

Brief History of the court cases regarding 270 & 147 SDEs LDCE quota retrospect promotions - Drafted & complied by veteran leader Com. A.Sugumaran, Ex-Circle Secretary, TESA(I), Tamilnadu Circle; who is one of the applicant in the 270 Court Case.

Origin:

The second competitive exam was conducted in May 1986 for the vacancies of 1983, 1984 and 1985 for 150, 200 & 102 posts respectively. The successful persons, about 300 for the 452 vacancies, were promoted and placed in the year 1984 and 1985 keeping the unfilled posts in 1983. Some persons went to Ernakulam CAT vide O.A.No.1982/95 (Jolly Jacob & others) that they should be given seniority from 1983 onwards demanding competitive vacancies should be filled up only by 1/3 quota. The CAT Ernakulam gave the verdict as:

- 1) The Dept. should calculate the vacancies meant for 1/3rd quota from 1981 to 1986 year-wise
- 2) Whether examination is held in those years for 1/3rd quota and how many persons qualified in LDC.
- 3) If in a year, any vacancies are filled up by persons passed in qualifying exam and not LDC, they should vacate those posts and filled up only by persons qualified in LDC.

This verdict was pronounced on 3-2-1998.

Quoting this judgement, Mr.K.S.Hegde, SDE Karwar, KTK filed a case in Bangalore CAT vide O.A. No:961/1999 that there are a number of vacancies of 1/3rd quota were filled by 2/3rd quota persons from the year 1982 onwards as the persons passed in LDC were less than the vacancies. He had written LDC exam held in 1988 and could not be promoted in that year as the vacancies for that year is less. Had the Dept. carried over the unfilled vacancies of earlier years meant for 1/3rd quota, he could have been promoted in that year.

The Dept. reply was that after Ernakulam CAT judgement, it had taken an internal decision not to carry over the unfilled posts with the approval of the competent authority. As the Dept. could not produce the copy of that decision, the CAT had directed the Dept. **“to calculate the vacancy of the year 1988 by carry forwarding the earlier years unfilled 1/3rd quota and treat the applicant eligible for promotion against the any of the carried over vacancies from 1982 to 1988 and give him all the consequential benefits”.**

(It is to be noted that this is not a general relief and only for a particular person.)

Based on this judgement, the Dept. promoted not only K.S.Hegde but 269 others by an order dated 1-2-2001, and given them seniority in 1988 DPC. thus giving them **13 years restrospective promotion.**

Our case:-

The order dated 1-2-2001 promoting 270 persons 13 years retrospectively was challenged by T.Nagarajan and 9 others in Madras CAT vide O.A.No. 305/2001 on the ground that:-

- 1) The impugned order by which 270 officers were retrospectively declared successful and granted promotion has been passed without application of mind.

- 2) The 270 persons never challenged their non promotion in 1/3rd quota when others were promoted in 1988. They also accepted their promotion in 2/3rd quota in 1994 onwards. Hence the respondents can not unsettle the rights accrued to the applicants at this distance of time and grant them a jump in seniority over 10000 positions that too after 14 years.
- 3) Had the respondents announced the carried over vacancies in 1988 itself which will be much more than the announced at that time, the applicants and many others could have appeared considering the wider chances of getting selected (only 3 chances are allowed).
- 4) The order of the tribunals Ernakulam, Bangalore and other benches relied upon by the respondents do not grant general relief. In any case, they can not be put against the applicants since they were not party to their proceedings.
- 5) The action of the respondents quoting supreme court's decision in 2000SCC(L&S)835(union of India Vs Madras SC&ST Association) is most misleading and malafied as the supreme court's judgement did not deal with competitive exam at all.
- 6) The impugned order is in violation of fundamental rights under articles 14 and 16 of the constitution and is most unfair, unreasonable and irrational.
- 7) The impugned order is also illegal for the rules do not provide any retrospective seniority. No person can be granted seniority for the period they did not even officiate in higher post.

Meanwhile CAT in order to differentiate from other CAT judgements and to order the applicants to publish in news papers of different languages so that all the others who can join as respondents can join there by seeing that the principle of res judicata does not hit.

