

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
ORIGINAL APPLICATION NO.60/86/2021**

ORDER RESERVED ON 10.03.2021

DATE OF ORDER: 03.05.2021

CORAM:

HON'BLE SHRI SURESH KUMAR MONGA, MEMBER (J)

(On video conference from Central Administrative Tribunal, Bangalore Bench at Bangalore)

HON'BLE SHRI RAKESH KUMAR GUPTA, MEMBER (A)

(On video conference from Central Administrative Tribunal, Bangalore Bench at Bangalore)

Satish Kumar, aged 51 years, son of Shri Kahan Chand
Sub Divisional Engineer, Cantonment Board
83, Jhoke Road, Ferozepur Cantt.
Resident of House No.7, Street No.1
Dashmesh Nagar, Ferozepur City, Punjab.

....Applicant

(By Advocate Shri G.S. Bal, Sr. Advocate with Ms. Mandeep Kaur – through video conference)

Vs.

1. Director General of Defence Estates
Govt. of India, Ministry of Defence
Directorate General Defence Estates
Raksha Sampda Bhawan
Ulaanbaatar Marg, Delhi Cannt-110010.

2. Chief Executive Officer
Cantonment Board, 83, Jhoke Road
Ferozepur Cantt.

....Respondents

(By Advocate Shri Sanjay Goyal, SCGSC – through video conference)

ORDER**PER: RAKESH KUMAR GUPTA, MEMBER (A)**

1. The applicant had filed CWP No.3420/2020 & 6970/2020 before the Hon'ble High Court of Punjab and Haryana, Chandigarh inter alia seeking appointment to the post of Chief Executive Officer in the Cantonment Board. Both the petitions were together on the question of jurisdiction of the High Court in the matter. Both the petitions were ordered to be transferred to this Tribunal for hearing. The prayer of the petitioner to allow him to avail the remedy before this Tribunal was allowed and the complete paper books of both these petitions were sent to this Tribunal for proper adjudication of the claim of the petitioners. The case transferred from Hon'ble High Court of Punjab & Haryana vide order dated 13.01.2021 is registered as OA.No.86/2021 before this Tribunal.
2. Since the pleadings including written statements of the respondents are already placed on record and since the learned Senior Advocate for the applicant stated that there was no need to file any rejoinder to the said written statements, hence, the pleadings were treated to be complete and the matter was heard finally.
3. The applicant has filed the present Original Application under Section 19 of the Administrative Tribunal's Act 1985 seeking the following relief:

“Writ of mandamus be issued directing the respondents to offer appointment to the petitioner as Chief Executive Officer Group-B, Cantonment Board, petitioner being next in the merit list”.
4. The applicant in his pleadings has averred as follows:

- a. The petitioner was appointed as Junior Engineer on 27.05.1993 in Cantonment Board, Ferozepur on a regular basis. He was subsequently promoted as Sub Divisional Engineer on 21.06.2013.
- b. The respondents vide notification dated 28.06.2018 (Annexure-P1) invited applications for holding limited departmental examination for recruitment of Chief Executive Officers Group-B Gazetted in the pay scale of Level-7 (revised pay scale of Rs.9300-34800) (PB-2) with Grade Pay of Rs.4600/-.
- c. The results of the said examination were declared by the office of respondent No.1 vide letter dated 09.09.2019. A perusal of the results showed that against three available vacancies, names of four candidates were recommended. The applicant obtained 160 marks and one Sh. Uma Shankar obtained 161 marks.
- d. However, since the petitioner was not satisfied with the marks obtained by him, he along with Shri Uma Shankar applied for revaluation. Consequently, marks of Shri Uma Shankar were reduced from 161 to 154 and marks of the applicant were increased from 160 to 160.50. Consequently, in place of Shri Uma Shankar at merit No.4, the name of the applicant appeared at merit No.4 and the final merit list as prepared by the respondents in this regard is as under:

