

**GOVERNMENT OF PUDUCHERRY
DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS
(PERSONNEL WING)**

No. A. 23015/1/2022/DPAR/CCUI

Puducherry dated 31/05/2022

ORDER

Sub : Public Services – LDC Seniority List – Speaking order issued in compliance of the order dated 26/04/2022 of the Hon'ble Central Administrative Tribunal, Chennai Bench in MA 212/2022 in & OA 310/00354/2022.

Ref: Letter dated 28/04/2022 of Thiru. Jai Bharath, Advocate, Madras High Court, Chennai – 600078.

The Revised Tentative Seniority list of LDCs who were appointed upto 01/10/2021, was communicated to all concerned calling for objections if any to the seniority assigned to them, vide Memorandum dated 05/04/2022. In response the LDCs who were appointed during 2013-2014 have submitted representations with a request to set aside the revised tentative seniority list dated 05/04/2022 and to finalize the tentative seniority list dated 04/01/2022.

2. Meanwhile Tvl. A. Anbarasan, LDC and M. Virassamy, LDC have filed MA 212/2022 in & OA 310/00354/2022 in Central Administrative Tribunal, Chennai Bench with the following prayer.

" to direct the respondents to consider and pass orders on Applicants representations dated 18/04/2022 and 21/04/2022 by revising the tentative seniority list dated 05/04/2022 in accordance with the various DoPT guidelines 07/02/1986, 03/07/1986, 13/06/2000, 04/03/2014, 06/08/2021 and 13/08/2021 within a time limit fixed by this Tribunal."

3. The Hon'ble Central Administrative Tribunal, Chennai Bench has passed an order dated 26/04/2022 as below:

"....without going into the merits of the case, the competent authority among the respondents is directed to consider the representation of the applicants dated 18/04/2022 and 21/04/2022 and pass a reasoned and speaking order in accordance with law within a period of three months from the date of receipt of a copy of this order. "

Accordingly, the representations of Tvl. A. Anbarasan, LDC and M. Virassamy, LDC have been examined.



4. This Department had issued a combined recruitment notification on 02.12.2011 for recruitment of LDC, Store Keeper Grade III, Junior Clerk and Typist. In the said notification 400 vacancies in the cadre of LDC was notified. For all the four cadres, a common written competitive examination was held on 02.12.2012. The results were declared on 18.12.2012. Results were declared for 340 posts of LDC only as against the 400 vacancies notified as the CAT, Madras Bench in O.A. No.1460/2012 ordered to keep 60 posts of LDC vacant till the disposal of the case.

5. After certificate verification, 313 candidates were offered appointment as LDC. The remaining 27 candidates were rejected for various reasons. Similar was the case in other cadres also. In addition, vacancies on account of non-reporting of selected candidates and resignation after joining within a short span of time were also reported.

6. All the above said vacancies occurred within a year. So, in order to fill up the vacancies the Department operated the overall merit list prepared based on the examination conducted on 02.12.2012 and prepared another list for each post. While doing so, some of the candidates selected earlier under various categories for the post of Lower Division Clerk / Storekeeper Gr. III / Junior Clerk / Typist are slided according to merit to the Unreserved category within the select list of the respective posts. Also, some of the candidates selected earlier under various categories for the post of Typist are slided to the post of Lower Division Clerk and some of the candidates selected earlier under various categories for the post of Junior Clerk are slided to the post of Storekeeper Gr. III according to merit and option exercised by them. For the resultant vacancies in the respective categories, candidates are selected afresh from the overall merit list based on the option exercised based on the notification dated 18.12.2012. The list was notified on 28.11.2014. The newly selected candidates joined as LDC in February-April 2015.

7. While, issuing the tentative seniority of LDCs the above facts escaped the notice of this department and hence the LDCs appointed in 2015 were placed en-bloc juniors to those who had been appointed in 2013. This led to objections from the LDCs appointed in 2015 and they requested to fix their seniority as per their merit position as their appointment was based from single recruitment process. Tvl. J. Kumar, LDC and S. Sudesh of second list filed MA/310/00073/2022 in & OA/310/00088/2022 in Hon'ble CAT, Madras Bench to consider their representations. The CAT disposed the O.A with a direction to consider their representation and to issue a speaking order.



8. Accordingly, their representations were considered and a revised tentative seniority list was issued on 05.04.2022 in which they have been assigned seniority as per their merit position in the overall merit list. Their representations were also disposed simultaneously.

9. Now, the LDCs who were appointed in 2013 and whose seniority positions has been pushed down based on their merit position in the overall merit list have objected to the revised tentative seniority list and requested the Department to restore the seniority assigned to them in the first tentative seniority list dated 04.01.2022 stating that the LDCs appointed in 2015 could not be treated as wait listed candidates and to apply the DOPT guidelines as claimed by them.

10. Though they were appointed in 2015, their appointment was within the notified vacancies and it cannot be treated as fresh vacancies. It may be pertinent to mention here that the DOPT O.M. dated 13.06.2000 has clarified as follows:

"2. The Fifth Central Pay Commission, in para 17.11 of its Report, has recommended that with a view to reduce delay in filling up of the posts, vacancies resulting from resignation or death of an incumbent within one year of his appointment should be filled immediately by the candidate from the reserve panel, if a fresh panel is not available by then. Such a vacancy should not be treated as a fresh vacancy. This recommendation has been examined in consultation with the UPSC and it has been decided that in future, where a selection has been made through UPSC, a request for nomination from the reserve list, if any, may be made to the UPSC in the event of occurrence of a vacancy caused by non-joining of the candidate within the stipulated time allowed for joining the post or where a candidate joins but he resigns or dies within a period of one year from the date of his joining, if a fresh panel is not available by then. Such a vacancy should not be treated as fresh vacancy".

