

R.N. Katyal and ors. Vs. Delhi Transport Corporation and ors.

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Court : Delhi

Decided On : Sep-19-2005

Reported in : 2005(85)DRJ465

Judge : Vikramajit Sen, J.

Acts : [Road Transport Corporation Act, 1950](#) - Sections 45 and 46; Road Transport Corporation (Amendment) Act, 1971 - Sections 4; Delhi Road Transport Laws (Amendment) Act, 1971 - Sections 4 and 4E; Delhi Road Transport Authority Act, 1950; [Delhi Municipal Corporation Act, 1957](#) - Sections 480, 516, 516(1) and 516(2); unicipal Corporation Act; Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations, 1952 - Regulation 5

Appeal No. : W.P. (C) Nos. 8143-45/2005

Appellant : R.N. Katyal and ors.

Respondent : Delhi Transport Corporation and ors.

Advocate for Def. : Raj Birbal, Sr. Adv., ; Ajay Kapur, ; M.K. Jha and ;

Advocate for Pet/Ap. : G.D. Gupta, Sr. Adv. and; Anil Mittal, Adv

Judgement :

Vikramajit Sen, J.

1. The dispute in these Petitions relates to promotion to the post of Deputy Chief General Manager (Traffic). The Petitioners asserts that the distinction between the Mechanical and Traffic Department had evaporated in the recent past. Persons from these two streams were, according to the Petitioners, freely appointed to posts in the Traffic Department and the Mechanical Department. So far as the DTC is concerned it is their stand that the distinction has always been maintained, except for a few postings made purely temporarily for short durations necessitated by exigencies of service. The Petitioners are from the Mechanical Department and the other Respondents from the Traffic Department.

2. The Petitioners joined the DTC as Graduate Engineers/Trainee Apprentices in 1973-1974 and were promoted as Assistant Engineers/Managers in 1976-77. The contesting Respondents No. 2 & 3 are stated to have joined DTC in 1982 as Deputy Managers and were promoted as Traffic Superintendent/Manager (Traffic) in 1985. Petitioners were promoted as Works Manager/Sr. Manager in 1985-1988. In September, 1994 the Petitioners filed CW No. 3894/1994 challenging the consideration of only the contesting Respondents for promotion to the post of Deputy Chief General Manager (Traffic). That Writ Petition was disposed of by the Division Bench in terms of Orders dated 26.8.1996 noting the submission of the DTC that it was not contemplating filling up the posts in question and further that 'as and when Respondents intend to fill up the said post, the same shall be done in accordance with the recruitment basis and in accordance with the law.' It was further stated that the DTC 'is not considering individuals namely Shri R.K. Kasana and Shri A.K. Goyal to the post of Deputy Chief General Manager (Traffic) without constitution of the Selection Committee or without holding proper interview.' In Contempt Case No. 409/2003 the present Petitioners had invoked the Contempt jurisdiction of this Court, but that Petition was dismissed on 12.1.2004, inter alia, for the following reasons:

'The petitioners had filed CWP No. 3894/1994 making a dual prayer calling upon the respondents not to make promotions to the post of Deputy Chief General Manager (Traffic) without constituting a proper selection Committee or inviting applications and without considering the claim of all the eligible candidates. The second prayer was arising from the grievance against the action of the

respondents proposing to promote two candidates Shri R.K. Kasana and Shri A.K. Goyal in the said post. This writ petition was disposed of on 26-08-1996 taking note of the reply of the respondents that the respondents as on that date were neither contemplating nor considering to fill up the posts in question and as and when the respondent intend to fill up the posts the same shall be done in accordance with the recruitment rules and in accordance with law. The respondents also stated that the Management is not considering the two individuals for promotion without constitution of the Selection Committee.

The present contempt petition has been filed alleging contempt of the aforesaid Order on account of the order dated 20-02-2003 issued by the respondent Corporation. In terms of the said order the aforesaid two officers have been asked to appear before the Departmental Promotion Committee/Selection Committee for interview. Learned counsel for the Petitioners contend that the same is being done in violation of the norms for recruitment and without considering the petitioners.

The respondents in their reply have stated that the eligible persons are being called for the interview from the Feeder Care who fulfill the requisite qualifications and that there is no violation of the rules.

