

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) No.1223/2010**

% **Date of Decision: 05.05.2010**

Krishan Pal and Ors. .... Petitioners  
Through Mr. Javed Ahmed and Mr. Vaseem Mian,  
Advocates

Versus

MCD & Ors. .... Respondents  
Through Nemo

**CORAM:**  
**HON'BLE MR. JUSTICE ANIL KUMAR**  
**HON'BLE MR. JUSTICE MOOL CHAND GARG**

- |    |                                                                       |     |
|----|-----------------------------------------------------------------------|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not?                                | NO  |
| 3. | Whether the judgment should be reported in the Digest?                | NO  |

**ANIL KUMAR, J.**

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The petitioners have impugned the order dated 11<sup>th</sup> December, 2009 passed by the Central Administrative Tribunal, Principal Bench in TA No. 903/2009 titled as Krishan Pal & ors Vs. MCD, dismissing their Original Application claiming grant of 2<sup>nd</sup> financial upgradation in their pay scale in accordance with the office order dated 13<sup>th</sup> May, 2003 allegedly also granted to the similarly situated other employees.

The petitioner no.1 was initially appointed as Seasonal Malaria Jamadar in January, 1971 and were promoted as AMI/SW on 6<sup>th</sup> September, 1977. The petitioner No. 2 was also initially appointed as Seasonal Malaria Beldar on 12<sup>th</sup> August, 1976 and was promoted as AMI/SW on 1<sup>st</sup> June, 1978 and ACP benefit was granted to the petitioner No. 2 w.e.f. 12<sup>th</sup> August, 2000. The petitioner No. 3, Sh. Suraj Bhan was also appointed as Seasonal Malaria Beldar (SMB) on 8<sup>th</sup> February, 1978 and was promoted as AMI/SW on 4<sup>th</sup> July, 1978 and was granted first ACP benefit w.e.f. 8<sup>th</sup> February, 2002.

Under the policy of Assured Career Progression (ACP), benefits were to be granted w.e.f. 9<sup>th</sup> August, 1999. First ACP was granted w.e.f. 2.8.1999 and according to the respondent, the petitioners were not entitled for 2<sup>nd</sup> ACP as they were promoted from Seasonal Malaria Jamadar to Assistant Malaria Inspector in 1977-78.

This was challenged by the petitioners contending that they were directly appointed to the post of Assistant Malaria Inspector during the period 1977-78 and consequently, after their direct appointment, since they have not been given any promotion besides the first ACP benefit, they are entitled for 2<sup>nd</sup> ACP benefit also.

Since the 2<sup>nd</sup> ACP benefit was denied to them, they filed the writ petition in this Court being WP (C ) No. 3936-38/2006, which was transferred to the Central Administrative Tribunal and was registered as TA 903/2009, which has been dismissed by the Tribunal holding that the appointment of the petitioners was initially as Seasonal Malaria Jamadar and they were promoted in 1977-78 and they were not appointed directly to the post of Assistant Malaria Inspector as they did not have the requisite educational qualification and therefore, they could not have been appointed directly rather they were promoted from Seasonal Malaria Jamadar to the post of Assistant Malaria Inspector and thus, the 2<sup>nd</sup> ACP benefit could not be granted to them.

The learned counsel for the petitioner has very vehemently contended, referring to the appointment order dated 5<sup>th</sup> September, 1977, that they were not promoted to the post of Assistant Malaria Inspector but they were directly appointed to the said post. The eligibility conditions for appointment to the said post of Assistant Malaria inspector are stipulated in the relevant Recruitment Rules which are as under:-

“7. Educational & other qualification for direct recruits

(1) Matric preferably with science subject

(2) Sanitary Inspectors Diploma or Malaria inspectors Course

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|-----|-----------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 10. | Method of recruitment<br>Whether by direct recruitment<br>or by promotion and percentage<br>of vacancies to be filled | (i) 50% by direct appointment<br>(ii) 50% by promotion from<br>categories of Anti malaria/DDT<br>Beldars & Jamadars with 1<br>year experience in the case of<br>matriculates & 10 years<br>experience in the case of<br>Middle. |
| 11. | In case of recruitment by<br>promotion, grade from which<br>promotion to be made                                      | 1. Anti Malaria/Anti Larval<br>Beldars<br>2. Anti Malaria/Anti Larval<br>Jamadars.<br><br>3. DDT Jamadars (Superior<br>Field Workers).<br><br>4. DDT Beldars<br>(Field Workers)"                                                |