S/Sh.	Marks Obtained
1. Satish V Mannurkar	195.00

2. Sudhir Kumar	171.00
3. Mabel Christian	165.00
4. Satish Kumar (Applicant)	160.50

- e. Shri Sudhir Kumar shown at merit No.2 was not otherwise eligible and his candidature had wrongly been accepted. Certain representations were made to respondent No.1 against his candidature. Under these circumstances an explanation was called from the Chief Executive Officer, Cantonment Board, Meerut Cantt as to how the candidature of Shri Sudhir Kumar was forwarded by him, for the limited departmental examination. But still when no action was taken in this regard by respondents, hence applicant filed CWP No.3420/2020.
- f. The applicant has come to know from reliable sources that person at Merit No.1 Shri Satish V. Mannurkar has refused to join as Chief Executive officer (Group-B). The information was also obtained under RTI from the respondents, that Shri Satish V. Mannurkar, Assistant Engineer, Cantonment Board, Belgaum has given his unwillingness to accept the post of CEO (Group-B) vide his letter dated 10.02.2020.
- g. Under these circumstances, the applicant submitted a representation dated 13.02.2020 through proper channel requesting that since person at Merit No.1 has refused to accept appointment, he being next in the merit be offered appointment as CEO (Group-B).
- h. In this case, law is well settled that irrespective of the fact as to whether any waiting list is maintained or not, if any post advertised remains

vacant and next candidate in merit list is available, appointment against that post is liable to be offered to such candidate next in the merit list. In this regard, some of the judgments of the Hon'ble High Court are appended at Annexure-P8.

- i. Thus, in view of the settled law, the respondent No.1 is duty bound to offer appointment to the applicant, since candidate at merit No.1 has refused to accept the appointment. Thus, out of three posts to be filled up, one post remains unfilled and in view of the law laid down, the said vacant post having become available is liable to be offered to the applicant.

5. The respondents, in their reply statement have averred as follows:

- a. The Defence Estates Organization is a Central Government organization under Government of India, Ministry of Defence and is headed by the Director General, Defence Estates. The Organization is having various cadres of 'A' 'B' & 'C' posts, including a Cadre of CEO Group-B posts. The recruitment/appointment to all these posts are to be made in accordance with the relevant Recruitment Rules as notified by the Government of India.
- b. There are a total of 24 sanctioned posts of CEO Group-B and the appointment/recruitment to these posts are governed by the "Defence Estates Service (Cantonment Executive Officer) (Group-B) Recruitment Rules, 1987, which was notified vide SRO No.378 in the Gazette of

India dated 09.12.1987. The method of recruitment to the post of CEO Group-B, as prescribed in the *ibid* Recruitment Rules, is as under:-

- I. 45% by promotion by Limited Departmental Exam conducted by the Ministry of Defence
- II. 55% by transfer on the basis of Limited Departmental Exam conducted by Ministry of Defence.

c. The eligibility criterion as prescribed in the *ibid* Recruitment Rules for appointment to the post of CEO Group-B, is as under:-

Promotion:

- I. 10% by Office Supdt. in the Indian Defence Estates Service with 3 years regular service in the Grade.
- II. 35% by officers in the grade of Office Supdt., Stenographer Gde-I and Junior Translator who have rendered 20 years total regular service.

Note: While computing 20 years of qualifying service, experience of an employee in any other department of the Central Government will be taken into account provided he has been permanently absorbed in the Defence Estates Service/Cantt. Boards as the case may be.

Transfer:

On the basis of Limited Departmental Exam from

- I. 45% of vacancies from employees of the Cantt. Boards drawing basic pay of not less than Rs.1400/- per month and passed Matriculation examination from a recognized university/board/school or equivalent.

