

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00674-00676/2018

DATED THIS THE 30th DAY OF AUGUST, 2019

**HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER
HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER**

1. R.Satheesh
S/o. C.Radhakrishnan
Aged 33 years
Working as Sub-Divisional Officer II
Defence Estates Office
Karnataka Circle, K.Kamaraja Road
Bengaluru-560 042.
Residing at Quarter No.8/4
DAD Complex
Someshwarapura Extension
Halasuru, Bengaluru-560 008.

2. Sunil Narayanan
S/o. A.V.Narayanan
Aged 34 years, working as
Sub-Divisional Officer II
Defence Estates Office
Karnataka Circle, K.Kamaraja Road
Bengaluru-560 042.

3. V.Raja
S/o Late J.S.Venkatesan
Aged 28 years, working as
Sub-Divisional Officer II
Defence Estates Office
Karnataka Circle, K.Kamaraja Road
Bengaluru-560 042.

....Applicants

(By Advocate Shri.A.R.Holla)

Vs.

1. Union of India
by Secretary
Ministry of Defence
136, South Block
New Delhi-110 001.

2. The Director General
Defence Estates
Raksha Sampada Bhavan
Ulaanbaatar Marg
Delhi Cantt-110 010.
3. The Defence Estates Officer
Karnataka Circle
K.Kamaraja Road
Bengaluru-560 042.Respondents

(By Advocate Sri Vishnu Bhat)

O R D E R

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

The case of the applicants is that they were appointed as Sub-Divisional Officers Grade-III (SDO-III) in the Defence Estates Office, Min. of Defence on 27.4.2010, 27.4.2010 & 12.4.2010 respectively. The next higher post in the hierarchy is Sub-Divisional Officer Grade-II. As per the Defence Estates (Gr.C and Gr.D posts) Recruitment Rules, 1988, the Sub-Divisional Officer Grade-II requires to be filled by promotion of Sub-Divisional Officer Gr-III, who has completed 5 years of service. Further, the posts of Sub-Divisional Officers Grade-I has to be filled up by 80% by promotion of SDO-II who have completed 3 years as such, failing which by direct recruitment and 20% by direct recruitment (Annexure-A1). The Govt. of India vide OM dtd.24.3.2009(Annexure-A2) amended the recruitment rules in tune with the revised pay scales, method of recruitment etc. of various posts. But the 2nd respondent vide order dtd.30.12.2011(Annexure-A3) promoted several officials from SDO Gr.III to SDO Gr.II as per the old recruitment rules. Thereafter, another set of officials was promoted from SDO Gr-I to the post of Assistant Defence Estates Officer vide order dtd.8.7.2015(Annexure-A4).

Thereafter, vide order dtd.11.2.2016 (Annexure-A5), the posts of SDO Gr.I and SDO Gr.II were merged and re-designated as SDO Gr.I and the post of SDO Gr.III has been re-designated as SDO Gr.II. As such the applicants became eligible for promotion to the post of SDO Gr.I as they have completed 8 years of service in the erstwhile post of SDO Gr.I & Gr.II under 80% quota as per the existing recruitment rules. In the meanwhile, the Principal Director, Defence Estates, Southern Command, Pune Cantt. issued an advertisement in April 2018(Annexure-A6) to fill up 21 posts of Sub Divisional Officer Gr.I by direct recruitment. Then the applicant No.1 submitted a representation on 3.4.2018(Annexure-A7) to the Principal Director, DE with a request to withhold the direct recruitment pending recruitment by promotion. As there was no response, the applicant No.1 submitted a representation to the respondent No.2 on 24.4.2018(Annexure-A8) with a request to take steps to promote the eligible officials to SDO Gr.I and withhold the direct recruitment till then as otherwise, there will be delay in promotion of the eligible officials. In response to the same, the 2nd respondent issued an order dtd.9.5.2018(Annexure-A9) stating that 'as per the instructions of DoPT OM dtd.19.1.2007 post based roster in respect of SDO Gr.I has been prepared and the number of vacancies released against direct recruitment quota has been calculated in accordance with the said roster. The issue of filling up of vacancies against promotion quota is processed separately in terms of DoPT OM dtd.24.3.2009. Therefore, recruitment process for SDO-I will continue'. That means action has been initiated to fill up the posts by direct recruitment as per OM dtd.19.1.2007 and by promotion as per OM dtd.24.3.2009 i.e. after amendment of recruitment rules. On the other hand, steps have been taken to fill up the posts by direct recruitment as per the existing