In my considered view the aforesaid does not amount to a willful disobedience of Order of the Court even if the petitioners have certain grievance since the grievance of the petitioners as to whether they are eligible to be considered and as to the manner in which recruitment should take place has to be considered in the appropriate proceedings. In fact there has been no adjudication on this aspect in terms of the Order dated 26-8-1996 and what has been recorded is that two officers would not be promoted without constitution of the selection committee. The Selection Committee has obviously been constituted in terms of the order dated 20-2-2003 and they have been asked to appear before the Selection Committee.

In view of the aforesaid if the petitioners are aggrieved now by the process of the interview of these persons or their non-consideration after seven years of the aforesaid order the remedy of the petitioners lies by taking out appropriate legal proceedings to challenge the same in accordance with law and not by these

proceedings. Liberty granted to the petitioner to file appropriate proceedings.

Dismissed.

Contempt Notices stand discharged.

CM 289/2003

Dismissed.'

3. Thereafter in January, 2004 WP (C) No. 1356-60/2004 1356-60/2004 was filed again on the question of the contemplated promotion of the contesting Respondents. This Petition was disposed of by the following Order:

'Petitioners pray that letter dated 24.7.2003 be quashed and the respondent be directed to consider all the eligible candidates including the petitioners for promotion to the post of Deputy Chief General Manager (Traffic) by following the due process of law i.e. recruitment/promotion policy.

It is not disputed by the petitioners that Mr. R.K. Kasana and Mr. A.K. Goel are eligible to be considered for promotion to the post of Deputy Chief General Manager (Traffic). If that be so, no occasion arises to quash letter dated 24.7.2003 in as much as by said letter a reference has been made to the vigilance department of the DTC to report to the Manager Personnel whether any vigilance/disciplinary case is pending or contemplated against Mr. R.K. Kasana and Mr. A.K. Goel.

Learned counsel appearing for the DTC states that the Corporation would make promotion to the post of Deputy Chief General Manager (Traffic) strictly in accordance with the recruitment/promotion policy in force as of date. All those who are eligible would be considered for promotion and promotion would be effected in terms of the recruitment/promotion policy. Mr. Luthra states that letters would be sent to all the eligible candidates, to appear before Selection Committee.

In view of the statement made by learned counsel for the DTC nothing further survives for adjudication. Binding the DTC to the statement made by it's counsel in court today, with petition stands disposed of.'

From this narration of the litigation filed by the Petitioners in this Court it is evident that they have persistently opposed the consideration of only the Respondents to the exclusion of the Petitioners for promotion to the post of Deputy Chief General Manager (Traffic); the DTC has never admitted that the Petitioners' were eligible; and have repeatedly stated that promotions will be carried out strictly in accordance with extant Recruitment Regulations. The DTC should arguably have been more forthright in articulating that the Petitioners were not eligible to be considered for promotion to that post, rather than sagaciously skirting the issue. Equally, the Petitioner should have resisted the disposal of the previous Writ Petitions without an adjudication of their eligibility.

4. The present Petition has been filed on the foundation of the letter dated 3.5.2005 in which the contesting Respondents along with Shri H.C. Gupta, Sr. Manager (Tr.), Trg.School had been asked to appear before the Selection Committee for interview for the post of Deputy Chief General Manager (Traffic) on 4.5.2005. The following Orders were passed on 13.5.2005 on the first date of hearing of the present Petition.

'The Petitioners have filed several Writ Petitions and other proceedings in this Court complaining against the consideration of two persons, namely, Shri R.K. Kasana and Shri A.K. Goel for promotion to the post of Deputy Chief General Manager (Traffic). It is their contention that for several past years the distinction between the Mechanical and Traffic Departments has evaporated and they have virtually merged. The said Mr. Kasana and Mr. Goel are Graduates whereas the Petitioners are Graduates (Engineering). The effect is that whilst the Petitioner may be entitled/eligible for consideration in the Traffic Department, the reverse is not possible since Mr. Kasana and Mr. Goel are not Mechanical Graduates. It is also the contention of the Petitioners that they have been working since 1976 as Depot Manager etc. and this assignment is an integral part of Traffic Management.

Learned counsel for the DTC vehemently contends that there has been a material suppression of facts inasmuch as the Petitioners have not disclosed in the Petition that they have been called for to appear in the DPC for Deputy Chief General Manager (Mechanical) and that none of them have been selected. It is also

contended that assuming that they may have worked in the Traffic Department, none of them have held the post of Sr. Manager (Traffic). It has been contended by Mr. Kapur on instructions from Mr. D.K. Jain, Sr. Clerk that none of the Petitioners have worked in the Traffic Department. These conditions do not impress me for the reason that in all previous litigation there is no mention whatsoever of the alleged distinction between the Traffic and Mechanical Departments. It is difficult to believe that this distinction would not have been brought home to the Court if in fact the operations of the DTC the Mechanical and Traffic Departments were totally distinct of each other.

