

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE
ORIGINAL APPLICATION NO.170/00724/2018**

DATED THIS THE 26th DAY OF SEPTEMBER, 2019

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

Zahur Mulla
Son of Mohammad Haji
Aged about 59 years
Working as Office Superintendent
Office of the Deputy Chief Labour Commissioner (Central)
"Shram Sadan", 3rd Main, 3rd Cross
Yeshwanthpur Phase II
Tumkur Road
Bangalore-560 022.

Residing at No.402, B Block
Arvind Godavari Apartment
Rachenahalli Main Road
P & T Layout, Shivaram Karanth Nagar Post
Bangalore-560077.

....Applicant

(By Advocate Sri K.Hanifa)

Vs.

1. Union of India
Represented herein by its Secretary
Ministry of Labour and Employment
"Shram Shakti Bhawan", Rafi Marg
New Delhi-110001.
2. The Chief Labour Commissioner (Central)
Ministry of Labour and Employment
"Shram Shakti Bhawan", Rafi Marg
New Delhi-110001.
3. Deputy Chief Labour Commissioner (Central)
"Shram Sadan", 3rd Main, 3rd Cross
Phase II, Tumkur Road
Bangalore-560022.

...Respondents

(By Advocate Sri K.Gajendra Vasu)

ORDER

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

The case of the applicant in a nutshell is that he is employed as Office Superintendent(OS) on 26.3.2010 under the 1st respondent and is currently working in the office of 3rd respondent in the said post. The 1st respondent has issued a notification (Recruitment Rules) dtd.28.7.1984 notifying the eligibility conditions for recruitment to the post of Labour Enforcement Officer (Central) LEO(C) whereby 25% shall be made by promotion from within the feeder cadre of Labour Department and 80% of such recruitment shall be made through Limited Departmental Competitive Examination(LDCE) to be conducted by the Ministry of Labour and 20% shall be filled by promotion within the department on the basis of seniority cum fitness(Annexure-A1). The sanctioned strength in the grade of LEO(C) in the 2nd respondent organisation as on date is 162. Out of which 8 posts of LEO(C) i.e. 5% of sanctioned posts are to be filled up through seniority cum fitness basis from amongst the OS cadre(20% out of 25% of the sanctioned posts). As on 6.2.2017 there were 5 vacancies within the quota of the seniority cum fitness. The applicant as on 20.5.2015 was placed at SI.No.8 in the All India Seniority List of OS within the organisation of 2nd respondent(Annexure-A2). Consequent to promotions and retirements, he is placed at SI.No.3 in the All India seniority list of OS. Then the applicant filed a representation dtd.14.3.2013(Annexure-A3) bringing the fact of 8 posts of LEO(C) in the seniority cum fitness quota being vacant and also bringing to the notice of the 2nd respondent that he is eligible to be promoted to the said post and he sought for filling up of all 8 posts in LEO(C) through seniority cum fitness as it would not

only benefit individuals but also the entire organisation. The 2nd respondent issued an office note dtd.6.2.2017(Annexure-A4) calling for the ACRs/APARs of 7 OSs within the zone of consideration to be promoted to the post of LEO(C) out of which 3 OSs have already retired. The applicant immediately registered his protest for improper consideration of APARs of retired officials vide his letter dtd.23.5.2017(Annexure-A5) to the 2nd respondent. He submits that had the retired OSs names been not included in the zone of consideration, his name would have figured in the zone of consideration in the earlier DPC. But the said protest letter was never replied by the 2nd respondent. Despite the letter of protest of the applicant, the 2nd respondent proceeded to pass Office Order dtd.28.4.2017(Annexure-A6) wherein two OSs were promoted to the post of LEO(C) thereby 2nd respondent filled up only 2 vacancies despite there being 5 vacancies in the said post. The applicant submitted his representation dtd.20.10.2017 seeking amendment to the Recruitment Rules, 1984 to govern the recruitments to the posts of LEO(C) which was in line with the instructions of DoP&T from time to time. Since he did not receive any response to the said representation, he submitted a reminder on 9.2.2018(Annexure-A7) wherein he sought the finalisation and publication of Revised Recruitment Rules governing the recruitment of LEO(C) post. Since the existing vacancies in LEO(C) in the seniority cum fitness quota were long pending, the applicant sought for the filling up of the said vacancies through the existing RRs.