recruitment rules, while assuring that the posts will be filled up by promotion after amending the recruitment rules. Thereafter, the 2nd respondent issued a notification dtd.18.5.2018(Annexure-A10) proposing to amend the recruitment rules and publishing the draft recruitment rules seeking comments from the concerned.

2. The applicants submit that as per the existing recruitment rules, 80% of SDO Gr.I posts be filled up by promotion failing which by direct recruitment and the balance 20% by direct recruitment. The vacancies which arose as per the old recruitment rules have to be filled up as per the old rules. However, in the instant case, the promotional vacancies are proposed to be filled up as per the proposed amended rules. The view taken by the 2nd respondent is not at all justified and in violation of Article 14 of the Constitution of India. Accordingly, the applicants have filed the present OA seeking the following relief:

- i. To quash the order No.1012/194/ADM/DE/SDO/DFMS ID-56540 dtd.9.5.2018 issued by the respondent No.2(Annexure-A9).*
- ii. Direct the respondent No.2 to take steps to fill up the posts of Sub Divisional Officer Grade-I both by promotion and direct recruitment simultaneously as per the existing recruitment rules, Annexure-A1.*

3. Per contra, the respondents have submitted in their reply statement that the applicants were appointed to the post of Sub Divisional Officer Grade-III in the respondent department during the year 2010. As per the existing Recruitment Rules, the post of SDO-III is a classified General Central Service Group 'C', non-gazetted and non-ministerial posts. Consequent upon implementations of the 5th & 6th CPC, the pay scale attached to the post of SDO-III were revised to Rs.4000-6000 and Rs.5200-20200 with GP Rs.2400/- respectively. The Defence Estates (Gr.C & Gr.D posts) RRs 1988 have been published in Gazette of India

vide SRO 21 dtd.25.1.1990(Annexure-R1) and the same are presently in force except those specifically amended subsequently. Consequent upon the merger of two or more scales into one in the revised pay structure, the DoP&T vide OM dtd.24.3.2009 has prescribed the minimum qualifying service for promotion from one post to next higher post carrying the specific grade pay and as per which for promotion from GP Rs.2400 to Rs.4200, the minimum qualifying service prescribed is 10 years. Since the applicants in the present case have completed 8 years of regular service in the grade of SDO-III carrying GP Rs.2400, they are not entitled to be considered for promotion to the next higher post in the hierarchy i.e. SDO-II until they complete 10 years of regular service. As per the existing Recruitment Rules, 20% vacancies of SDO-I post is to be filled up through Direct Recruitment and remaining 80% vacancies is to be filled through Departmental Promotion. The department is presently having acute shortage of manpower and considering the overall administrative as well as organizational interest, has initiated the action for filling up 21 posts out of total 79 vacant, through direct recruitment. The number of posts to be filled up through DR quota has been calculated as per post based roster prepared in accordance with the instructions contained in DoP&T OM dtd.19.1.2007. Accordingly, the notification has been issued for inviting the applications from eligible candidates for appointment to the post of SDO-I through direct recruitment which is in accordance with the extant government instructions and within the administrative powers entrusted upon the respondent department.

4. The respondents submit that the claim of the applicants is against the instructions contained in DoP&T OM dtd.24.3.2009(Annexure-R2) as per which the minimum qualifying service of 10 years in the present post is invariably