Statements were made before Hon'ble Mr. Justice M.K. Sharma, Hon'ble Mr. Justice Sanjay Kishan Kaul and Hon'ble Mr. Justice Pradeep Nandrajog as well as before the Hon'ble Division Bench that the promotions to the post of Deputy Chief General Manager (Traffic) will be carried out strictly in accordance with the recruitment/promotion policy. If the Petitioners were not eligible for consideration there would scarcely have been any relevance in the mentioning 'Traffic'. On my query it transpires that the DPC was convened on 4th May, 2005 and the persons being considered for this post were called one day previously. The expedition with which the DPC has been held and persons have been called shows that the Respondents were attempting a fate accompli so far as the Petitioners are concerned.

Till the next date of hearing the appointment/promotion by internal letter dated 12th May, 2005 is ordered to be held in abeyance.

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Shri R.K. Kasana and Shri A.K. Goel who are represented are directed to be imp leaded as Respondents. Mr. Gupta, learned Senior Counsel states that they have not been imp leaded since the Petitioners were not aware of their selection. Needful be done within two days.

Copy of the Petition be furnished to Mr. Aggarwal in the course of the day. Replies be filed within seven days. Rejoinder, if any, be filed within three days thereafter.

Renotify on 27th May, 2005.

dusty.'

However, what needs to be noted is that this Writ Petition was listed before Court on 10.5.2005 but had to be adjourned because no appearance was entered by the Petitioners; it was listed again on 13.5.2005 because of the filing of a fresh application. Once again the Petitioners have displaced their attitude or design to obstruct the promotion of the Respondents rather than advance an adjudication of their rights.

5. The salient features of the Recruitment Rules for the post of Deputy Chief General Manager (Traffic) are as follows:

7. Education and other : Essential : qualifications required i) Degree of a for direct recruits recognised University or equivalent. ii) At least 7 years experience in a responsible supervisory capacity in the Traffic Department or a big Road Transport Undertaking, preferably big city Transport Undertaking. iii) Special knowledge or an experience in Planning of routes, schedules and allied matters. (Qualifications relaxable at Corporation discretion in case of candidates otherwise well qualified.) Desirable: Diploma or a certificate of the Institute of Road Transport of India or equivalent. 10. Method of rectt. : By promotion failing which whether direct rectt. by transfer on deputation or by promotion or on including short term transfer and percentage contract from State of the vacancies to be Transport Undertaking/ filled by various Public Transport Corporation methods. and failing both by direct recruitment. 11. In case of rectt. : Promotion: * by promotion transfer Sr. Manager (Traffic) with 5 grades from which years service in the grade. promotion to be made. Transfer on deputation: Suitable Officers holding analogous posts under Central/State Govts. Short-terms Contract: Suitable Officers holding analogous posts under State/Transport Undertakings/Public Transport Corporation. (Period of deputation/contract ordinarily not exceeding 4 years.) 12. If a DPC exists what : Class-I DPC is its composition. * APPROVED BY M.C.D. VIDE RESOLUTION NO. 44 DATED 7.5.65 AND ALSO APPROVED BY DTC BOARD VIDE RESL. NO. 44/86 DATED 26/27.2.1986'

6. The obstacle that obstructs the path of the Petitioners for the promotion to the said post is that they have not functioned as 'Senior Manager (Traffic) with five years service in the grade'. Their answer, however, is that the above extracted Recruitment Rules are not legally efficacious. According to them, the effective qualification for appointment to the post of Traffic Manager (now Deputy Chief General Manager (Traffic)) was as follows:

'Traffic 1500-60-1800- Essential Manager 100-2000 i) Degree of a recognised university of equivalent. ii) At least 7 years experience in a responsible supervisory capacity in the Traffic Dept. of a big road Transport Undertaking, preferably big city Transport Undertaking. iii) Special knowledge of and experience in planning of routes, schedules and allied matters. Desirable i) Diploma or a certificate of the institute of Road Transport of India or equivalent.

7. The contention is that these Standing Orders and Recruitment Rules are deemed to have been made under Section 45 of the [Road Transport Corporation Act, 1950](#) as amended by the Amendment Act, 1971 and can only be changed or altered or modified by following the procedure prescribed under Section 45. It is the Petitioners' contention that since 1952, Assistant Manager (Mechanical) could aspire for promotion to the post of Works Manager as was done for the Petitioners.

