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Court : Central Administrative Tribunal CAT Delhi

Decided On : Sep-23-2011

Judge : The Honourable Mr. M.L. Chauhan, Judicial Member & the Honourable Mrs. Manjulika Gautam, Administrative Member

Appeal No. : TA No.678 of 2009

Appellant : Sh. Devender Kumar and Others

Respondent : Municipal Corporation of Delhi Town Hall, Delhi (Through Its Commissioner) and Another

Advocate for Pet/Ap. : For the Applicants: V.K. Singh, Advocate. For the Respondents: Mrs. Biji Rajesh for Gaurang Kanth, Advocates.

Judgement :

Mr. M.L. Chauhan, Member (J):

1. Initially, applicants, five in number, filed WP (C)-9444 of 2007 before the Hon'ble High Court of Delhi, which was transferred to this Tribunal on 02.02.2009 consequent upon conferment of jurisdiction on this Tribunal in respect of the employees of Municipal Corporation of Delhi (MCD) and the same was registered as TA No.678/2009, praying for the following reliefs:

“A) Issue a writ in the nature of mandamus or any other appropriate writ order/direction directing the Respondents to consider the Petitioners for the post of Assistant Sanitary Inspector and other posts requiring similar qualifications and provide the Petitioners with similar opportunities for promotion vis-à-vis Safai Karamcharies/Sanitary Guides; and

B) Issue a writ in the nature of mandamus or any other appropriate writ order/direction directing the Respondents to promote the Petitioners to post of Assistant Sanitary Inspector with all consequential benefits.

C) Pass any order, further orders, as this Hon’ble Court may deem fit and proper, in view of the facts and circumstances of the case and in the interest of justice.”

2. Briefly stated, facts of the case are that the applicants No.1, 3 and 5 are working as Beldar, whereas applicants No.2 and 4 are working as Mate with the MCD. As can be seen from the prayer clause, their grievance is that there are no promotional avenues for them to the post of Assistant Sanitary Inspector (ASI) in terms of the recruitment rules for the said post, whereas Safai Karamchari and Sanitary Guide have been made eligible for promotion to the post of said category. It is further stated that they possess the diploma in Sanitary Inspector and their nature of work is identical to that of Safai Karamchari. It is further stated that both of them report to the same controlling authority and are also getting the same pay scale, yet the Safai Karamchari and Sanitary Guide have been made eligible for promotion to said post. It is further stated that the applicants have also made repeated representations to the respondents but the respondents have not ventilated their grievance so far no reply was given.

3. Respondents in their reply have disputed that the job performed by the applicants are of the same nature as of Safai Karamchari and along with their reply they have also annexed a list (Annexure A-1), showing duties and responsibilities of the Mate and Mazdoor to point out the difference. Respondents have further stated that the controlling authorities of the two categories are different because the applicants are working under the direct control of Executive Engineer whereas Safai Karamchari are working under the control of ASI. Respondents have stated that in terms of the recruitment regulations (Annexure

“B”, page 73 of the paper-book), whereby Safai Karamchari/Sanitary Guide with certain number of years of regular service and possessing other required qualifications have been made eligible for promotion. It is also stated that neither Mate nor Beldar are the feeder category for the post of ASI. Thus, according to the respondents in terms of the existing rules/regulations applicants cannot be promoted to the post of ASI.

4. Applicants have filed rejoinder, thereby reiterating the submissions made in the OA.

5. It may be stated that earlier this Tribunal vide order dated 10.07.2009 after hearing the parties and relying upon the judgment of the Apex Court has directed to the respondents to take steps to introduce necessary amendment in the existing rules to the post of ASI. At this stage, it will be useful to quote paras-9-13 of the judgment, which thus read:

“9. In the case of Raghunath Prasad Singh Vs. Secy., Home (Police) Department, Government of Bihar and Others, AIR 1988 SC 1033 the Honble Supreme Court observed as follows in para-4 thereof:-

“Before we part with the appeal, we would like to take notice of another aspect. In course of hearing of the appeal, to a query made by us, learned counsel for the appellant indicated the reason as to why the appellant was anxious to switch over to the general cadre. He relied upon two or three communications which are a part of the record where it has been indicated that there is no promotional opportunity available in the wireless organization. Reasonable promotional opportunities should be available in every wing of public service. That generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly. We would, therefore, direct the State of Bihar to provide at least two promotional opportunities to the officers of the State Police in the wireless organization within six months from today by appropriate amendments of Rules”.