AND

Have rendered 20 years total regular service to the Cantt. Board

- II. 10% of the vacancies from Ex-Serviceman of the rank of Subedar Major/Subedar or equivalent who are still in service but are about to retire or transferred to the reserve within a

year shall also be eligible to appear at the competitive examination. In the event of their selection before retiring they shall be appointed on transfer on deputation basis to be absorbed on re-employment subsequently on their retirement from Armed Service.

Commissions shall be consulted for appointment officers from the Cantt. Boards/Ex-serviceman on transfer basis.

- d. There were a total 18 vacancies of CEO Group-B, as per details given below, which were required to be filled by the prescribed method of holding a Limited Departmental Examination:

SN	Category	No. of Posts
1.	Cantonment Board Stream	06
2.	Defence Estates Stream :- (i) Office Supdt. Gde-I (now OS) in the Indian Defence Estates Service with 3 years' regular service in the Grade (ii) Officers in the grade of Office Supdt. Gde-I (now OS), Stenographer Gde-I and Junior Translator who have rendered 20 years of total regular service	02 08
3.	Ex-Serviceman Stream	02
	Total	18

- e. The respondent No.1, being the Competent Authority, vide letter dated 28.06.2018, had issued notification for holding Limited Departmental Examination for appointment to the post of CEO Group-B in Defence Estates Organisation and invited applications from the eligible employees of Cantonment Board Stream, Defence Estates Stream and Ex-Serviceman stream. The last date for receipt of application form was fixed as 01.08.2018. It is pertinent to mention here that no provision for

preparation of a waiting list of Reserve list or Extended Panel was made in the aforesaid notification dated 28.06.2018 for considering the names of candidates beyond the number of notified vacancies, nor any parameters or modalities for same were devised.

- f. The reservation for SC and ST categories has also been made in accordance with extant government instructions and post reserved for these categories, as under:-

Sl. No.	Stream	Total vacancy	Gen	SC	ST
1.	Cantonment Board Stream & Ex-Serviceman Stream	08*	05*	02	01
2.	Defence Estates Stream	10	08	01	01

*Note: 02 Posts reserved for Ex-Serviceman

- g. The applications received from eligible employees were scrutinized in accordance with the eligibility criteria prescribed in the Recruitment Rules of 1987 as well as information furnished by the applicants in their application form. At the first instance, total 99 officials were found eligible from Cantonment as well as Defence Estates Streams. Accordingly, the candidature of these candidates, including petitioner, were admitted provisionally, subject to verification of their eligibility in due course and admit cards were issued to them. The LDE was held on 19th & 20th July, 2019.

- h. The minimum qualifying marks prescribed for the said LDE was 40% in each paper and 50% in the aggregate for UR candidates and 35% in each paper and 45% in the aggregate for SC/ST candidates.
- i. The result of the LDE was declared vide Notification dated 30.08.2019. Out of 56 candidates who appeared in LDE from Cantonment Board stream, only 07 candidates qualified in the LDE. As the vacancies in UR category was only 03 (after excluding posts reserved for Ex-Servicemen), the top 03 scorers on the basis of merits were provisionally recommended for further processing of their cases in accordance with Recruitment Rules of 1987 for appointment to the post of CEO Group-B, subject to verification of their candidatures, testimonials and other service records and clearance from vigilance angle. Here again while declaring the aforesaid results no mention was made in the notification dated 30.08.2019 (Annexure-R1) regarding any waiting list/Reserve list or Extended Panel for considering the candidature of any other person beyond the names recommended for selection.
- j. In view of the above, the requisite information in respect of all concerned candidates, who were provisionally declared as qualified in the LDE vide notification dated 30.08.2019, was sought from their concerned Controlling Offices. The post of CEO Group-B is a central Civil Post (Group 'B' Gazetted) and thus, the person so appointed to the said post, becomes, a Central Govt. employee.

