

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.795 of 2013

Date of Decision: 18th July, 2019

CORAM: R.VIJAYKUMAR, MEMBER (A)
R.N. SINGH, MEMBER (J)

Shri Narendra Kumar, age 27, Peon,
Residing at Naval Armament Depot,
Karanja, Taluka Uran, District Raigad,
Maharashtra 400 704.

.. ***Applicant***

(By Advocate Shri Vicky Nagrani)

VERSUS

1. Union of India, through the Secretary,
Ministry of Defence (Navy), South Block, New Delhi 110 011.
2. The Director General of Naval Armaments,
Integrated Headquarters, Ministry of Defence (Navy),
R.K. Puram, New Delhi 110 066.
3. The Chief General Manager, Naval Armament Depot,
Shahid Bhagat Singh Road, Mumbai 400 023.
4. The Flag Officer Commanding-in-Chief (for CCPO),
Headquarters, Western Naval Command,
Shahid Bhagat Singh Road, Mumbai 400 023.
5. Shri P.H.Patil, MTS (Ammn),
Naval Armament Depot, Karanja, Taluka Uran,
District Raigad, Maharashtra 400 704. ... ***Respondents***
(By Advocate Shri N.K.Rajpurohit and Shri P.Khosla, R-1 to 4)

ORDER (Oral)

Per : R.Vijaykumar, Member (Administrative)

Shri Vicky Nagrani, learned counsel
for the applicant.

2. Shri N.K.Rajpurohit and Shri P.Khosla,
learned counsels for the respondents Nos.1
to 4.
3. None for the respondent No.5.

4. This application has been filed on 31.10.2013 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :-

“8(a). this Hon'ble Tribunal be pleased to call for the records and proceedings of the Departmental Promotion Committee held on 6th June, 2013 and to declare the promotion of the Respondent No.5 as illegal, bad in law and to quash and set aside the same;

8(b). this Hon'ble Tribunal be pleased to declare that the Applicant is fit to be appointed and promoted to the post of LDC with effect from 14th June, 2013 as he is qualified and senior most;

8(c). this Hon'ble Tribunal that consequential benefits of the said promotion be given to the Applicant;

8(d). this Hon'ble Tribunal will be pleased to pass such other and further orders as deem fit in the fact and circumstances of the case;

8(e). the cost of this application be awarded to the applicant;

8(f). this Hon'ble Tribunal be pleased to quash and set aside order dtd. 11.12.2013 whereby the Applicant's request for grant of promotion to the post of Lower Division Clerk was rejected, though he is senior to Respondent No.5.”

5. The applicant commenced service as Peon in Group 'D' category with the respondents. He was recruited and selected by an advertisement issued by the respondent No.4 of the Western Naval Command, appointed in orders dated 07.09.2009 and in the same orders which assigned some appointees to the

Western Naval Command (R-4) and some to the Naval Armaments Depot (R-5) within which, the applicant came to be posted under respondent No.3 of the Naval Armaments Depot at Mumbai and the applicant has been working ever since with the respondent No.3 as per their instructions. He responded to the notification issued by the respondents Temporary Depot Order No.33/2013 (Annexure A-3) for participating in a Departmental Qualifying Examination for Promotion to the Post of LDC and it is clarified across the bar that the person so selected would be ranked for seniority in the LDC cadre, in order of merit according to the marks obtained by them in the said examination. This notification at paragraph No.4 refers to and invites employees of the Naval Armaments Organization, Mumbai who are prepared to work anywhere in India and apply as prescribed. The applicant applied for this post on the strength of his service from commencement of appointment up to the date of said notification and he is stated to have qualified in the examination as the list enclosed in the Temporary Depot Order No.15/2013 dated 20.03.2013 (Annexure A-5)

in which he is shown at Serial No.8 as Qualified. However, the respondents have on 14.06.2013 promoted only the two other persons who also qualified in the examination and omitted applicant's name. In reply to his representation dated 21.06.2013 against the orders of promotion for the other two persons issued on 14.06.2013, the respondents replied in their letter dated 19.07.2013 (Annexure A-7) stating that the applicant was borne on the strength of the Western Naval Command and have replied as under:-

“1. Refer to your representation dated 21 jun 2013.