10. Yet again in Food Corporation of India and Ors. Vs. Parashotam Das Bansal and Ors., 2008(1)SCT 769 the Apex Court while dealing with non availability of promotional avenues for the respondents in the engineering section of the Corporation quoted in Para-11 thereof from decision in Council of Scientific and Industrial Research and Anr. Vs. K.G.S. Bhatt and Anr. , (1989)4 SCC 635 as under:-

“It is often said and indeed, adroitly, an organization public or private does not “hire a hand” but engages or employees a whole man. The person is recruited by an organization not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organization. It is an incentive for personnel development as well. (See: Principles of Personnel Management by Flipo Edwin B. 4th Ed. P.246). Every management must provide realistic opportunities for promising employees to move upward. “The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both non- managerial employees and their supervisors”. (See: Personnel Management by Dr. Udai Pareek p. 277). There cannot be any modern management much less any career planning, man-power development, management development etc. which is not related to a system of promotions.”

The following judgments have been relied upon by the applicants:-

Babu Lal, Convenor and another v. New Delhi Municipal Committee and another (AIR 1994 SC 2214).

(ii)Dr. Subrata Sarkar V. State of West Bengal and Ors. (2008(3)CALLT 304(HC)

The Apex Court in Babu Lal (supra) has observed that a Beldar is essentially a Safai Karamchari and they alongwith Sewer men and sweeper are part of the Sanitary Staff belonging to Class-IV. Prior to 1978 their posts were interchangeable with sweepers and they alongwith sweepers and allied categories were appointed in same manner and belonged to a unified cadre. Their nature of

work is similar, being connected with maintaining cleanliness of roads, sewerage system and storm water drains and aimed at protecting the drainage and sewerage system from being chocked. It was found that Sweepers, Beldars and Mates are included by NDMC in the group of Class-IV called Safai Karamchari for purpose of promotion to Assistant Sanitary Inspector. In Dr. Subrata Sarkar (supra) the relevant rules did not provide scope for promotion for clinical instructor to higher post and when they were held to be discriminatory denying right to promotion, the Rules were amended and later suitable relief would be granted.

12. We, therefore, find that the applicants have made out a case for being provided opportunity for promotion. As the Recruitment Rules carry legislative force the applicants cannot expect to be considered for promotion as Assistant Sanitary Inspector in terms of the same as they exist today. However, such a matter lies within the domain of the administration and as a model employer they are expected to consider and introduce necessary provisions whereby promotional avenues are extended to Mates and Beldars in the MCD, if feasible by their inclusion in the Recruitment Rules as one of the feeder categories for the post of Assistant Sanitary Inspector with necessary Government approval.

13. The respondents are, therefore, directed to take steps to introduce necessary amendment in the existing Recruitment Rules for the post of Assistant Sanitary Inspector to provide for promotional avenues for the applicants or in the alternative to frame appropriate rules for promotion in accordance with law. This exercise be completed within a period of three months from the date of receipt of a certified copy of this order and applicants apprised thereof.

6. It may be stated that the respondents filed RA-116/2010 along with MA for condonation of delay. However, the said RA along with MA for condonation of delay was dismissed vide order dated 29.04.2010. It may also be stated here that the order of this Tribunal passed in TA as well as order passed in RA were challenged by the respondents by filing WP (C) No.5773/2010. The High Court of Delhi set aside the order dated 29.04.2010 with a direction to restore the RA. However, for the negligence on the part of the respondents they have not brought to the notice of the Tribunal the fact that promotional avenues to Nala Beldars are

already available a cost of Rs.11,000/- was imposed upon the Corporation. Accordingly, vide order dated 1.8.2011 RA was allowed and order dated 29.04.2010 was recalled and TA restored to its original number. As such, this TA has been listed for the purpose of hearing again on merit.

7. We have heard the learned counsel of the parties and has gone through the reasoning given by the Tribunal in the earlier judgment, relevant portion of which has been reproduced in the earlier part of this judgment, we are of the view that no mandamus can be issued to the respondents to provide promotional avenues to the category of Beldar/Mate being a policy matter and it is for the rule-making authority to consider such a matter.

8. At the outset, it may be stated here that the applicants No.1, 3 and 5 are working as Beldar. As per the recruitment regulation for the post of Mate, which has been placed on record in the RA, it is evident that there are promotional avenues available to Beldar to the post of Mate, as such their grievance that they should also be made eligible for promotion to the post of ASI, which is definitely a higher category than that of the Mate, is without any basis and deserves outright rejection.

