

**CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH**

**ORIGINAL APPLICATION NO.170/01790/2018**

**DATED THIS THE 16<sup>th</sup> DAY OF JULY, 2019**

**HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER**

**HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER**

Zahur Mulla  
S/o Md.Haji  
Aged about 59 years  
Working as Office Superintendent  
O/o The Deputy Chief Labour Commissioner (Central)  
Sharam Sadan  
3<sup>rd</sup> Main, 3<sup>rd</sup> Cross  
Yeshwantpur, 2<sup>nd</sup> Phase  
Tumkur Road, Bangalore-560 022.

....Applicant

(By Advocate Sri Abhilash Raju)

Vs.

1. The Union of India  
through the Secretary  
Ministry of Labour and Employment  
Government of India  
Shram Shakti Bhawan  
Rafi Marg  
New Delhi-110 001.
2. The Chief Labour Commissioner (Central)  
Government of India  
Shram Shakti Bhawan  
Rafi Marg  
New Delhi-110 001.
3. The Deputy Chief Labour Commissioner (Central)  
Sharam Sadan  
3<sup>rd</sup> Main, 3<sup>rd</sup> Cross  
Yeshwantpur, 2<sup>nd</sup> Phase  
Tumkur Road, Bangalore-560 022.
4. Union Public Service Commission  
through its Chairman  
Dholpur House, Shahjahan Road  
New Delhi-110 069.

5. Department of Personnel & Training  
through its Secretary  
North Block  
New Delhi – 110069.

...Respondents

(By Advocate Sri K.Gajendra Vasu)

O R D E R

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

The case of the applicant in a nutshell is that he joined service in 1983 as LDC and was promoted as UDC in 1991 and thereafter he was promoted as Office Superintendent(OS) on 26.3.2010 and is currently working in the said post. The next promotional post is Labour Enforcement Officer (Central) LEO(C) as per the Recruitment Rules(RRs) 1984(Annexure-A1). The feeder cadres for the said post by way of promotion are UDC & Stenographers with 5 years regular service and OS(Grade I & II). Pursuant to the VI CPC recommendations, CCS(Revised Pay) Rules, 2008 came to be notified by the Min. of Finance on 29.8.2008. Consequently some of the pre-revised scales were merged and some others were upgraded. Therefore, it was imperative that the existing Service Rules/RRs would be amended in order to bring the same in conformity with the CCS(Revised Pay) Rules 2008. Accordingly, the DoPT issued OM dtd.24.3.2009(Annexure-A2) to all Ministries/Departments of Govt. of India for necessary action. Further there were specific directions issued to initiate appropriate action to update the Service Rules for Group A & B posts within a period of 6 months from the date of issuance of the said OM. Consequent to which, the 2<sup>nd</sup> respondent(R2) vide order dtd.3.11.2009(Annexure-A3) clarified the position regarding merger of the post of OS Gr.I & II to that of OS with GP of Rs.4200 in PB-2 classifying the post as Gr.B Non-Gazetted. The said order was also sent to the Admin.Section of the R2 with the

request that the feeder grade in recruitment rules for the post of LEO(C) be amended accordingly. Upon doing so, there was a need to fill up the vacant posts of LEO(C) and accordingly R2 issued a notification on 1.9.2011(Annexure-A4) informing to hold Limited Departmental Competitive Examination(LDCE) 2011 by way of promotion for 12 vacancies out of 41 vacancies. The applicant made a representation on 29.9.2011(Annexure-A5) to R3 expressing the need to amend the RRs 1984 in order to incorporate several subsequent changes and evolution the various posts were subjected to. R2 was requested to amend RRs in conformity with the changes occasioned by the implementation of VI CPC in so far as it related to the feeder cadre for the post of LEO(C). Since there was no response, the applicant made another representation dtd.11.10.2011 along with application form(Annexure-A6) and he appeared in the test under protest. As there was still no response, the applicant has filed the OA.446/2011 which was dismissed by this Tribunal at the admission stage itself on 8.11.2011 (Annexure-A7). Then he filed WP.No.15893/2012 before the Hon'ble High Court of Karnataka which also dismissed on 21.3.2013(Annexure-A8) holding that 'the rules as they stand today are not in conflict with the extant rules as and only when the rules are brought in conformity of the VI CPC will they become ultravires'.