8. The DTC contends that the Seniority List of Traffic Officers and Mechanical Officers has traditionally been separately maintained. The Petitioners, namely, Shri G.K. Sabharwal, Shri R.N. Katyal and Shri S.C. Chaudhary are placed at Sr. No. 5, 13 & 11 respectively in the Seniority List of Mechanical Officers, whereas Respondent No. 2 & 3 are at Sr. No. 1 & 2 in the Seniority List of Traffic Officers. It is also contended that the Petitioners had applied for promotion to the post of Deputy General Manager (Mechanical) and were duly considered. Accordingly, they are estopped from laying any claim to the post of Deputy Chief General Manager (Traffic). Furthermore, reliance has been placed on Regulation 5 of the D.R.T.A. (Conditions of Appointment & Service) Regulations, 1952 (hereinafter referred to as 'the DRTA Regulations').

9. Sixty seven officers of the DTC, under the banner of the DTC Engineering Association, had filed Civil Writ Petition No. 957 of 1978 which was decided by

S.S.Chadha, J. in terms of Judgment dated February 4, 1980. One of the issues that had arisen was the change in academic and technical qualifications for the post of Foreman and Chageman in the context of the DRTA Regulations as enforced by virtue of Section 4 of the Delhi Road Transport Laws (Amendment) Act, 1971. The repeal of the DRTA Act, 1950 by Section 516(1)(a) of the [Delhi Municipal Corporation Act, 1957](#) (DMC Act) and by virtue of clause (a) of Section 516(2) appointments, notifications, orders etc in force immediately before the establishment of the MCD were deemed to have been granted under the DMC Act, and therefore, continued in force. It was observed inter alias as follows:-

'A Division Bench of this Court in 'D.T.C. v. Surinder Kumar' L.P.A. 6 of 76 decided on September 30, 1977 had the occasion to consider the effect of Section 4(e) and (f) of the Amending Act. The Division Bench expressed that the effect of Section 4(e) was that all orders, rules and regulations etc. relating to transport services, whether made under DRTA Act or under the Municipal Corporation Act and in force immediately before the establishment of the new Corporation, were to continue to be in force and were deemed to be Regulations made by the new Corporation under Section 46 of the Act unless and until they were superseded by Regulations made under Section 45 of the Act. The effect of Section 4(e) of the Amending Act is stated in very clear terms. The legislature in its wisdom by a deeming fiction provided that all Regulations and Standing Order, whether made under the DRTA Act, 1950 and in force immediately before the establishment of the new Corporation, continue to be in force. The legislature further wanted to remove a distinction between the Rules, Regulations, Bye-laws, Standing Orders or Orders and elevated them to the status of Regulations by deeming fiction.

The legislature further expressed that they will be regulations made by the new Corporation under Section 45 of the [Road Transport Corporation Act, 1950](#) unless and until they are superseded by the regulations made under that section. Section 45 of the Act confers powers on the new Corporation to make regulations with the previous section of the State Government for administration of the affairs of the new Corporation. It is the admitted case of the respondents that the impugned Resolution No. 503 dated February 11, 1976 was not submitted for the sanction of the State Government. The power to frame regulations has been conferred for

various matters including the condition of appointment and service and the scales of pay of officers and servants of the new Corporation other than the Chief Executive Officers or General Manager and Chief Accounts Officer. This power has to be exercised in the manner provided in Section 45 of the Act. So far as the conditions of appointment and service and scales of pay of Chief Executive Officers or General Manager or Chief Accounts Officers are concerned, it can only be done by virtue of Rules which are to be framed under the Act. The statute has not provided any other mode of prescribing the conditions of appointment and service-The passing of the impugned resolution by the respondents which related to the conditions of appointment and service is ultra virus of the provisions of Section 45 of the Act and is entitled to be struck down.'

10. Cognate questions again came to be considered in CW No. 151/1983, this time by the Division Bench of this Court. It was noted that prior to coming into force of the DMC Act, transport was being looked after by the Delhi Road Transport Authority (DRTA) Act, which was repealed by virtue of Section 516 of the DMC Act. However, all appointments, notifications and orders issued immediately before the establishment of the Corporation which were not inconsistent with the provisions of the DMC Act were to continue to force. The Division Bench held that Regulation 5 of the DRTA Regulations continued in operation by virtue of Section 516 of the DMC Act and Regulation 5 itself provided that academic qualifications can be laid down by the General Manager and this power had been exercised in 1964 with the approval of the MCD.