The learned counsel for the petitioner has not been able to deny that all the petitioners did not have the requisite qualification of Sanitary Inspector Diploma or Malaria Inspector Course. If the petitioners did not possess the requisite Sanitary Inspector Diploma or Malaria Inspector Course, they could not be appointed to the post of Assistant Malaria Inspector directly.

The learned counsel for the petitioner could not justify that though they did not have the requisite qualification for appointment as Assistant Malaria Inspector, however they were appointed on account of alleged concession granted at that time. The learned counsel, however, is unable to show any such order or any order granting such relaxation

for appointment as Assistant Malaria Inspector despite not having pre-requisite qualification in case of petitioners or to any other persons.

The learned counsel for the petitioner has contended that the respondents have the necessary orders or notification granting relaxation and the same has not been produced. This is not disputed by the learned counsel for the petitioner that the production of such relaxation order or notification was not sought by the petitioners from the respondent before the Tribunal. Perusal of the writ petition, which was filed before this Court, which was later on transferred to the Tribunal, reveals that no such plea was taken by the petitioners that though they were not eligible for appointment by direct recruitment to the post of Assistant Malaria Inspector on account of not having pre-requisite qualification, however, they were appointed on account of relaxation granted by MCD.

The plea of the petitioners is rather that they were given ad hoc appointment as Assistant Malaria Inspector and they have continued to work as such. In the circumstances, the petitioners cannot be permitted to contend that though they did not possess the requisite qualification in accordance with the Recruitment Rules, however, they were appointed as Assistant Malaria Inspector directly on account of relaxation from the requisite qualification granted by MCD to them. In the circumstances the plea of the respondent that the petitioners were

promoted to the post of Assistant Malaria Inspector has to be accepted and the finding of the Tribunal in this regard cannot be faulted.

The learned counsel for the petitioner has also relied on a show cause notice dated 9<sup>th</sup> August, 2005 stipulating that the petitioners were promoted from the post of Seasonal Malaria Beldar and since the petitioner did not fulfill the eligibility for direct recruitment for the post of Assistant Malaria Inspectors applicable at that time as per Recruitment Rules for the said post and as the candidates for the post of Assistant Malaria Inspector were required to possess Sanitary Inspector Diploma and since the petitioners were promoted, therefore, why the 2<sup>nd</sup> financial upgradation granted under the ACP Scheme may not be withdrawn with retrospective effect.

The said show cause notice was not restricted to the petitioners only but was given to number of employees on the premise that the second upgradation under the scheme scheme had already been granted to the petitioner and other persons. This is not disputed that the 2<sup>nd</sup> financial upgradation had not been granted to the petitioners. Therefore, on the basis of the show cause notice dated 9<sup>th</sup> August, 2005, they cannot contend that they were appointed as direct recruit to the post of Assistant Malaria Inspector and they were not promoted from the post of Seasonal Malaria Beldar.

In the totality of the facts and circumstances, the petitioners have not been able to establish that they were appointed directly to the post of Assistant Malaria Inspector as they did not have requisite qualification as contemplated under the Recruitment Rules and consequently, the inevitable inference that they were promoted from the post of Seasonal Malaria Beldar to the post of Assistant Malaria Inspector and on account of getting one promotion in 1977-78, they are only entitled for one benefit under the ACP Scheme and not to the other benefits, cannot be faulted.

In the circumstances, this Court does not find any such illegality or irregularity or such perversity in the order of the Tribunal, which shall require any interference by this Court in exercise of its jurisdiction under Article-226 of the Constitution of India.

The writ petition, in the facts and circumstances, is without any merit and, it is therefore, dismissed.

**ANIL KUMAR, J.**

**MAY 05, 2010**

‘rs’

**MOOL CHAND GARG, J.**