2. The applicant submits that R2 has sent a reply dtd.1.11.2011(Annexure-A9) stating that RRs in respect of LEO(C) can be amended only after carrying out amendment in the RRs of the feeder cadres i.e. OS & Stenos. Applicant has filed a formal departmental appeal to the 1<sup>st</sup> respondent before appearing in the LDCE-2011. Since the appeal was pending, he followed up another letter which is also pending. He was unsuccessful in the LDCE 2011 and a total of 12 vacancies were filled out of which only one belonged to the OS cadre and the rest were filled by 3

UDCs and 8 Stenos. He is only aggrieved by the fact that by permitting UDCs and Stenos with 5 years of service to participate in the LDCE 2018 there would be jumping of Grade Pay by two stages i.e. from GP 2400 to GP 4600 bypassing GP of 2800 and 4200 which is highly inequitable to all the OSs. It is impermissible and opposed to the constitutional scheme and not regarding eligibility of any criteria thereof. In RR 2007 and RR 2013, Stenographers were not considered in the feeder cadre for the post of OS. Under the circumstances, considering the Stenographers in the feeder cadre for a higher post than that of OS would not arise and would be contrary to logic and the constitutional scheme. After filling up the vacancies pursuant to LDCE 2011, the RRs of all the feeder cadres stood amended to bring the same in conformity with the VI CPC and OM dtd.24.3.2009 viz., the RRs for UDC was amended on 10.6.2011(Annexure-A10), RRs for Stenos on 6.6.2013(Annexure-A11) and RRs in respect of OS were amended on 31.8.2013(Annexure-A12). But RRs for LEO(C) were not amended. R2 circulated draft RRs 2015 more than two years after amending the RRs in respect of feeder cadre, calling for objections from the concerned stake holders. Then the applicant filed objections bringing out several inconsistencies in the draft RRs(Annexure-A13). Instead of considering the objections filed by the applicant and the proposal made by the concerned Ministry itself, R2 had kept the same pending for more than two years and thereafter circulated one more draft in RRs 2017 without recalling the previous draft RR 2015 in respect of LEO(C). Then the applicant filed objections once again on 20.10.2017(Annexure-A15).

3. The applicant further submits that in one of his OA.724/2018 filed before this Tribunal, the 2<sup>nd</sup> respondent has stated that the new RRs of LEO(C) is under amendment with the approval of DoPT, UPSC, Min. of Law & Justice and has been

sent for Hindi translation. After Hindi translation, it will be sent to the press for notification. With this it is apparent that the respondents have already initiated and completed the process of amending the RRs 1984 in respect of LEO(C) and only the formality of Hindi translation of the same is pending. Despite the same, the 2<sup>nd</sup> respondent called for applications for the post of LEO(C) through the impugned notification dtd.23.8.2018(Annexure-A16) for filling up undisclosed number of vacancies under LDCE quota. The said examination has been made open to UDCs and Stenos with 5 years regular service as well as regularly appointed OS. The applicant made a representation to the 4<sup>th</sup> & 5<sup>th</sup> respondents on 28.8.2018(Annexure-A17) regarding the unconstitutional method of holding LDCE 2018 by R2. In reply dtd.5.9.2018(Annexure-A18) R4 stated that advice had been issued by the Commission with respect to amendment of RRs in April 2018 itself on the same. On 8.5.2018(Annexure-A19), 5<sup>th</sup> respondent has in clear terms issued an OM, categorically informing all ministries and departments that RRs must be updated forthwith as they are statutory in nature and that it was a matter of concern that recruitments are being made on the basis of RRs that are not updated and reflect the old position. In the draft RRs in respect of LEO(C), it has been observed that LDCE itself has been done away with as DoPT has not agreed to allow Stenos to appear in the LDCE 2018 exam. UDCs have been denied from appearing due to level jumping in pay scales and Stenos have been denied the same as their job is different from that of LEOs. Therefore, it would not be possible to hold the exam only in respect of 36 OSs as the said post of LEO(C) is also filled through Seniority cum fitness quota out of OS cadre thereby further reducing the strength of eligible candidates. Conducting of any LDCE 2018 for filling up vacant posts in respect of LEO(C), pending notification of amended RRs 2017 in respect of LEO(C) is