2. The applicant submits that as per the administrative instructions of DoP&T contained in OM dtd.6.1.2009, the recruiting authority needs to consider 5 eligible candidates for 1 vacancy and 8 eligible candidates for 2 vacancies and 10 eligible candidates for 3 vacancies(Annexure-A8). Despite numerous protests

and reminders on the issue, the 2nd respondent issued an Office Note dtd.4.7.2018(Annexure-A9) seeking APARs of 5 OSs including the applicant for the purpose of filling up of undisclosed number of posts of LEO(C). Despite being not disclosing the number of posts that are being filled up, it is disclosed that the 2nd respondent is going to fill up only one post of LEO(C) out of 3 vacant posts by seeking APARs of only 5 OSs wherein the APAR of another retired person is also called for. Aggrieved by the same, the applicant has filed the present OA seeking the following relief:

- a. *Issue an order, direction or writ in the nature of certiorari calling for records in connection with Office Note bearing No.Adm./4(19)/2018 dated 4.7.2018 (Annexure-A9) issued by respondent No.2 and quash the impugned order at Annexure-A9 as arbitrary and discriminatory.*
 - b. *Issue an order, direction or writ in the nature of mandamus directing the respondent No.2 to fill up all the existing vacancies as on this date, in the post of LEO(C) against Seniority Quota.*
 - c. *Award costs of the proceedings and*
 - d. *Pass any other order(s) as may be deemed fit and necessary in the facts and circumstances of the case in the interest of justice and equity.*
3. The applicant further submits that the names of two OSs Sri Suresh Kumar Sharma and Sri K.K.Bassi whose APARs are once again being sought in the impugned office note(Annexure-A9) were also in the zone of consideration in the earlier office note dtd.6.2.2017. Since both the OSs were not promoted to the post of LEO(C) in the earlier round of promotions, despite there being adequate vacancies, they are now again being found to be in the same zone of consideration for the second time. On the contrary, applicant's name did not figure in the zone of consideration in the earlier office note dtd.6.2.2017 because of wrongful inclusion of names of two retired OSs above his name. It is quite incomprehensible as to why the APARs of retired officials are being considered for promotion to the post of LEO(C). If the existing number of vacancies are filled

up in one go, there would be no necessity to hold DPC again and again, calling APARs of the same candidates repeatedly. He submits that by filling up of limited number of LEO posts, the respondents are indirectly ensuring that eligible candidates superannuate and would indirectly lead to nepotism. In his case, though he was eligible to be considered in the zone of consideration for promotion to LEO(C) post quote some time back, the respondents ensured to keep him out of zone of consideration for the reasons best known to them. His name in the impugned note at Annexure-A9 should have been at SI.No.3. However, since an ineligible officer, who has already superannuated, has been placed in the zone of consideration, he finds himself at SI.No.4 which is quite illegal. This time around, though he is sought to be portrayed to be in the zone of consideration, he would not be considered as only 1 or at the most 2 vacancies would be filled up, as only 4 candidates being in the zone of consideration would not even come close to 5 candidates in line with the instructions of DOPT. Since the applicant is due to retire in May of 2019, he has no chance of figuring in the DPC proceedings for the year 2019. Hence, the respondents are indirectly ensuring that he retired without obtaining his due promotion and also are ensuring that some junior of his would get an early opportunity towards a promotion to the post of LEO(C). This action of the respondents is arbitrary and is liable to be set aside. The applicant submits that it is a normal practice in any organisation to notify the number of posts to be filled up. However, giving such a practice a complete go by, the 2nd respondent is always seeking the APARs of the eligible officers, without notifying the number of posts to be filled up. The applicant is eligible for being in the zone of consideration and also is entitled for promotion as there are 3 vacancies of LEO(C) posts to be filled in as on date

against seniority quota. However, by denying the said right of promotion to the applicant, the respondents are causing severe injustice and irreparable loss. He submits that several deserving candidates have superannuated as OSs merely because the respondents are practicing this pick and choose method. If all the existing vacancies are filled up in one go, there would be no occasion to cast such aspersions to the recruiting authorities and hence, such a measure is just an expedient.

