

No. 9-02/2019-SPG-II
Government of India
Ministry of Communications
Department of Posts
(SPG-II Section)

Dak Bhavan, New Delhi - 110001

Dated: 12th July, 2023

OFFICE MEMORANDUM

Subject: Implementation of Order in OA No.466/2020 (J Srinivasulu and others Vs UoI and others) in respect of seniority in PS Gr.B cadre - reg.

The undersigned is directed to refer this Department OM No.9-02/2013-SPG dated 16.09.2014, wherein final seniority list (SL) of Postal Services Group 'B' cadre officers as on 01.01.2012 (updated upto 30.04.2013) was issued. At the bottom of the said list, PS Gr.B officers promoted through LDCE (V.Y.-2011) {from Sl. No.736 to 759} followed by DPC 2012-13 promotees {from Sl. No. 760 to 929} were included *en-bloc*.

2. Meanwhile, the 'post-based' vacancy calculation of LDCE (for the vacancy year 2011) was challenged by Sh. K Ramesh Babu & ors. before Hon'ble CAT, Hyderabad bench in OA No.554/2013. The Hon'ble CAT, Hyderabad bench vide order dated 10.03.2015 directed this Department to recalculate the vacancy in terms of the DoPT OM No.14017/2/1997-Estt.(RR)/Pt. dt.19.01.2007 with further direction to consider the case of the applicants in the remained unfilled vacancies as they are already qualified in the LDCE held on 03.06.2012 with all consequential benefits. This was upheld by the Hon'ble High Court of Andhra Pradesh.

3. In the above litigation, this Department went in Appeal by filing SLP (C) No.24725 of 2017 before the Hon'ble Supreme Court and the Hon'ble Supreme Court vide order dated 10.10.2017 dismissed the said SLP in the following manner:

"... We do not find any ground to interfere with the impugned order. The special leave petition is accordingly, dismissed.

However, it is clarified that promotion which has already been given may not be disturbed but the respondents will be entitled to be considered against any further vacancies by making suitable adjustments in future in accordance with the impugned judgment."

4. In compliance of the above order, this Deptt. recalculated the vacancies for the LDCE (V.Y. 2011) and LDCE 2012-13 to 2016-17, wherein an additional 27 vacancies were given to the LDCE (V.Y. 2011). However, officers selected through LDCE (V.Y.-2011) were promoted notionally vide this Department Order No.9-34/2011-SPG dated 19.06.2019.

5. Further, this Department vide letters No.9-02/2019-SPG-II dated 15.03.2019 and dated 04.11.2019 issued draft seniority list of PS Gr.B officers (updated as on 01.04.2017) in accordance with Para 2.4.1 of DoPT OM No.22011/7/86-Estt(D) dated 03.07.1986 read with DoPT OM No.20011/1/2012-Estt.(D) dated 04.03.2014 since there is no instruction of DoPT for preparation of *inter se* seniority list for officers being promoted through DPC and LDCE. In this draft SLs, PS Gr.B officers promoted in the year 2018 through LDCE (whose result declared on 26.02.2018, 10.04.2018, 26.04.2018 etc.) were included and placed before the PS Gr.B officers promoted through earlier DPCs held before 2018 and accordingly, the final SL issued in 2014 were required to be revised.

6. Aggrieved by the above decision of this Department, Shri J.Sreenivasulu and others filed O.A. No.466/2020 in the Hon'ble CAT, Hyderabad bench for restoration of their original seniority issued on 16.09.2014. The said OA was disposed of by the Hon'ble CAT, Hyderabad bench vide order dated 02.09.2020. The relevant excerpts of the Order are produced below:

“Para-7(II): ...Hence, the respondents differentiating the applicants as promotees under 75% quota and the LDCE officers under 25% quota as direct recruits is against the recruitment rules. Both the category of officers are promotees. Applicants were promoted to the Group B cadre prior to the LDCE officers. Thus, according to the General principles of seniority, applicants rank senior to the LDCE officers.

Para-7(V): ...K. Meghachandra Singh judgment was delivered by the Hon'ble Apex Court on 19.11.2019 and hence, any final seniority list issued after the referred date of judgment will have to be in congruence with the law laid therein, which makes it lucid that seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre. The LDCE officers were promoted subsequent to the applicants getting promoted to the Group B cadre and on applying K. Meghachandra Singh judgment applicants have to be placed above LDCE officers, under reference, in the seniority list. Hence, the contention that K. Meghachandra Singh is not applicable, is incorrect.

Para-7(VI): ...Having made it clear that officers promoted under 75% and 25% quota are promotees, the DOPT OM dated 3.7.1986 would become irrelevant because it speaks of fixing seniority between direct recruits and promotees.

Para-7(X): Therefore, in view of the above, viewed from any angle, the action of the respondents is against rules and law. Hence respondents' decision to revise the seniority list of 2014 has to be construed to be against rules, arbitrary and illegal. The revised draft senior lists issued on 15.3.2019/4.11.2019 are set aside. The OA fully succeeds.

Consequently, respondents are directed to consider as under:

- i. Issue the final seniority list by protecting the seniority of the applicants as was fixed in the seniority list published on 16.9.2014 in Group B cadre.*
- ii. After issue of the final seniority list, respondents to conduct DPC to promote those eligible to the Junior Time Scale in Group "A" cadre as per relevant rules and regulations of the respondents organisation as well as in accordance with law.*
- iii. Time calendared to implement the judgment is 3 months from the date of receipt of this order.”*

7. Against the order of the Hon'ble CAT, Hyderabad bench, this Department filed W.P. No.25171/2020 before Hon'ble High Court of Andhra Pradesh, wherein Hon'ble HC issued vide interim orders dated 03.03.2021 and dated 30.04.2022 directing this Department *“that the promotional process may be undertaken by the petitioners in the light of the directions of the CAT, Hyderabad, however, subject to the results of the appeal and without equities being created in favour of the respondents.”*

8. Pursuant to the aforesaid orders and judgement of Hon'ble Supreme Court, Ld. Addl. Soliciter General for India has rendered his considered opinion in the matter, which are as under:

“2. The Hon'ble Supreme Court of India while disposing of SLP Appeal (C) No.24725/2017 vide order dated 10.10.2017 has not considered the issue of inter-se seniority between the two groups i.e. officers promoted through DPC and LDCE mode, the Hon'ble Supreme Court held that promotions already made shall not be disturbed, the persons in whose favour the Hon'ble CAT granted orders in OA No.554/2013 are to be accommodated in future vacancies. Having followed the said directions of the Hon'ble Supreme Court of India, the seniority is now fixed by the department in the year 2018, whereas earlier seniority list which was prepared in 2014 is directed to be followed for the purpose of promotions to be made during the pending of present Writ Petition i.e. W.P.No.25171/2020 with a clause that no lien, right or equities can be claimed by the persons promoted temporarily pending disposal of the Writ Petition.