- k. That after confirmation regarding fulfilment of eligibility criteria by the concerned candidates declared as qualified in the said LDE for appointment as CEO Group-B in Defence Estates Organization from Cantonment Board Stream from their respective Controlling Offices, the offer of appointment to those successful candidates was made and out of 03 UR category candidates, 01 candidate, namely, Shri Satish V Mannurkar, has declined to join and rest 02 UR category candidates, have joined the post.
1. This was a Limited Departmental Examination and no provision for extended panel or waiting list or reserve list was ever contemplated nor any such panel/list was ever prepared or got approved from the Competent Authority while notifying the vacancies or declaring the result of the said examination. And since no such proposal was ever contemplated or approved by the Competent Authority at any stage of selection process, therefore, the unfilled vacancy on account of unwillingness of any selected candidate, is required to be filled afresh through prescribed method. Any subsequent attempt to prepare a waiting list/Reserve list/Extended Panel after declaration of results shall be illegal and de hors the selection process. Same shall also prejudice the cases of other candidates and bound to be legally questionable and not sustainable. Accordingly, the unfilled vacancy on account of non-joining by the selected candidate, namely, Shri Satish V Mannurkar, has been taken into consideration by the Department for filling up the same along

with other available vacancies in the ensuing Limited Departmental Examination, for which notification is being issued shortly.

- m. The facts mentioned by the applicant that *'against three available vacancies, names of following four candidates were recommended'* are factually incorrect and misleading facts produced before this Tribunal. The answering-respondent would like to again clarify that it has already been stated in earlier paragraphs that there were a total 6 vacancies to be filled up from Cantonment Board Stream and out of which, 2 posts reserved for SC category, 1 post reserved for ST category and remaining 3 vacancies to be filled by unreserved categories. Further, against the 3 unreserved category vacancies, out of total qualified candidates, 3 meritorious UR candidates have been recommended and against 2 vacancies reserved for SC category, only 1 candidate has qualified in the LDE, hence, his name was recommended against vacancies reserved for SC Category and 1 vacancy remained unfilled due to non-availability of qualified candidate from SC category in LDE. No candidate from ST category has qualified in the LDE and therefore, the vacancy reserved for ST category remained unfilled.
- n. Shri Uma Shankar has also represented in the matter with regard to reduction of his aggregated marks in re-evaluation and the said representation is presently under examination and consideration.

- o. The contention that as per information ascertained from the controlling office of one Shri Sudhir Kumar, it was observed that he was holding the post of Accountant in Cantonment Board, Meerut at the time of applying for the post of CEO Group-B and as per the Establishment Folder of the said office, which was duly approved by the Competent Authority, the post of Accountant Grade-I in Cantonment Board, Meerut was sanctioned in the pre-revised pay scale of Rs.1400-40-1800-EB-50-2300 (4th Pay Commission). It is evident from the above facts that Shri Sudhir Kumar on the crucial date of determination of eligibility i.e. 01.08.2018, was holding the post carrying the pay not less than of Rs.1400/- P.M. and thus, he fulfilled the minimum eligibility criteria as prescribed in the Recruitment Rules of 1987, for appearing in the LDE and eligible for appointment to the post of CEO Group-B, consequent upon qualifying the LDE. The averments of the applicant that Shri Sudhir Kumar is not fulfilling the eligibility condition, is misrepresentation of facts with ulterior motive to mislead the Tribunal. The filing of WP No.3420/2020 by the applicant is not disputed.
- p. There is no irregularity, illegality or arbitrary exercise in selection of Shri Sudhir Kumar and in rejection of applicant's representation. Further, there is no discrimination against the applicant and he is not entitled to get any favourable relief. These facts have clearly been brought to the kind notice of the Hon'ble Court by the answering

respondent, while filing the counter/reply affidavit in the CWP No.3420 of 2020.