4. The respondents, on the other hand, have submitted in their reply statement that as per the Recruitment Rules of LEO(C), the distribution of the vacancies in the LEO(C) among Direct Recruitment(DR), Limited Departmental Competitive Examination(LDCE) and Promotion through Seniority(DP) comes out to 75%, 20% and 5% respectively. It means if in a particular year 20 vacancies arise in the LEO(C) grade, it will be distributed among DR, LDCE and DP as 15, 4 and 1 respectively. As per the vacancies roster, only two points come under Seniority Quota. Accordingly, two vacancies were arisen under the seniority quota one each against vacancy year 2014-15 and 2016-17. One another vacancy was also arisen against the vacancy year 2017-18. All these vacancies had been filled up and as on date there is no vacancy available for promotion under seniority cum fitness quota. They submit that the DoP&T is a nodal Ministry in the matter and as per DOP&T's OM dtd.12.10.1998, the name of the retired officials may also be included in the panel. Such retired officials would, however, have no right for actual promotion. Accordingly, the name of the retired OS was included in the zone of consideration. However, actual promotion was given only to the working OS. As on date of protest by the applicant, all the vacancies had been filled up and as on date there is no vacancy available for promotion under seniority cum

fitness quota. The new Recruitment Rules of LEO(C) are under amendment with the approval of DoP&T, UPSC, M/o Law & Justice. It has now been referred to Official Language Department of Min. of Law & Justice for Hindi translation. After Hindi translation, it is being sent to press for notification which will take more time. As such, promotion cannot be withheld till publication/revision of RRs. In view of this, the promotion of LEO(C) was done as per the existing RRs and as on date there is no vacancy for promotion under Seniority cum fitness quota. The applicant has always been in the zone of consideration and hence the contention that by filling up of limited vacancies the respondents are indirectly ensuring that the eligible candidates superannuates before they can be promoted is misconceived, misleading and not based on the facts and hence totally denied and the OA is liable to be dismissed.

5. The applicant has filed rejoinder reiterating the submissions already made in the OA and submits that the contention of the respondents that all the vacancies have been filled up under the seniority cum fitness quota and as on date, there are no further vacancies to be filled under the said quota is primarily without any merit because the origin of the vacancy would become quite relevant to see under which quota a vacancy has arisen. For instance, a person, who has been recruited to the post of LEO(C) grade under the quota of seniority cum fitness, retires or gets promoted, the said vacancy required to be filled up only under the quota of seniority cum fitness and not otherwise. One manner of recruitment cannot be substituted by another manner. In other words the vacancies meant for seniority quota (DPC) cannot be filled up either by Direct Recruitment(DR) or through LDCE, as it would cause injustice and leads to inadequate representation to the seniority cum fitness quota. Hence, this manner of

recruitment is quite contrary to the existing Recruitment Rules, 1984 and also to the established administrative practices. The concept of year based vacancy has nothing to do where percentage based quotas have been provided separately for filling up vacancies by the method of promotion (through LDCE & Seniority cum fitness) in the existing Recruitment Rules, 1984.

6. The applicant submits that the 2nd respondent had sought for clarifications from the applicant regarding the availability of 3 vacancies in the post of LEO(C) in the quota of seniority cum fitness and in compliance of which, the applicant had sent a letter dtd.7.8.2018 along with corrigendum dtd.9.8.2018(Annexure-A10 series). He submits that despite a clear cut demonstration of the fact of there being 3 vacancies in the post of LEO(C) grade under seniority cum fitness quota, the 2nd respondent has not taken any action to fill up the same, and in fact, has stated that there is no vacancy available for promotion to the post of LEO(C) under seniority cum fitness quota. The respondents in their reply statement have not stated anything about his letter dtd.7.8.2018 or corrigendum dtd.9.8.2018. Since the respondents have denied the existence of 3 vacancies to be filled under seniority quota, the applicant has produced certain documents to establish the fact of existence of 5 vacancies under seniority cum fitness quota as on 6.2.2017(Annexure-A15). He prepared a chart demonstrating the respective vacancies in the 3 quotas i.e. DR, LDCE and DP which indicates the distribution of the posts inter se and the number of posts that are occupied as on the date and the number of vacancies called for by the other 2 modes of recruitment i.e. DR and LDCE(Annexure-A11). A perusal of the seniority list as on 30.4.2017 communicated by the 2nd respondent vide letter dtd.12.9.2017(Annexure-A12) would confirm the number of posts occupied under each quota as demonstrated