required to be completed. As the applicants have not yet fulfilled the requisite qualifying service in their present grade to be considered for promotion to SDO-I, they have no locus-standi to challenge the ongoing recruitment process initiated by the respondent department for filling up of the DR quota vacancies of SDO-I. The issue regarding promotion of eligible SDO-I to the post of Assistant Defence Estates Officer(ADEO) vide letter dtd.8.7.2015 has no relevance to the issue involved in the instant OA as the promotion to the post of ADEO is governed by the recruitment rules applicable to the said post. The representations of the applicants have been replied by the 2nd respondent vide letter dtd.9.5.2018 wherein it is mentioned that the issue of filling up of the vacancies of SDO-I against promotion quota will be processed separately in terms of DoPT OM dtd.24.3.2009 and nowhere it is mentioned about filling up the said posts by promotion after amendment of existing recruitment rules and proceeding with the direct recruitment process as per the existing recruitment rules. The DR quota vacancies of SDO-I posts were calculated on the basis of post based roster in accordance with the instructions contained in DoP&T OM dtd.19.1.2007 and it is not prejudicial or discriminatory against the applicants as it would not have any adverse implications over and above the legitimate service rights of the applicants. Therefore, there is no cause of action arisen to the applicants to approach the Tribunal and accordingly the OA deserves to be dismissed with costs.

5. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The issue in this case is in a very small compass. The applicants are Sub Divisional Officers Grade-II(SDO-II) and are eligible to be promoted as Sub Divisional Officers Grade-I(SDO-I). The present

rules which govern them are the Defence Estates (Gr.C and Gr.D posts) Recruitment Rules, 1988 which have been notified on 25.1.1990 and are presently in force. The applicants would claim that as per the said rules, persons who are appointed as SDO-III are eligible to be promoted as SDO-II after 5 years of regular service and SDO-II are eligible to be promoted as SDO-I after 3 years of regular service. Since they have joined in the year 2010, they are eligible to be promoted as SDO-I as they have completed 8 years of service. In the meantime, the department merged these three categories with SDO-III being re-designated as SDO-II with Grade Pay of Rs.2400 and SDO-I and SDO-II merged and became SDO-I with Grade Pay of Rs.4200. The DoP&T has issued an Office Memorandum dtd.24.3.2009 wherein for promotion from a post carrying Grade Pay of Rs.2400 to a post carrying Grade Pay of Rs.4200, the minimum service required would be 10 years. Even though this OM of DoPT directs all the departments to modify the recruitment rules accordingly within a period of six months and with regard to the Gr.C and D posts, delegated power is with the Ministry, the respondents have initiated the process of amending the service rules only in May, 2018(Annexure-A10) i.e. after more than 9 years of the DoPT memorandum. Therefore, it is clear that the applicants will definitely be covered by the existing rules of 1988 as on date. As contended by the applicants, if they are eligible to be promoted from SDO-III to SDO-II after 5 years and from SDO-II to SDO-I in 3 years, the respondents should take immediate action for filling up the vacancies in SDO-I without any further loss of time. We, therefore, direct the respondents to complete this process within a period of two(2) months from the date of issue of this order. Regarding the respondents' claim that the applicants must complete 10 years of service as per the DoPT OM dtd.24.3.2009, it is clear

that the respondents themselves have taken more than 9 years to initiate the process of amendment of recruitment rules and therefore, they cannot cite that process to deny the legitimate opportunity for promotion to the applicants as per the existing rules. However, the process of filling up certain number of posts by direct recruitment can also proceed simultaneously.

6. The OA is therefore allowed as above. No costs.

(C.V.SANKAR)
MEMBER (A)

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

/ps/

Annexures referred by the applicant in OA.No.170/00674-00676/2018

- Annexure-A1: Copy of the notification dtd.25.1.1990
- Annexure-A2: Copy of the OM dtd.24.3.2009
- Annexure-A3: Copy of the order dtd.30.12.2011
- Annexure-A4: Copy of the order dtd.8.7.2015

Annexure-A5: Copy of the order dtd.11.2.2016

Annexure-A6: Copy of the notification dtd. Nil.04.2018

Annexure-A7: Copy of the representation of the applicant No.1 dtd.3.4.2018

Annexure-A8: Copy of the representation of the applicant No.1 dtd.24.4.2018

Annexure-A9: Copy of the order dtd.9.5.2018

Annexure-A10: Copy of the order dtd.18.5.2018

Annexures with reply statement:

Annexure-R1: Copy of the Gazette Notification dtd.25.1.1990

Annexure-R2: Copy of the OM dtd.24.3.2009