arbitrary, illegal and an attempt to overreach the guidelines, circulars and OMs issued by the DoPT time and again in this regard. The applicant has again sent a detailed representation to R2 through R3 on 7.9.2018(Annexure-A20) regarding illegalities that were being perpetuated by R2 by attempting to fill up an undisclosed number of posts of LEO(C) through LDCE 2018. On 11.10.2018, 2<sup>nd</sup> respondent has published the LEO(C) Amendment Rules 2018(Annexure-A21), wherein promotion through LDCE has been completely done away with and that apart UDCs and Stenos do not feature in the feeder cadre. In view of the same, the notice dtd.23.8.2018 has been rendered ineffective and as the RRs stand today LDCE is not contemplated as a promotional avenue to the post of LEO(C). The only mode of entry to the post of LEO(C) 85% through direct recruitment and 15% through seniority quota from the post of OS. Hence, any further process of recruitment for the post of LEO(C) can only be undertaken as per the RRs 2018 and not on the basis of any other old or unamended RRs. Irreparable loss would be caused to employees in the post of OS if other cadres are permitted to be promoted to the post of LEO(C) which is already suffering from acute stagnation and further could completely close the seniority cum merit promotional avenues for them in the event the illegal LDCE 2018 is conducted to fill up the post of LEO(C). When the RRs in respect of UDCs, Stenos and OSs were amended on 10.6.2011, 6.6.2013 and 3.9.2013 respectively, there is absolutely no explanation forthcoming as to why the RRs in respect of LEO(C) have been notified on 11.10.2018 after substantial delay. As per the DoPT instructions, there is time limit of 10 weeks in so far as notifying amended RRs 2017. The said time limit has not been adhered to. The 2<sup>nd</sup> respondent is embarking on a recruitment process that is not consistent with the VI CPC recommendations. He does not have discretion to initiate recruitment process

as per his whims and fancies. Therefore, the applicant has filed the present OA with a prayer to issue writ of certiorari or any other appropriate order or direction to quash LDCE 2018 Examination notice bearing No.Adm.I/4(01)/2017 – Annexure-A16 dtd.23.8.2018 issued by Respondent No.2 marked as Annexure-A16 as the same is violative of Labour Enforcement Officer (Amendment) Rules 2018 and Articles 14,16 and 21 of the Constitution of India.

4. On the contrary, the respondents in their reply statement have submitted that the notification dtd.23.8.2018 for conducting LDCE, 2018 has been circulated on the basis of the applicable then existing RRs of the LEO(C) on the date of notification as the notification has been issued for the vacancies arisen up to 1.11.2017 whereas the revised RRs has been notified on 12.10.2018 and it will be effective from prospective i.e. from the date of notification and 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 seniority list of OS, the applicant is at Sl.No.1. He may get promotion any time to the post of LEO(C) based on the available vacancy under seniority quota. If LDCE would have not been held, he would not lose anything as he will get promotion through promotion quota but the officials who are not eligible for promotion through promotion quota would be deprived of by the staying of the LDCE 2018 for LEO(C). As per DoPT instructions on the subject matter, recruitment rules are applicable prospectively, the legal position is that posts are to be filled up as per eligibility conditions prescribed in the recruitment rules in force at the time of occurrence of vacancy unless the recruitment rules are amended retrospectively. After revising the recruitment rules of the feeder grades, the RRs to the post of LEO(C) was