in the chart. Thereafter, the UPSC vide advertisement No.6/2017(Annexure-A13) has called for applications from eligible candidates to fill up 33 numbers of posts of LEO(C) grade through DR which confirms the data collated by him regarding existing number of vacancies. Further, the 2nd respondent has issued a letter dtd.23.8.2018(Annexure-A14) calling for applications from eligible candidates for filling up of undisclosed number of vacancies of LEO(C) post under LDCE quota. The applicant submits that non-disclosure of number of posts to be filled up by LDCE quota is quite deliberate, as the respondents do not wish to disclose the actual number of vacancies in the post of LEO(C) through LDCE, however, he submits that the number of posts to be filled up through LDCE cannot exceed 13, since those are the actual vacancies existing in the quota of the LDCE. He further compiled data regarding the LEOs who were promoted under the seniority cum fitness quota right from the framing of Recruitment Rules in the year 1984 which confirms the total number of vacancies available as of this date to be 3(Annexure-A15). He submits that this list is in conformity with the Post Based Reservation Rosters maintained in respect of promotion through seniority quota and promotion through LDCE quota. If the manner of distribution of vacancies between different quotas, as suggested by the respondents is indeed followed, it would end up giving excess representation to one particular quota and would also lead to inadequate representation to other quotas. This has indeed happened during the year 2011 when 41 posts of LEO(C) vacancies were available as on 1.9.2011, in all quotas. By distributing the posts among the different quotas, the DR quota was given 26 posts, LDCE was given 12 posts and DP was given 3 posts. This method of calculation lead to deficiency of 5 posts to DR quota, 4 excess to LDCE quota and 1 excess to DP quota. Hence,

such a mode of distribution of posts is not sound and totally illegal(Annexure-A16). He submits that the method suggested by the respondents is not backed by any DOPT guidelines or instructions. He prepared a chart depicting the total number of LEO(C)s who were promoted by way of LDCE as on 1.4.2012 which would indicate 4 excess share percentage of posts to be at 36 as against prescribed ratio for LDCE quota which is only 32 and it demonstrates the erroneous method of calculation and filling of vacancies to the post of LEO(C) by the respondents(Annexure-A17). The contention of the respondents that the applicant through his representations during different periods of time, held that there are 5 vacancies and 3 vacancies, is held to be misconceived as he submits his representations during the relevant period of times, depicting the vacancies that were in existence. There would be bound to be variance in the vacancies at different points in time, since many officers would superannuate, get promoted or new candidates would be recruited etc. Hence, they were accurate at that relevant point in time and he has never misrepresented the facts. The object of percentage based quota is to provide adequate representation to different feeder grades, if the same is not achieved, it would defeat the very purpose of having different quotas and there might as well be a single quota and a single mode of recruitment. He submits that as on this date, only 5 posts of LEO(C) occupied under DP quota as against the share percentage of 8 posts under seniority cum fitness quota. It demonstrates the fact that there are 3 vacancies available as on this date under DP quota. If the respondents are contending that the DP quota is adequately represented and there exists no vacancy as on this day, they ought to prove the same by providing the additional 3 names of LEOs who have been recruited through DP quota and are still in service. If the same is established by