11. The analogy laid down above in the O.M. dated 13.06.2000 squarely applies to the instant case as the vacancies were due to non- joining/resignation within a year. So, the Department took a considered decision to prepare a further list from the overall merit list. In the process, sliding from one category/cadre to another category/cadre was also done and hence the select list notified on 18.12.2012 was also subjected to changes to some extent. Thus the list prepared has become an extended select list/a supplementary list as it modified the position/category/cadre of some officials already appointed as discussed above. Hence, it would be proper to treat the list as part and parcel of the original select list



and to fix the seniority as per the overall merit position irrespective of the date of joining. It may be recalled that even while operating wait list after one year, overall merit position is maintained as per DOPT clarification given below:

"Clarification : Appointment from the Reserve panel at a later date: The inter-se seniority of candidates nominated from reserve panel will be fixed as per consolidated merit given by UPSC/SSC/Recruiting agency. However instructions circulated vide this Department's O.M. No. 41019/18/97-Estt.(B) Dated 13th June 2000 should be strictly followed in operating or requesting for nominations from the reserve panel".

12. Further, the settled legal position is that in appointments made out of single selection process, over all merit should be the yardstick for deciding seniority. The Principal Bench of the Central Administrative Tribunal, Delhi in OA.No.465/2013, Neeraj Kumar Sharma vs. UPSC, in its order dated 6.9.2013 held as follows:

"5. When the matter was heard earlier, learned counsel for the respondents sought time to seek instruction in the matter and file reply. Shri R.N.Singh, counsel appearing for DOP&T, respondent No.2, informs that the grievance of the applicant has already been redressed as the cadre controlling authority of the applicant is instructed for fixation of seniority in order of marks obtained by the candidates. He submits that in this regard, as per advice of the Commission, necessary directions to all the cadre controlling authorities have been issued for fixation of seniority in order of marks obtained by the candidates, vide letter dated 08.06.2013. He, therefore, submits that since the only grievance of the applicant is with regard to fixation of his inter-se seniority on the basis of the marks obtained by the candidates, as provided by the DOP&T through OM NO.41019/18/97-Estt(B) dated 13.6.2000, and the cadre controlling authorities have now been instructed to fix seniority as per marks obtained by the candidates, nothing survives to be decided by this Court. The applicant also fairly submitted that the respondents may, therefore, be directed to prepare the seniority list keeping in view the marks obtained within a reasonable period of time.

6. In view of the submissions made and also as agreed to by the parties, we dispose of this matter at this stage with the direction to the respondents to fix the seniority of the applicant as per the marks secured by him in the Examination, meaning thereby that he should be placed above the candidates who have secured less than 1195 marks. However, it would be open to the applicant to approach the Tribunal again in the event the respondents fail to prepare the seniority list keeping in view the marks obtained by the applicant".

13. In the said OA, the applicant had appeared for the Civil Services Examination 2003. The first list of 413 candidates was published in 2004. In view of the available vacancies, a supplementary list of 44 candidates was published in January, 2005 in which the applicant figured. The applicant was placed below in the first consolidated merit list. As admitted by the DOPT in the said OA, the fixation of seniority was to be based on the order of marks obtained by the candidates irrespective of whether they are in the first list or in the supplementary list. On the same analogy, in the present case also the seniority of the LDCs appointed in 2015 should be based on the marks secured by them rather than placing them at the bottom of the consolidated list.

14. As mentioned in the above CAT orders, the DOPT issued an O.M dated 08.08.2013 to all CCAs including this UT Administration which is the Cadre Controlling Authority for PCS and PPS, informing as follows:

"It is informed that the CCAs may like to assign inter-se seniority of the candidates recommended on the basis of a particular service through the Civil Services Examination and also allocated to a particular service, on the basis of the aggregate marks obtained by the candidate. The merits of the candidates determining inter-se seniority may be determined based on the aggregate marks of the candidates revealed by the UPSC. In case of tie incidents, the UPSC may be consulted directly to resolve the issue".

15. The same position was reiterated in their O.M dated 09.01.2014 also. Recently, in Sudhir Kumar Atrey vs Union of India decided on 26 October, 2021, the Supreme Court observed as follows:


"18. We are also of the view that in the matter of adjudging seniority of the candidates selected in one and the same selection, placement in the order of merit can be adopted as a principle for determination of seniority but where the selections are held separately by different recruiting authorities, the principle of initial date of appointment / continuous officiation may be the valid principle to be considered for adjudging inter se seniority of the officers in the absence of any rule or guidelines in determining seniority to the contrary".



16. Taking all the above said facts into account, the seniority assigned based on overall merit in the revised tentative seniority list dated 05/04/2022 is in order.

17. With this the representations stand disposed of.

// By order of the Secretary (Personnel)//



(V. JAISANKAR)

UNDER SECRETARY TO GOVERNMENT

-Through proper channel-

To

1. A. Anbarasan, LDC, Town and Country Planning Department, Puducherry.
2. M. Virassamy, LDC, Dr. Ambedkar Government Law College, Puducherry.

Copy to:

1. Thiru. R. Syed Mustafa, Govt. Pleader for Puducherry at CAT, Madras High Court Building, Chennai.
2. Thiru. Jai Bharath, Advocate, No. 37/1, Bazaar Street, KK Nagar West, Nesapakkam, Chennai – 600078