11. The contention on behalf of the DTC to the effect that the Petitioners have availed the advantages of the Recruitment Rules which they are now assailing has considerable merit. In order to be eligible for promotion to the post of Works Manager, equivalent to Senior Manager (Mechanical), the Petitioners should have possessed the essential qualifications of a degree in Mechanical and Automobile Engineering. Shri G.K. Sabharwal is only a Diploma Holder in Engineering and Shri R.N. Katyal and Shri S.C. Chaudhary hold degrees in Electrical Engineering. A relaxation was granted to them under the extant Recruitment Rules, which power was not available in the Rules relied upon by the Petitioners. Since they were working in the post of Manager (Mechanical) with five years service in the

grade, they were considered and appointed to the post of Senior Manager (Mechanical). There is also considerable force in the contention raised on behalf of the DTC that Section 4E of the Delhi Road Transport Laws (Amendment) Act, 1971 imparts validity to all Recruitment Rules which were prevalent prior to 1971, by deeming them to be Regulations made by new Corporation.

12. It is true that in all previous Writ Petitions filed by the Petitioners the DTC had stated that the recruitment shall be made in accordance with the Regulations, whilst they could easily have stated that the Petitioners were not entitled to be considered to the post of Deputy Chief General Manager (Traffic). However, this point has specifically been taken in the Counter-Affidavit filed on behalf of the DTC. The fault equally lies on the Petitioners in permitting the Petition to be disposed of on the aforementioned statement of the DTC without obtaining a clear assurance that the Petitioners would also be considered for this post. In CCP No. 409/2003 it has been asseverated that Senior Managers (Mechanical) are not entitled to be considered for promotion to the post of Deputy Chief General Manager (Traffic).

13. The DTC has all along been maintaining separate Seniority lists for Traffic Officers and Mechanical Officers. There is an abundance of judicial decisions to the effect that Seniority lists which have been in existence for some time should not be disturbed. In this Seniority List Respondents No. 2 & 3 are at Seriall No. 1 & 2 respectively as Traffic Officers; and Petitioners No. 1,2 & 3 at Seriall No. 5, 13 & 11 respectively as Mechanical Officers. A challenge to the preparation of separate seniority lists should have been laid well before the present appointments. I also find that there is little or no significance in the fact that persons from the Mechanical Branch were appointed on temporary or work-charge basis for brief periods to posts in the Traffic Branch. Exigencies of service may require such postings. No rights would be created because of that. There is also no force in the argument on behalf of the Petitioners that they are Engineering Graduates from recognised universities possessing more than seven years experience in responsible supervisory capacity in the Traffic Branch. It has already been noted that they are not graduates in Mechanical Engineering, the fact that has been cleverly disguised and/or concealed all through. Since the Recruitment Rules

which have been enforced were in existence prior to 1971, they did not require to be approved by the Central Government or be Gazetted as per requirements of Section 480 of the DMC Act. The Petitioners must show that they had discharged their duties in the post of Senior Manager (Traffic) for a period of five years in the grade to be entitled to further consideration for promotion in this stream. While it is admitted that the Petitioners had been empanelled and considered for promotion to the Deputy Chief General Manager (Mechanical), it has not been contended that Respondents No. 2 & 3 were also similarly considered. This would have been essential, had there been any substance in the submission that merger of the Traffic and Mechanical Branches/Streams had been effected.

14. The Petitioners participated in the interviews for pertaining to the Deputy Chief General Manager (Mechanical) on 4.5.2005 and having realised that they would not get a promotion, they filed the present Petition on 7.5.2005. The Petition was listed for hearing on 10.5.2005 but the Petitioners stayed away from the Court. They had approached this Court only after subject promotions were given effect to on 12.5.2005. Even on this ground, they have missed the DTC bus. It is an established occurrence in service law that promotions in one branch/cadre/stream may be faster than in others. It leads to heartburn no doubt, but there is no reason, legal or otherwise to remove this disparity.

15. In this analysis the Petitions are without merit. The interim Orders dated 13th May, 2005 are recalled. Since there has already been considerable litigation on the subject, considered by the single Benches as well as Division Benches, the Petitioners shall pay costs of Rs. 10,000/- each of which half to be paid to the DTC and half to Respondent No. 3.