

5. On the other hand, counsel for the respondents would contend that as per the RR prevailing on the date of selection, the minimum qualification required is 12th

Standard pass with 3 years experience in the category of Group C. Therefore, the applicant is not entitled.

6. We have anxiously heard both sides and have perused the notification produced as Annexure A1, A2, notice intimating the date of examination etc., representation filed by the applicant before the CPWD etc. We have also gone through the RR produced by the respondents as Annexure R2 in this case. On a perusal of the RRs, it can be seen that only a person having qualification of 12th Standard and having 3 years experience can apply for the LDQE for the post of LDC in this case. As per the Scheme of the RR, 85% of the vacancies are to be selected by Direct Recruitment, 10% through LDCE and 5% on the basis of seniority-cum-merit. The educational qualification fixed is 12th Standard for Direct Recruitment as well as for LDQE. So, *prima facie* the applicant is not having the requisite qualification prescribed as per RRs prevailing at the date of notification of the vacancies i.e. Annexure A1. The main contention put forward by the counsel for the applicant is that the applicant was having a legitimate expectation for getting the promotion for the post of LDC as a minimum pass of 10th Standard would permit him to write the examination, when he joined service. The counsel for the applicant mainly rely on the Doctrine of “Legitimate Expectation” for claiming the promotion in this case.

“Legitimate expectations may come in various forms and owe their existence to different kinds of circumstances e.g. Cases of promotions which are in normal course expected, contracts, distribution of largess by the Government and some what similar situations i.e. discretionary grants of licences, permits or the like, carry with it a reasonable expectation though not a legal right to renewal or non-revocation, and to summarily disappoint that

expectation may be seen as unfair without the expectant person being heard. The court has to see whether it was done as a policy or in the public interest. A decision denying a legitimate expectation based on such grounds does not qualify for interference unless in a given case the decision or action taken amounts to an abuse of power. Therefore, the limitation is extremely confined and if the doctrine of natural justice does not condition the exercise of the power, the concept of legitimate expectation can have no role to play and the court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the Court is expected to apply an objective standard which leaves to the deciding authority the full range of choice which the legislature is presumed to have intended.”

In this case, the applicant is aged 47 years and he has entered the service 17 years ago and he already had the opportunity to participate in the LDCE after he had completed 3 years of service. It is not clear why the applicant was not able to get promotion during the last 17 years period. The RRs for the post of LDC was amended in the year 2012 and a passing of 12th Standard was made compulsory for becoming eligible to appear in the LDQE in the department. In this case, it can be seen that the applicant was selected as a Peon and was later his post was re-designated as MTS. The post of LDC requires a better knowledge in English language and communication and it is only reasonable that the department has fixed a minimum qualification of 12th Standard for appearing for LDQE. The respondents had amended the rules taking into consideration the necessities and requirements for the function of LDC and we are unable to find any arbitrariness or illegality in fixing the eligibility qualification as 12th Standard. So, we find that the contention of the applicant that he was having legitimate expectation for promotion has no merit in this case. He was given opportunity to get promotion till the year 2012 ie. till the date of

amendment and he has not succeeded in getting the promotion. Further, there is also no material to show that the department had in any way had given any expectation at the time of his recruitment and there is no material to show that there is a basis for such a claim put forward in this case. A legitimate or reasonable expectation must arise from an express promise given by a public authority. Here there is absolutely no material to show such a legitimate expectation. The expectation cannot be the same as anticipation. It is different from a wish, desire or a hope nor can it amount to a claim or demand on the ground of a right. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or established procedure followed in regular and natural sequence. Here there is no material to prove those aspects.

7. In the above circumstances, we are of the view that the applicant has no right to get promotion to the post of LDC on the basis of available RR and his claim of legitimate expectation has also no basis to stand in the circumstances of the case. OA lacks merit and is liable to be dismissed. OA is dismissed. No costs.

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

07.03.2019

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