the respondents, the applicant would have no further grievance in this matter. In their reply, the respondents have contended that APARs of retired employees, who were in the zone of consideration, was being sought, in compliance with the DoP&T OM dtd.12.10.1998 but they have not produced the said OM. But the applicant has produced said OM at Annexure-A18 vide which in the preamble itself, the DOPT mentioned that the procedure mentioned in the OM should be followed when due to unavoidable circumstances, 'the DPCs could not be held for the years even though vacancies arose during the years'. In the present case, the DPC was very much held in the year 2017 and as a result of which two persons were promoted to the post of LEO(C). Hence, there was no occasion to call for the APARs of retired persons in this year, since the very condition mentioned in the preamble of the DOPT OM is not satisfied. The issue raised by the applicant regarding inadequate size of zone of consideration for filling up 2 vacancies has not been addressed by the respondents which demonstrates the fact that the selection process adopted by the respondents is flawed and illegal. The respondents vide para 11 of the reply have made a false declaration stating that the applicant has always been in the zone of consideration as he was never been in the zone of consideration for the post of LEO(C) under DP quota. Vide office order dtd.29/30.8.2018(Annexure-A19), Sri K.K.Bassi who was in the panel of DPC was promoted to the post of LEO(C) by virtue of refusal of promotion by Sri S.K.Sharma to the post of LEO(C) vide office order dtd.6.8.2018. Since Sri Bassi retired on 31.10.2018, the applicant will be the next person for consideration for promotion to the post of LEO(C) and the panel of DPC would be valid for a period of one year. Since, Sri K.K.Bassi was promoted on the basis of panel, the same ought to be followed in the case of the applicant also as he is

due for superannuation in May 2019. As on date there exists 3 vacancies in the post of LEO(C) under DP quota, and hence the applicant can be considered for the said promotion.

7. The respondents have filed additional reply statement reiterating the submission already made in the reply. On the contention of the applicant that the respondents do not wish to disclose the actual number of vacancies in the post of LEO(C) through LDCE, they submit that since the matter has been stayed by this Tribunal, vacancy position will be disclosed with the approval of the competent authority after vacation of the stay. On the averment of the applicant made in para-4 of the rejoinder, the respondents submit that vacancies of LEO(C) has been maintained as per the roster for reservation and the Recruitment Rules. As per Note-2 of para 4.2 of Chapter-4 heading 'Determination of Reservation Quota' where recruitment is made vacancy based, it is possible that at any given point of time share of direct recruitment may increase and share of promotion may correspondingly decrease or vice-versa. In such cases cadre strength for direct recruitment and cadre strength for promotion may change from year to year. Consequently, number of reserved posts in direct recruitment quota and number of reserved posts in promotion quota would change from year to year(Annexure-R1). On the contention of the applicant that there was no occasion to call for APARs of retired persons in the year 2017, the respondents submit that the DoP&T is a nodal Ministry in the matter and as per DoP&T's OM dtd.12.10.1998(Annexure-R2), the name of the retired officials may also be included in the panel. Such retired officials would, however, have no right for actual promotion. Accordingly, the name of the retired OSs was included in the zone of consideration. However, actual promotion was given only to the working

OSs. Hence, the action of the respondents is as per rules and records. In reply to para 7 of rejoinder, the respondents submit that as per the zone of consideration, the applicant when come into the zone of consideration his name was kept but it is not meant that if name is under zone of consideration, he will be promoted. Vacancy has been calculated as per the Rules and it has been distributed among the different mode as per RRs in terms of Gol's guidelines. On the contention of the applicant at para-8(a), they submit that notice for conducting LDCE, 2018 has been circulated on the basis of the applicable the then Recruitment Rules of the LEO(C) as the Notification has been issued for the vacancies arisen up to 1.11.2017 whereas the Revised RRs have been notified on 12.10.2018 and it will be effective from prospective i.e. from the date of notification not retrospective. Since all the vacancies for which notice has been issued pertain to prior to the period of revised RRs, as such, LDCE is being held as per the then applicable RRs in which one mode of recruitment through LDCE had been mentioned. As per the vacancy roster there was only one vacancy for the year 2017-18 and accordingly Sri S.K.Sharma was considered for promotion who was at Sl.No.1 in the zone of consideration. However, Sri K.K.Bassi and the applicant Sri Zahur Mulla were at Sl.No.2 & 4 respectively in the zone of consideration. Accordingly, DPC held on 2.8.2018 recommended Sri S.K.Sharma for promotion and also recommended only Sri K.K.Bassi for promotion under extended panel as Sri S.K.Sharma was due for retirement on 31.12.2018 and accordingly vacancy will be arisen on 1.1.2019. However, since Sri Sharma has denied to accept the promotion, Sri K.K.Bassi was considered for promotion to LEO(C) in lieu of Sri Sharma's denial. Further, Sri K.K.Bassi retired on superannuation on 31.10.2018 and vide notification dtd.12.10.2018, Govt. of India Press has notified new