initiated to revise as per the instructions/guidelines of the Govt. of India on the subject matter. Since this was revised first time after 1984, various issues were coming in the matter. There were various deviations coming through the Ministry and this office to come to a conclusion. In this process, Ministry has made various queries on the proposal before sending the proposal to the DoPT for approval. In this regard, reply was given to the Ministry and power point presentation was also given to the Ministry to justify the revised proposal. Thereafter, the proposal was referred to DoPT and they also raised various issues for which replies were also submitted to the DoPT. The DoPT has finally approved the revised RRs on 28.2.2018 and UPSC has approved the proposal on 26.4.2018. Further Law & Justice(Legislative Division), Law & Justice (Rastra Bhasa Wing), Hon'ble MOS(IC), Labour & Employment has approved the proposal on 6.8.2018, 17.9.2018 and 9.10.2018 respectively. Subsequently the RRs was notified on 12.10.2018 in the Gazette of India. But vacancies under the LDCE are being taken only that have arisen up to 1.11.2017 i.e. much before all the above approvals. Since at the time of the vacancy under consideration for LDCE, RR 1984 was applicable, the vacancies are being filled up as per the then existing RRs. As such the LDCE exam is valid. In the last examination, the applicant appeared for the post of LEO(C) through LDCE but he was at Sl.No.48 out of 60 candidates in the merit list for the vacancies of 12. As such, he is aware that he may not be able to pass the examination being his previous competitive ranking and therefore he is only trying to create disturbance in the matter. There are many candidates who have been preparing for examination for many years and having hope to participate in the said examination as last chance. About 109 applications have also been received in the matter of LDCE, 2018. Therefore, the Tribunal may vacate the stay granted and also to dismiss the

OA being devoid of merit.

5. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The applicant has also filed written arguments note. The issue in this case relates to the conduct of Limited Departmental Competitive Examination(LDCE) for promotion to the cadre of Labour Enforcement Officers(Group-B Gaz.). As per the Labour Enforcement Officer(Central Recruitment Rules) 1984, the Limited Departmental Competitive Examinations were open to UDC/Stenographers with 5 years of regular service along with Office Superintendents to which category the applicant belongs. The earlier examination was conducted in the year 2011. But apparently the applicant could not succeed therein, he having got a rank of 48 out of 60 candidates whereas the number of vacancies was only 12. Even this examination of 2011 was challenged by the applicant in OA.No.446/2011. Vide order dtd.8.11.2011, this Tribunal dismissed the OA.446/2011 with the following order:

*“There is absolutely no merits in this OA. The applicant is also eligible to appear for the examination. When the Recruitment Rules are not modified, the respondents are bound to conduct the examination as per the Rules available now. Further, if the Recruitment Rules are amended, it will only be with prospective effect for future vacancies and for the existing vacancies, Recruitment Rules is as on the date of occurrence of vacancies/ on the date of recruitment procedure has been initiated for those vacancies, will apply.*

*The OA is dismissed at the admission stage itself.”*

6. The same being taken on challenge to the Hon'ble High Court of Karnataka also failed(Annexure-A8). Subsequent to this, the respondents had amended the rules relating to the recruitment to the post of UDC in 2011, to the Stenographers in June 2013 and to the Office Superintendents on 03.09.2013. The only amendment that was not done to the recruitment rules was to the grade of Labour Enforcement