9. Now, let us consider the grievance of applicants No.2 and 4, who are Mates, and for them there is no promotional avenues to the post of ASI. This Tribunal in the earlier judgment has placed reliance upon the decision of the Court in the case of Raghunath Prasad Singh Vs. Secy., Home (Police) Department, Government of Bihar and Others, AIR 1988 SC 1033 and Food Corporation of India and Ors. Vs. Parashotam Das Bansal and Ors., 2008(1)SCT 769, in para-13 of the judgment has issued a direction in the nature of mandamus, thereby directing the authorities to introduce necessary amendment in the existing recruitment rules for the post of ASI to provide for promotional avenues for the applicants or in the alternative to frame appropriate rules for promotion in accordance with law. Thus, according to us, it was not legally permissible for this Tribunal to give such directions. It is no doubt true that the Apex Court in the case of Raghunath Prasad Singh (supra) before parting with the appeal has made observation, relying upon Food Corporation of India (supra) and Council of Scientific and Industrial Research and

Anr. Vs. K.G.S. Bhatt and Anr., (1989)4 SCC 635, that there should be reasonable promotional opportunity available in every wing of public service and there should at least two promotional avenues to the officers of State Police Service in the wireless organization, but, one cannot lose sight of the fact that the judgments in the case of Raghunath Prasad Singh (supra) and K.G.S. Bhatt (supra) were rendered in the years 1988 and 1989 and subsequently the Government pursuant to the recommendations of the V Central Pay Commission has introduced a ACP Scheme whereby two financial upgradation have been provided to the employees who are stagnating on account of non-promotional avenues. It is also not in dispute that the ACP Scheme has also been made applicable to the employees of the MCD. Thus, after the introduction of the ACP Scheme it cannot be said that the employees are stagnating even if there are no promotional avenues; as such employees have been provided two financial upgradation in their entire career and now three financial upgradation pursuant to the introduction of MACP on the recommendations of the VI CPC. Thus, according to us, applicants cannot draw any assistance from the aforesaid judgment. Rather according to us, the matter is squarely covered by the judgment of the Apex Court in the case of State of Manipur and Another v. Ksh. Moirangninthou Singh and others, (2008) 1 SCC (LandS) 35, where the Apex Court in para-6 has made the following observation:

“ . The Division Bench held that the learned Single Judge had no power to direct amendment of the Act and the Rules, and we fully agree with this view since the Act can be amended only by the Legislature and the Rules can only be amended by the State Government, or the empowered under the Manipur Home Guards Act, 1947. However, the Division Bench upheld the other directions given in the Judgment of the learned Single Judge”.

10. To the similar effect is the decision of the Apex Court in the case of Dilip Kumar Garg and another v. State of U.P. and others, JT 2009 (3) SC 202. That was a case where in terms of Rule 9 (2) of the U.P. Service of Engineers (Building and Road Branch) (Class II) Rules, 1936 no diploma holder Junior Engineer could be promoted as Assistant Engineer, unless he clears the qualifying examination. Such requirement was done away with by rule 5 of the 2004 Rules. The issue, which was under consideration before the Apex Court was whether Rule 5 of 2004

Rules violates Article 14 of the Constitution of India by placing Diploma holders at par with Degree holders for promotion. The Apex Court answered the issue in negative and held that whether degree holders and diploma holders should be treated at par, is a policy decision, which can be best taken by the administrative authorities. Article 14 should not be stretched too far to make administrative functioning impossible. The fact that in the past they have been treated differently does not mean that in future they cannot be treated at par.

11. In the present case there was no promotional avenue available to the category of applicants. If the rule-making authority, having regard to the efficiency of administration and other relevant circumstances and also taking into consideration the functional duties performed by the various categories of posts, has taken a decision that the category of Mate should not be included in the feeder category, it is not permissible for us to hold that the category of Mate should also be considered as feeder category, as according to us, it is the administrative authorities who are the best judge to decide as to what should be the feeder category for a particular post. As already stated above, it is not a case that the applicants are stagnating, as according to the ACP Scheme they are entitled to two financial upgradation, which Scheme has now been replaced by MACP Scheme, where the employees will be entitled for three financial upgradation in their entire service career, even if there are no promotional avenues available.

12. In the result, for the foregoing reasons, TA is found devoid of merit, which is accordingly dismissed, without any order as to costs.

13. Before parting with the case, we hasten to add that dismissal of this TA may not be construed that the rule-making authority shall not consider the case of the Mates for their induction as feeder category for the post of ASI and if rule-making authority decides to provide promotional avenues to this category, our observations shall not come in the way of the authorities to explore possibilities for including the category of Mate as feeder category for promotion to the post of ASI.