- q. It is also stated that neither any parameter or modalities for preparation of such waiting list/reserve list or extended panel were ever worked out by the respondents nor any mention regarding same was made in the results of the limited Departmental examination declared vide notification dated 30.08.2019. Accordingly, the list of qualified candidates up to the number of notified vacancies was prepared and got approved from the Competent Authority. Therefore, the applicant is not entitled for appointment to the CEO Group 'B' post consequent upon unwillingness of any successful candidate recommended for selection on the basis of results of LDE as such waiting list/reserve list was neither prepared nor approved by the Competent Authority in the instant case.

6. Heard learned counsels for the parties.

7. Shri G.S. Bal, learned counsel for the applicant has, during the course of his arguments, cited various court cases which, according to him, provided for appointment of candidates in the waiting list to fill up all the advertised vacancies consistent with the principles of equality laid down in Article 14 and 16(1) of the Constitution. The following court cases have been cited by him during the course of arguments:

- i. *State of Haryana and others versus Gajraj Singh* passed by the High Court of Punjab & Haryana, on 20th April, 2011, in LPA No: 716 of 2011.
 - ii. *Digvijay Pal Sharma vs. State of Punjab & Others* passed by the High Court of Punjab & Haryana, on 4th March, 2008, in CWP No: 8121 of 2002.
 - iii. *Shilpa Gupta vs. State of Punjab & Others* passed by the High Court of Punjab & Haryana, on 2nd March, 2016, in CWP No: 20393 of 2015.
 - iv. *Ravinderjeet Singh and others vs. State of Punjab & Others* passed by the High Court of Punjab & Haryana, on 8th April, 2013, in LPA No: 2257 of 2011, CWP No: 4102 of 2002 and CWP No: 7308 of 2002.
8. All these court cases, cited by him, were perused carefully.
9. In the case of *State of Haryana and others versus Gajraj Singh* passed by the High Court of Punjab & Haryana, on 20th April, 2011, in LPA No: 716 of 2011, the matter was concerning recruitment of Lecturers in Hindi from the open market through Direct Recruitment. In this case, it was held that once a post has not been consumed and a meritorious candidate in the merit list is available, then the vacancy could be filled in by inviting the next person in merit. This cited case concerns filling up of posts through Direct Recruitment from the open market, whereas the present case is that of selection through LDCE out of candidates who are already in service and who would be appointed on transfer basis.

10. In the case of *Digvijay Pal Sharma vs. State of Punjab & Others* passed by the High Court of Punjab & Haryana, on 4th March, 2008, in CWP No: 8121 of 2002, the case was concerning selection on Direct Recruitment basis of SS Masters. The petitioner was No: 1 on the waiting list maintained by the respondents. However, the waiting list had elapsed after expiry of the period of six months and since there was no valid waiting list in force at that time, the petitioner had been denied an offer of appointment. It was also argued that the petitioner could not be appointed since there was a ban on fresh recruitment in the State of Punjab. In this case the Court had ruled in favour of the petitioner. However, this case was concerning filling up of posts through Direct Recruitment from the open market, whereas the present case is that of selection through LDCE out of candidates who are already in service and who would be appointed on transfer basis. Moreover, there is no declared policy of maintaining a waiting list in the present case. Hence, the facts of this case are entirely different from the present case and cannot be considered as relevant to the present case.

11. In *Shilpa Gupta vs. State of Punjab & Others* passed by the High Court of Punjab & Haryana, on 2nd March, 2016, in CWP No: 20393 of 2015, the Punjab Public Service Commission had advertised 80 posts of Assistant District Attorneys in the State of Punjab. This was again, a case of filling up of vacancies through Direct Recruitment from the open market, based on recommendations of the Public Service Commission. A waiting list had also been maintained by the Commission. However, even after operation of the

waiting list, there were still some posts left vacant, for which the Court had issued a writ of mandamus to the State to consider offering appointment to the petitioner as per merit determined by the Commission. This case was, therefore, concerning filling up of posts through Direct Recruitment from the open market, whereas the present case is that of selection through LDCE out of candidates who are already in service and who would be appointed on transfer basis. Moreover, there is no declared policy of maintaining a waiting list in the present case. Hence, the facts of this case were entirely different from the present case and cannot be considered as relevant.