Officers(LEO) which was finally done vide Annexure-A21 w.e.f. 11.10.2018. As per the latest amended rules, the concept of Limited Departmental Competitive Examination for the 15% promotion quota has been completely done away with. The applicant's main contention is that the earlier feeder category posts like UDC and Stenographer etc. were in the same pay band as that of the Office Superintendents but after the 6<sup>th</sup> CPC recommendations which brought in the Grade Pay system, the UDC and Stenographers were in Rs.2400 Grade Pay whereas the Office Superintendents were in Rs.4200 Grade pay. Therefore, treating the three categories as eligible to appear in the Limited Departmental Competitive Examination was anomalous providing an opportunity for the lower category staff with just 5 years experience to jump two levels. He also urges on the point that for promotion to his level i.e. Office Superintendent, as per the rules amended in September, 2013, an Upper Division Clerk(UDC) has to have 10 years of regular service in the grade to be eligible for promotion. He would therefore contend that an Upper Division Clerk who as per the existing recruitment rules has to have 10 years of regular service in the grade to be considered for promotion to his level of Office Superintendent, is allowed to sit for the Limited Departmental Competitive Examination for the higher post of LEO with just 5 years of service based on the rules of 1984. The draft recruitment rules for the LEO were finalized two years after the amendment to the UDC, Stenographers etc. that is in 2015 and a second draft was circulated in the year 2017. It is obvious that the respondents have taken an unconscionably long time to notify the rules relating to LEO. Now they would claim that the impugned notice at Annexure-A16 dtd.23.8.2018 is for the vacancies of LEO's that have arisen till 1.11.2017 since the old recruitment rules of 1984 were still valid as on that date, their notification of August, 2018 is valid and that the

LDCE has to be held with respect to the old RRs only. We are unable to see the logic of this contention besides the point raised by the applicant in his written argument that even if their contention is to be accepted relating to the vacancies which existed up to 1.11.2017, there is no logical position with respect to the vacancies which have arisen from 2.11.2017 till 11.10.2018. As we have already seen, the feeder category posts recruitment rules have all been amended and a stenographer cannot become an Office Superintendent as per the existing recruitment rules, but he can aspire to jump one level and become a Labour Enforcement Officer, Group-B Gazetted because of the provisions that existed in the 1984 rules which the respondents would like to rely upon in the conduct of examination notified in August, 2018. The respondents would also like to hinge their arguments based on the orders of this Tribunal in OA.No.446/2011(supra) giving them an opening to take the recruitment rules as existed on the date when the promotion process was initiated and they would claim that the vacancies arisen up to 1.11.2017 were considered by them. This is not apparent in Annexure-A16 where it is only mentioned that the existing vacancies in the grade of LEO are to be filled up on the basis of the said examination. Their now claiming a date 1.11.2017 appears more as an afterthought after filing of this OA. We also note that while the earlier examination notification mentioned about the number of vacancies to be filled up, in 2018 that is not mentioned. This adds force to the arguments of the applicant that the only purpose of the respondents for the conduct of this LDCE for LEO's after having amended the recruitment rules for all the feeder posts is only to enable some of the feeder category staff to clear the LDCE as they will not be eligible for the promotion as LEO after 11.10.2018 unless they become Office Superintendents. In OA.No.1692/2018 vide para-7 of the order dtd.21.06.2019, this

Tribunal had made a mention on the relevant point which is as follows:

*“Therefore, having waited from 2015 onwards when the M/o Health & Family Welfare had given specific directions, there cannot be any ground for the respondents to say that at least now the promotee should be appointed as he is eligible as per the existing rules. The Rules ought to have been amended in 2015 on receiving specific instructions from M/o Health & Family Welfare which was compounded by instructions from the DoPT. Having not done so, we do not think that it is correct and proper to give premium to an infraction because of the deliberate delay on the part of the respondents, this has happened. If we now allow promotion of this person also that will be compounding the infraction which we refuse to do. Therefore, OA is allowed.”*