The CAT observed that the Dept. did not follow the DOP order of 1985 on fixing seniority and carrying over the vacancies. (For example if promotee and DR are to be fixed on 1:1 basis and in a particular year 50 DR are to be recruited but only 30 have joined, then fix the seniority up to 60 by giving 1:1 for the 30 DR and fill up the remaining 40 by promotees. For next year add 20 vacancies to DR quota which was filled up this year in excess of promotee quota) **Thus only vacancies can be carried over and not the posts.** And secondly CAT observed that seniority comes only after appointment. Even before appointment seniority can not be given.

CAT Madras ordered:-

1) The order of the Dept. dated 1-2-2001 is not valid as the Dept. neither followed DOP rule nor the Natural justice. It was further found that declaration of 270 candidates as successful and their seniority has to be recalculated with retrospective effect was invalid as the candidates appointed on the basis of LDCE cannot have retrospective appointment. For the aforesaid purpose, the Tribunal relied upon the decision of the Supreme Court reported in 2000 SCC (L&S) 977 (SURAJ PARKASH GUPTA & OTHERS v. STATE OF JAMMU & KASHMIR AND OTHERS, Paragraphs 80 and 81). **The Tribunal further referred to an earlier order of the Hyderabad Bench wherein, while deciding O.A.Nos.1070/1993, 772/89 and 611/90, the Hyderabad Bench held that the candidates on the basis of LDCE quota appointed in June 1985 could not have been given the benefit of retrospective promotion.** It was also found that

many candidates who had passed the qualifying examination held in 1987 and 1988 were given promotion effecting from earlier dates, even though they were not eligible. On the basis of the aforesaid conclusions, the Tribunal allowed the Original Application.

2) The CAT observed that the O.As of other Tribunals are not hitting the principles of res judicata as these applicants were not made the party in those cases where in here all persons in the Dept. were made respondents.

3) The 269 persons can be declared passed on 1-2-2001 and they are free to take either 2/3rd quota promotion or 1/3rd quota which ever is advantage to them.

4) Since Bangalore CAT has specifically given relief to K.S.Hegde, he is exempted by this order.

Dept. When it was implementing all CAT orders obtained by 1/3rd quota persons not only for them but for all similarly placed persons, filed writ petition in Madras High court vide W.P.21961 of 2001.

The Madras bench of High court dismissed the writ petition Observing the following:

13. In the present case, however, the factual matrix appears to be different. In the present case, LDCE had been held during the year 1987 and 1988 and some persons had been promoted on that basis. The writ petitioners (Respondent Nos.6,7,9 & 11 in the O.A.), even though they had appeared at such examination, had not been promoted and subsequently they got their promotion in 1994 onwards by the normal method coming within 2/3rd quota. On the other hand, the applicants, who are the contesting respondents in both the writ petitions, had also been promoted earlier on the basis of the Departmental Qualifying Examination within the very same 2/3rd quota. It is not that the results of the examination held during 1987 and 1988 had been stayed or not published. On the basis of such examination, some persons had been promoted and others had not been promoted. It may be that this was on the basis of the wrong calculation made by the Department, but the glaring fact remains that even though the writ petitioners (Respondent Nos.6,7,9 & 11 in the O.A.) had appeared at the examination, they were not accorded promotion and, on the other hand, they had accepted the promotion offered to them through the normal method within the quota of 2/3rd. **The process adopted by the Central Government in 2001, by antedating the seniority of such persons on the ground that they had appeared in the competitive examination in 1987 and had qualified, has the effect of unsettling the seniority of employees which had already been settled.** The effect of the decision decided by the Supreme Court was to give notional date of promotion from an earlier date which in fact affected none, not even the Central Government, whereas the action now taken by the Department has the effect of affecting all other promotees who were already holding the promotional post on the basis of regular promotion.