Recruitment Rules of LEO(C)(Annexure-R3). Therefore, vacancy arose after that date may be considered as per new RRs for LEO(C) post. As per the revised RRs, the applicant has been sent for training for four weeks thereafter he will be considered for promotion subject to availability of vacancy under promotion quota. On the contention of the applicant that there exist 3 vacancies in the post of LEO(C) as on this date under DP quota, the respondents submit that as per the vacancies roster, only two points were come under seniority quota. Accordingly, two vacancies were arisen under the seniority quota one each against vacancy year 2014-15 and 2016-17. One another vacancy was also arisen against the vacancy year 2017-18. All these vacancies had been filled up. The respondents further submit that the applicant filed two OAs.No.724/2018 and 1790/2018 and in OA.1790/2018 he wants benefits as per revised RRs and in another OA.724/2018, he wants benefits as per pre-revised RRs whereas the department has taken action as per the RRs for the period vacancies pertain. Hence, they prayed to dismiss the OA being devoid of merits.

8. The applicant has filed additional rejoinder reiterating the submission already made in the rejoinder and submits that the respondents have not replied to the issues raised by him and have placed complete reliance on Note-2 under para 4.2 of Chapter-4 which is not relevant at all to the dispute at hand because the term 'cadre strength' used in Note-2 is in relation to calculation of reservation posts required to be filled under 14 point Rosters prescribed vide DoPT OM dtd.2.7.1997. This OM only mandates maintenance of separate 14 point reservation rosters for each mode of promotion, if the number of posts in a cadre is 2 or more than 2, but less than 14, the object of which is to ensure full representation of the SC/ST category in accordance with the reservation policy of

the Government and the applicant has not raised any dispute relating to maintenance of reservation rosters in the OA. However, cadre-strength is always measured by the number of posts comprising the cadre. The concept of vacancy has no relevance in operating the percentage of reservation. But in his case, out of 5 vacancies available as on 6.2.2017, only 2 vacancies within the seniority(Promotion) quota were filled and 3(UR) vacancies remained unfilled till this date. In other words, at no point of time, the sanctioned strength of 8 posts under seniority promotion quota have been filled up, as a result the OS cadre suffered with acute stagnation in promotion to the post of LEO(C) since 1984. He produced the Post Based Reservation Roster for the post of LEO(C) through promotion(Seniority Quota) at Annexure-A20. The said roster confirms unequivocally the sanctioned strength of posts under the said quota as 8 in which 1 post would be reserved to SC category, 1 post for ST category and 6 for unreserved category. As on 31.12.2008, there were 2 officers occupying UR posts and 1 officer occupying SC category, leaving 1 vacancy against ST and 4 against UR. The said roster shows one officer against ST category and two officers against UR categories. Subsequently, three UR officers and one SC officer were recruited to the post of LEO(C) as per the seniority list of LEO(C) as on 30.4.2017. After taking into reckoning the retirees over the period of time, the total number of officers occupied the posts of LEO(C) as on this date, under seniority promotion quota is 4 i.e. one ST (Sri P.L.Kosta), one SC(Sri Jaspal) and two UR (Sri D.S.R.Sharma & Ms.P.L.Barman) which leaves a total number of 4 posts vacant in the UR category. Furthermore, there are no vacancies to be filled in the SC and ST category and hence, there is no ambiguity regarding operation of roster. Though the total vacancies 4 in number one officer Sri K.K.Bassi retired

on 31.10.2018 i.e. after notification of LEO(C) Recruitment (Amendment) Rules 2018 and hence, the total posts to be filled up under old LEO(C) RRs 1984 are 3 in number and 1 post under new RR 2018. The fact of acute stagnation in the grade of OS has been admitted by the respondents in their draft proposal submitted to DoPT and UPSC in the prescribed form Annexure-III against column 12 at page 10 seeking approval for amendment of LEO(C) Recruitment (Amendment) Rules, 2017(Annexure-A21) and recommended for increase in Promotion Quota from existing 5% to 15% to ensure promotion within department through seniority only by removing LDCE system of recruitment permanently.

