

**Central Administrative Tribunal
Principal Bench**

OA No.1009/2014



New Delhi, this the 28th day of November, 2019

Hon'ble Mr. R.N. Singh, Member (J)
Hon'ble Ms. Aradhana Johri, Member (A)

1. Mahesh Kumar,
S/o Shri Tejpal Singh,
Serving in the office of the
HQs CWE, Delhi,
Delhi Cantt-110010.
2. Pankaj Kumar,
S/o Shri Rambali,
Serving in the office of the
HQ CWE (Project),
Delhi Cantt-110010.
3. Rakesh Kumar,
S/o Shri Dayanand Sharma,
Serving in the office of the
Garrison Engineer, New Delhi,
Delhi Cantt-110010.

...Applicants

(By Advocate : Shri A.K. Trivedi)

Versus

1. Union of India,
Through it's Secretary,
Ministry of Defence,
South Block, New Delhi.
2. The Engineer-in-Chief,
E-in-C's Branch,
Army HQs, DHQ, PO,
Kashmir House, New Delhi-11.
3. The Chief Engineer,
HQs Chief Engineer,
Western Command,
Chandimandir.PIN-908543.

...Respondents

(By Advocate : Shri R.K. Sharma)

ORDER (ORAL)**Hon'ble Ms. Aradhana Johri, Member (A) :-**

The applicants S/Sh Mahesh Kumar, Pankaj Kumar and Rakesh Kumar were appointed to the post of Khansama-Chowkidar under the respondents after passing through the selection process on 04.02.2004 and 06.02.2004. As per the Recruitment Rules published in the Standing Orders-1971, issued by Military Engineer Services, Engineer-in-Chief Branch, Army Headquarters, Delhi, the post of Khansama-Chowkidar was Class-IV Non-Industrial. As per the MES Group 'C' Recruitment Rules, 2004, the post of Lower Division Clerk (LDC) was to be filled through 75% by absorption, failing which by direct recruitment, 15% by promotion from Gp.'D' Matriculate Non-Industrial Employees, failing which by absorption, failing which by direct recruitment and 10% by deputation/re-employment (For ex-servicemen), in accordance with Ex-servicemen (Re-employment in Central Services and Posts) Rules, 1979, failing which by absorption, failing both by direct recruitment.

2. The applicants appeared in the written examination for the post of LDC and were declared successful. Their names were placed on the panel for promotion to LDC



from Group 'D' employees vide SRO No.12/S/2013 dated 03.09.2013 (Annexure-A/8). They were issued posting orders vide PO No.94/2013 dated 14.09.2013 (Annexure-A/9). The Recruitment Rules (RRs) for the post of Khansama-Chowkidar were amended vide SRO-48 dated 27.06.2012, by which the post of Khansama-Chowkidar was classified as Group 'C'. The orders were issued on 04.03.2014 and 05.03.2014, by which the applicants were intimated that since the post of Khansama-Chowkidar was a Group 'C' Non-Industrial post, their promotion to LDC grade is in violation of the RRs for the post, which, needs to be cancelled and reverted to the original post.

3. The applicants have stated that at the point of time when they were allowed to appear for LDC examination, the RRs that were in force categorised the post of Chowkidar-Khansama as Class-IV, and they were eligible to be selected for LDC post against the relevant quota, after clearing the relevant examination. Any subsequent revision of the RRs cannot be retrospectively used to adversely affect the interests of the applicants. They have cited several rulings in support of their contention.



4. The respondents have denied the claims of the applicants and stated that as per the RRs of 27.06.2012, Khansama-Chowkidar is a Group 'C' Non-Industrial post, hence, the applicants are not eligible for promotion to LDC.

5. The applicants have cited decision of Hon'ble Apex Court in the case of **Mohd. Raisul Islam And Others Vs. Gokul Mohan Hazarika and Others** (2010) 7 SCC 560, wherein, it was held that if the process of selection was started under un-amended rules, then, respondents cannot take the stand that they were entitled not to make appointments of persons from amongst the candidates selected in terms of the process initiated under the old Rules. Relevant para of the said judgment reads as under :-

“37. There can be no dispute that as a matter of policy the Government may take a conscious decision not to fill up vacancies for justifiable reasons, but at the same time, having started a process of selection under the unamended Rules, it cannot take the stand that it still was entitled not to make appointments of persons from amongst the candidates selected in terms of the process initiated under the old Rules. In fact, in the instant case, the recommendation made by the APSC was submitted to the Government on 22nd June, 1986, before the amended Rules came into operation on 21st July, 1986 whereby the quota

system was discarded. In such a situation, in our view, the decision in K. Ramulu's case (supra) cannot be applied to the facts of this case.”



6. They have also cited the case of **Vikas Pratap Singh & Ors. Vs. State of Chhattisgarh & Ors.** Civil Appeal Nos.5318-5320 of 2013, in which the Hon'ble Apex Court set aside the termination order on the ground that the concerned persons had successfully undergone training and are efficiently serving the respondents for more than three years and undoubtedly their termination would not only impinge upon the economic security of the applicants and their dependents but also adversely affect their careers. The relevant para of the judgment reads as under :-

“26. In our considered view, the appellants have successfully undergone training and are efficiently serving the respondent-State for more than three years and undoubtedly their termination would not only impinge upon the economic security of the appellants and their dependants but also adversely affect their careers. This would be highly unjust and grossly unfair to the appellants who are innocent appointees of an erroneous evaluation of the answer scripts. However, their continuation in service should neither give any unfair advantage to the appellants nor cause undue prejudice to the candidates selected qua the revised merit list.”



7. In the light of the above rulings of the Hon'ble Supreme Court, it emerges that if the process for selection has been commenced under certain RRs, then it cannot be set aside on the grounds that fresh RRs have come into force in the meantime. The case of the applicants is similar. Further, it is also observed that they have already been serving in the capacity of LDCs before notice was given for their reversion to Khansama-Chowkidar.

8. We are of the view that for the aforementioned reasons, there is merit in the OA, which is allowed. No orders as to costs.

(Aradhana Johri)
Member (A)

(R.N.Singh)
Member (J)

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