2. It is intimated that IHQ, DGONA is the cadre Controlling Authority of Ministerial Cadre's of NAD's. DP/DR points are released by IHQ/DGONA for filling up the vacancies of LDC according to the sanctioned and Borne Strength. DP points are filled up by DPC at depot level from eligible Group 'C' employees. Group 'C' employees other than NAD roster require concurrence from respective Cadre Controlling Authority for consideration by DCP. Due to non-availability of subject concurrence, Shri Narendra Kumar, Peon of NAD, Karanja could not be considered by DPC.”

6. The learned counsel for the applicant urges that the applicant was not at fault and he had been directed and posted, in his appointment order, to the respondent No.3 organization and has been working there ever

since. Therefore, he submits that there is no reason for denying him for promotion in the organization in which he has worked ever since.

7. The learned for the respondents argues that although the Recruitment Rules are the same under SRO-80 in both the cadres, the roster and seniority of the respective cadres are maintained independently and therefore, it has not become possible for the respondents to extend the promotion to the applicant.

8. The orders of the respondents in their letter dated 19.07.2013 have been perused. The letter itself concedes that the Group 'C' employees (Group 'D' as recategorized under the VI Central Pay Commission) other than those on the NAD roster required concurrence from the respective Cadre Controlling Authority for consideration by the DPC and it was due to non-availability of such concurrence that the applicant could not be considered by the DPC. However, in the present case, it is entirely on record that the applicant was posted by Cadre Controlling Authority right from

appointment by the Respondent No.4 and allocation even at the outset with Respondent No.3. The Recruitment Rules which provides sanctioned strength under SRO-80 is also the same. Therefore, the issue raised by the respondents is entirely a technical matter of an extremely petty nature. The respondents have accommodated the applicant against the existing vacancies in their cadre as in the appointment order without any indication or forewarning of roster and at the moment when his consideration for departmental promotion has come up, they have suddenly discovered some reasons that required application of discretion by the respective Cadre Controlling Authority. However, there is no evidence or pleading putforth by respondents that they sought such dispensation given the peculiar facts and circumstances. It is quite apparent from the chronology of events that the Cadre Controlling Authority of the applicant namely Western Naval Command had already applied its mind at the time of appointment / posting and dispatched him for working under the respondent No.3 and

concurrence that comes along with such permanent deployment, which should have been considered appropriately by the respondents before issuing the impugned refusal letter and as well as for the purpose of conducting the DPC.

9. The reply affidavit on behalf of the respondent No.5 was filed on 11.03.2015. However, it is found that no one has been appearing on behalf of the respondent No.5 since 25.08.2015.

10. We have perused the reply filed by the respondent No.5 and we find that in such reply, the respondent No.5 has also raised the same objections as raised by the respondents Nos.1 to 4 in their pleadings.

11. In the facts and circumstances, without interfering into the selection and appointment of the respondent No.5, the respondents Nos.1 to 4 are directed to consider passing of appropriate orders with regard to the appointment of the applicant to the post of LDC within the available vacancies subject to the other aspects of his suitability by either the respondent No.3 or respondent No.4 as the case may be.

The applicant shall be entitled for all the consequential benefits i.e. seniority, fixation of his pay on notional basis. However, applicant is not entitled to any arrears.

12. In the aforesaid terms, this OA is allowed. The aforesaid exercise shall be completed by the respondents within a period of ten weeks from the date of receipt of certified copy of this order. There shall be no order as to costs.

(R.N. Singh)
Member (Judicial)

(R. Vijaykumar)
Member (Administrative)

*kmg**

JD
22/7/19