9. The applicant submits that the size of zone of consideration for the DPC proceedings was inadequate and contrary to the DOPT orders. If the method of distribution of vacancies among DR, LDCE and DP as suggested by the respondents is followed, the same is proved to be wrong since recruitment to LDCE-2011 would be entitled to only 8 posts as per the calculation, but is filled with 12 posts(4 excess), further the seniority quota is entitled to 2 posts but is filled with 3 posts(1 excess) and DR is entitled to 31 posts but is filled up with only 26 posts(5 short). It demonstrates that the respondents do not even follow their own method of calculation in distribution of vacancies among different quotas. He produced the Post Based Reservation Roster for promotion to LEO(C) through LDCE as on 1.4.2012 at Annexure-A22 to substantiate his claim. The respondents have stated that only one point each had come under the seniority quota under vacancy year 2014-15, 2016-17 and 2017-18 and accordingly they were filled through DPC, which the applicant requests is to be clarified by the respondents. On the submission of the respondents that the vacancy arising out of the superannuation of Sri K.K.Bassi will be filled according

to the new RRs, the applicant submits that he has no dispute regarding the said issue, but since there are 3 backlog vacancies to be filled under the old RRs 1984, they should be filled on war footing, since he is still in the zone of consideration as also is in the panel of the DPC conducted earlier and hence there is no impediment to promote him to the post of LEO(C). On the contention that he has always been in the zone of consideration, applicant submits that it is true but he denies the said contention as he has never been in the zone of consideration except in the last DPC for the vacancy year 2017-18.

10. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. Both the parties have filed their written arguments note. It is not in dispute that the total number of posts of Labour Enforcement Officer(Central) (LEO)(C) in the respondent organisation is 162 and till October 2018, the 1984 recruitment rules were in force. The fact of the number of vacancies has not been disputed by the respondents. The contention of the applicant is that out of 162, 5% of the posts should be occupied by the method of promotion-seniority quota and the feeder category post is Office Superintendent to which the applicant belongs. The number of such posts is '8' and the contention of the applicant is that at the time when Annexure-A9 dtd.4.7.2018 came to be issued, there were 3 posts vacant which had to be filled up by promotion-seniority quota. The applicant has given a clear statement vide Annexure-A11 wherein the vacancy position in various quotas has been noted by him as 33 for Direct Recruitment, 13 for Promotion-LDCE quota and 3 for Promotion-Seniority quota. The fact of the calculation being correct is also confirmed by Annexure-A13 where the respondents have entrusted the UPSC to fill up 33 posts of LEO(C) by Direct Recruitment which tallies exactly with the

figure calculated by the applicant. Further the detailed list as at Annexure-A12 furnished by the applicant has not been challenged by the respondents since it is their own list wherein he has correctly shown the names of persons who have been promoted as LEO under Promotion-Seniority quota. This also confirms that there were three vacancies at the time of impugned letter at Annexure-A9. The applicant has also objected to the inclusion of the names of the retired persons in the eligibility list as can be seen from the Sl.No.3 at Annexure-A9 where it is mentioned that the person is retired. The respondents would claim shelter under the OM of DoPT dtd.12.10.1998 at Annexure-A18. A simple reading of this OM would reveal that inclusion of retired persons in the panel could only be considered when for various reasons the DPCs were not held for several years with the result that many persons who were rightly in the zone of consideration could not be promoted because of delay in the proceedings of the DPC. This is only a measure to ensure some kind of justice for the persons who would have been normally promoted if the DPCs had been held in time. However, using this logic to bring the names of the retired persons when it is completely not required is absurd. Further as rightly pointed out by the applicant, the DPC in this case has been held regularly and even in the previous year. Therefore, there was absolutely no need for the respondents to have included the names of the retired person in the impugned letter at Annexure-A9. The bottom line is that the respondents have miserably failed to establish that there were no further vacancies other than one as on the date of impugned letter vide Annexure-A9. When specific percentages are fixed for different type of promotions, it can only mean this specific percentage on the overall cadre strength and not on the vacancies arising year after year. If this principle is not followed, a time may

come when almost all the vacancies will go to direct recruitees since they have age on their side and if the new vacancies that had arisen are once again distributed among the various percentages, it will be an injustice done to the other categories of persons who could be promoted.