7. In this case, as has been pointed out by the applicant and also accepted by the respondents, the UPSC and DoPT had both agreed for the amendments in April 2018 itself and infact the respondents were instructed to complete the notification of the revised recruitment rules within 10 weeks which ended in July 2018. From the reply of the respondents also, it is obvious that the only thing that was pending to be cleared for the amendment to the RRs for the LEO's was relating to the Hindi translation and the final approval by the Hon'ble Minister of State, Independent Charge of Labour & Employment. Therefore, it is obvious that the respondents having been very well aware that the imminent new recruitment rules will not permit certain category of staff to gain promotion through LDCE, went ahead with the impugned notice in utter disregard to the benefits that would accrue to the organisation by following a steamlined process of feeder categories and promotions. The applicant would contend that if the examination is held and the stenographers and UDCs who have put in 10 years of service and who are already in the Grade Pay of Rs.4200 only are made eligible, he would have no objection. However, this would neither be here nor there since the only question to be decided is whether even if technically correct, the respondents were justified in issuing the impugned notice when all but the final formal approval was pending in the amended

recruitment rules which had taken more than 5 years for the respondents to finalise. It is also brought to the notice that the DoPT had not agreed to allow UDCs and Stenographers for appearing in the LDCE examination due to level jumping and due to the fact that the Stenographers handled a different job from LEO(C). Having known all these, it is not acceptable on the part of the respondents to have gone ahead with the LDCE as per the impugned notification.

8. In view of all the above, the impugned notification at Annexure-A16 is quashed and the respondents are directed to follow the recruitment rules of LEO(C) as amended by them w.e.f. 11.10.2018 for filling up of the vacancies which are existing. The OA is allowed. No costs.

(C.V.SANKAR)  
MEMBER (A)

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

/ps/

**Annexures referred to by the applicant in OA.No.170/01790/2018**

- Annexure A1: Recruitment rules pertaining to Group B Gazetted post of Labour Enforcement Officer (Central)
- Annexure A2: Copy of the OM dtd.24.3.2009 issued by respondent No.5
- Annexure A3: Copy of the letter dtd.3.11.2009 issued by respondent No.2
- Annexure A4: Copy of the notice dtd.1.9.2011 issued by the respondent No.2
- Annexure-A5: Copy of the representation dtd.29.9.2011 of applicant
- Annexure-A6: Application Form of the applicant for the LDCE-2011
- Annexure-A7: Copy of the order dtd.8.11.2011 passed by Tribunal in OA.446/2011
- Annexure-A8: Copy of the order dtd.21.3.2012 passed by High Court of Karnataka in WP.No.15893/2012 (S-CAT)
- Annexure-A9: Reply of R2 dtd.1.11.2011 to the representation dtd.29.9.2011
- Annexure-A10: Copy of notification dtd.10.6.2011 i.r.o. amendment to RRs of UDC
- Annexure-A11: Copy of notification dtd.6.6.2013 i.r.o.amendment to RRs of Stenos I
- Annexure-A12: Copy of notification dtd.3.9.2013 i.r.o. amendment to RRs of OS
- Annexure-A13: Copy of objections dtd.15.11.2016 i.r.o. Draft RRs 2015 of LEO (C)
- Annexure-A14: Copy of the reply under the RTI Act, dtd.22.5.2015 issued by R2
- Annexure-A15: Copy of objections dtd.20.10.2017 i.r.o.Draft RRs 2017 of LEO (C)
- Annexure-A16: Copy of the impugned notice dtd.23.8.2018 issued by R2
- Annexure-A17: Copy of representation dtd.28.8.2018 sent to R4 and copied to R2
- Annexure-A18: Copy of the response of R4 dtd.5.9.2018
- Annexure-A19: Copy of the OM dtd.8.5.2018 issuede by R5
- Annexure-A20: Copy of the representation dtd.7.9.2018 a/w forwarding letter to the impugned notice
- Annexure-A21: Copy of the Labour Enforcement Officer (Central) Recruitment (Amendment) Rules 2018 dtd.11.10.2018
- Annexure-A22: Copy of the circular dtd.17.9.2012
- Annexure-A23: Office order dtd.1.11.2012 promoting UDCs to the post of OS

**Annexures with reply statement:**

-NIL-

**Annexures with written arguments note filed by the applicant:**

-NIL-

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