15. Clause 2(iii) of Appendix I relates to inter-se seniority. It only means that upon being promoted seniority shall be in the ratio of 2:1 starting with the officers selected by the method of selection by the Departmental Promotion Committee on the basis of Departmental Qualifying Examination. Reading of

such clause as a whole only means that seniority has to be fixed between the promotees in the above ratio of 2:1 i.e., two promotees coming within 2/3rd quota would be followed by one promotee coming within the merit quota. It only relates to seniority among the promotees promoted on the basis of the same qualifying examination. However, **it does not contemplate that if the actual promotion takes place later on, such promotion can be antedated to the date of the holding of such competitive examination.** If the facts of the present case are examined, it appears that the writ petitioners (Respondent Nos.6,7,9 & 11 in the O.A.) were actually promoted only from 1993-94 or 1994-95 onwards, whereas the applicants before the Tribunal had been promoted much earlier. **If the persons who were not promoted immediately, even though they had qualified in the LDCE, they could have ventilated their grievance. Not only they had kept quiet at that time, but they had accepted the promotion subsequently without any demur.**

16. In a very recent decision reported in (2006) 11 SCC 709 (COI.B.J. AKKARA (RETD) v. GOVERNMENT OF INDIA & OTHERS), the Supreme Court has observed that mere implementation of some stray decision of a Tribunal by the Central Government would not mean that the principle in such decision becomes binding for all purposes, even though such decision might have become final for the parties concerned. In the present case, the Tribunal has rightly distinguished the orders passed by the other Benches of the Central Administrative Tribunal.

17. Keeping in view the peculiar facts and circumstances of this case, which have been noticed earlier, we do not find there is any scope to interfere with the decision of the Central Administrative Tribunal. The writ petitions are therefore dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Regarding 147 promotions recently issued:

Since the LDCE was stopped from 1990 onwards, some people filed case in Ernakulam CAT vide O.A.No.1497/1996 asking the dept. to conduct LDCE. Accordingly the LDCE was conducted in 2000-2003. It seems that George Paul and Jose vide their Original petition No.37134/2001 in which this K.S.Hegde joined as additional applicant (How a person from Karnataka was allowed in Kerala high court, I do not know) challenged the seniority no.2 and the judgement was given on 13-7-2006 directing the dept. to prepare a seniority list incorporating the applicants in appropriate position and publish in the news paper in THE HINDU and THE INDIAN EXPRESS inviting objections if any.

A contempt petition was filed by this K.S.Hegde against the dept. stating that the dept. has not implemented the original order. The dept. in reply to the CP, stated that it had prepared and circulated a seniority list as per the court order (a copy was given to court) and hence there is no contempt. The court had dismissed the contempt petition stating that on seeing the list, even then ,if the applicants are aggrieved , they can approach appropriate courts.

This judgement does not direct the dept. to promote 147 persons and keep them in the seniority list with 1989 DPC onwards. The fact is that these people wrote the LDCE in 2002&2003 for the vacancies of 1994,95 &96. They should be interpolated in the DPC of 1998 and not in 1989.

If Madras high court judgement is implemented, this 147 list will become null and void.

-----*

Comrades to note:-

We are not against competitive candidates. In fact, after 1st comp. exam which was made fate accomplice, we only printed books for comp. exam and asked our comrades to write. We never bothered to work under a junior who got promotion through comp. exam and working all along.

The pertinent question here is, when all the posts declared for particular exam. was filled up at that time, and after 14 years if the department tells that they wrongly calculated the vacancies at that time and wants to promote the people who were already working as SDEs under 2/3rd quota 14 years retrospectively superceding about 15000 seniors can not be acceptable. For example, a person of 1981 recruit who attended the 1988 comp. exam. could not get through at that time, is now promoted in 1986 DPC, occupying seniority before 1969 recruit. There by unsettling entire SDE seniority lists.

If this is allowed to continue, people who are going to write comp. exam in 2011, will be placed in 1990 DPC (senior to 1971 recruit). More over there will not be any permanent seniority list in SDE cadre as every year, somebody will be going up and the seniority will be going on changing. Comrades should think that this is not one time promotion of 270 persons and stops. Already following this, 147 has come and this will be a continuous process and in future what we stated earlier, is going to happen. Department can not give gaurentee that hence forth this will not happen. People will go to court and follow the seniority after 147.

- Can the association
- 1) be a mute spectator on this issue.
 - 2) allow the dept. to have a floating seniority list for SDE cadre.
 - 3) allowing persons writing comp. exam today and get promotion to SDE retrospectively and becoming STS next day when 15000 seniors today are to watch this helplessly.
 - 4) think that it follows strict trade union principles by not intervening in this case.
 - 5) simply believe that getting a good number of promotion whether they are eligible or not is the moto instead of getting promotions to the eligible persons.

Comrades, you think and decide whether we follow the correct path or not.

-----*