12. In *Ravinderjeet Singh and others vs. State of Punjab & Others* passed by the High Court of Punjab & Haryana, on 8th April, 2013, in LPA No: 2257 of 2011, CWP No: 4102 of 2002 and CWP No: 7308 of 2002, the issue under consideration before the Hon'ble Court was regarding selection from the open market through Direct Recruitment of 39 Soil Conservation Officers by the Subordinate Services Selection Board. In this case initially 34 persons joined and 5 persons did not join. Later on, 4 more persons were given appointment. However, one post remained to be filled up, for which a direction was issued by the Court in favour of the petitioner. This case was, therefore, concerning filling up of posts through Direct Recruitment from the open market, whereas the present case is that of selection through LDCE out of candidates who are already in service and who would be appointed on transfer basis. Moreover, there is no declared policy of maintaining a waiting list in the present case.

Hence, the facts of this case were entirely different from the present case and cannot be considered as relevant.

13. A careful examination of all these court cases, cited by the Counsel for the applicant in support of his contention, therefore reveals, that the cases cited by the learned counsel, are of selection for appointment by Direct Recruitment through an open competitive examination. In the present case, as per the Recruitment Rules in force, the issue pertains to filling up of these posts by transfer of existing eligible employees of the Cantt. Boards, on the basis of Limited Departmental Examination. Hence the ratio of these cases is not applicable in the present case.
14. In the present case, the respondents have categorically stated that as per the advertisement and their own policy in the matter, there is no concept of any waiting list and any unfilled vacancy is carried forward for the next round of selection process. They have stated that this was a Limited Departmental Examination and no provision for extended panel or waiting list or reserve list was ever contemplated nor such panel/list was ever prepared or got approved from the competent authority while notifying the vacancies or declaring the result of the said examination. It has also been categorically denied that a merit list of four persons was prepared for the three vacancies, keeping the 4th candidate to form the waiting list. It has been clarified by the respondents that there were three vacancies in UR category and only three persons had been selected against these three UR vacancies without any waiting list. The 4th name

being mentioned by the applicant is actually the applicant selected against the SC quota.

15. The contention of the applicant that one of the candidates, namely Shri Sudhir Kumar is not eligible for appointment has been disputed by the respondents. They have submitted that offer of appointment was made to all the three selected candidates and two (including Shri Sudhir Kumar) have already joined. Only the candidate at S. No: 1, namely Shri Satish V Mannurkar, has declined the offer.
16. The contention of the applicant that he stands 4th in the merit list subsequent to the revaluation of marks is also disputed. The reduction of marks awarded to Shri Uma Shankar from 161 to 154, is being contested by Shri Uma Shankar who has also represented in the matter. Consequently, the said revaluation is also under reconsideration.
17. The vacancy available due to non-joining of the candidate at Serial No: 1 has been carried forward and would be filled up in the next round of selections to be made by conducting LDCE. In fact, the process for conducting the next LDCE for the year 2020-21 has already been initiated.
18. In this case, there was no provision of any waiting list right from the initiation of the selection process. All unfilled vacancies are carried forward to the subsequent selection process. Hence, after the completion of the selection process, the candidates who had participated in this process knowing fully well the rules governing the selection, cannot now compel the authorities to alter the

rules of the game and introduce a waiting list. This would also be unfair to the prospective candidates who may be eligible to appear in the subsequent process of selection through LDCE. The candidates in this selection process may also have benefitted from the fact that the unfilled vacancies of earlier selection process, if any, would have been available to them in the current process.

19. Keeping all the above points in view, the OA being devoid of any merit, is liable to be dismissed.

20. The OA is therefore, dismissed. There shall be no orders so as to costs.

(RAKESH KUMAR GUPTA)
MEMBER (A)

(SURESH KUMAR MONGA)
MEMBER (J)

/ps/