11. Considering all the above, it is clear that the letter at Annexure-A9 has to be set aside and the respondents have to rework the position of the eligible candidates with the vacancies being taken as '3' instead of '1'. Since the applicant has unfortunately retired by May 2019, this exercise can only give him notional benefit with effect from the date on which he deserves to be promoted. The respondents are directed to recast the list of the eligible persons as of July 2018 and take appropriate action to promote the applicant with effect from the date he is eligible for such promotion with all consequential benefits. His pay etc. would have to be accordingly revised but since he has not acted in the promoted post before the date of his superannuation, the same shall have effect for his retiral and other benefits. This they shall do within a period of two(2) months from the issue of this order.
12. The OA is therefore allowed with the above orders. No costs.

(C.V.SANKAR)
MEMBER (A)

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

/ps/

Annexures referred to by the applicant in OA.No.170/00724/2018

Annexure-A1: Recruitment Rules 1958

Annexure-A2: Seniority List of O.S as on 20.05.2015

- Annexure-A3: Representation dt.14.3.2013
 Annexure-A4: Note F.No.Admn.I/4914/2016 dt.06.07.2017-DPC – Promotion to the posts of LEO(C) through seniority quota issued by R2
 Annexure-A5: Representation dt.23.5.2017 with forwarding letter dt.25.5.2017
 Annexure-A6: O.O.No.9 of 2017 dt.28.04.2017- promoting two OS to the posts of LEO (C)
 Annexure-A7: Representation dt.9.2.2018 with forwarding letter dt.9.2.2018
 Annexure-A8: Swamy's Handbook-2016 method of promotion
 Annexure-A9: Note No.Adm.14(19)/2018 dt.4.7.2018-DPC promotion to the post of LEO (C) through seniority quota (promotion)

Annexures with reply statement:

-NIL-

Annexures with rejoinder:

- Annexure-A10 series: Letter dt.7.8.2018 of applicant addressed to R2 with corrigendum dt.9.8.2018 of applicant
 Annexure-A11: Chart showing vacancy position
 Annexure-A12: Seniority List LEO (C) as on 30.4.2017
 Annexure-A13: UPSC Advertisement No.06/2017
 Annexure-A14: Notification dt.23.8.2018 hold LDCE-2018
 Annexure-A15: List of LEOs recruited under Seniority Quota since 1984
 Annexure-A16: Note dt.1.9.2011
 Annexure-A17: List of LEO's recruited by promotion against 20% LDCE-Quota
 Annexure-A18: DoP&T OM dt.12.10.1998
 Annexure-A19: Office Order No.36 of 2018

Annexures with additional reply:

- Annexure-R1: Determination of Reservation Quota
 Annexure-R2: OM dt.10.12.1998
 Annexure-R3: Notification

Annexures with additional rejoinder:

- Annexure-A20: Post Based Reservation Roster maintained by the respondents for the post of LEO (C) through Promotion (Seniority Quota)
 Annexure-A21: Copy of Annexure-III annexed to proposal for LEO (C) Recruitment (Amendment) Rules, 2017 by respondent-2
 Annexure-A22: Post Based Reservation Roster for Promotion to LEO (C) through LDCE as on 01.04.2012

Annexures with written arguments note filed by the applicant:

- Annexure-A23: DoP&T OM No.36012/2/96-Estt.(res) dt.2.7.1997-replacing

- vacancy based rosters by post based rosters
- Annexure-A24: DoP&T OM No.14017/2/1997-Estt.(RR) dt.19.1.2007-changing over from the existing 'vacancy based rosters to post based reservation roster'
- Annexure-A25: Letter No.Admn.I/4(19)/2011 dt.9.3.2012-showing improper distribution of 41 vacancies-R- has filled 36 posts (4 excess) of LEO against the sanctioned strength – showing the names of four excess recruits

Annexures with written arguments note filed by the respondents:

- Annexure-R4: DoPT Communication
Annexure-R5: OM dt.2.7.1997
