

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

+ **W.P. (C.) No.12254/2009**

% **Date of Decision: 16.03.2010**

DURGA PRASAD, LDC & ORS. PETITIONERS
Through Mr. K. Venkatraman, Advocate

Versus

M.C.D. & ANR. RESPONDENTS
Through Mr. Vinay Sabharwal, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 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 |

MOOL CHAND GARG, J.

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1. This is a writ petition filed by the petitioners who have assailed the order passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'the Tribunal') dated 28.07.2009 in O.A. No.340/2009 and M.A. No.253/2009 declining to interfere with the action of the respondents in withdrawing the ACP benefits given to the petitioners earlier.

2. The petitioners have prayed for quashing the order of the Tribunal limited to the extent of declining to restore the ACP benefits to the petitioners and with a further direction to direct the respondents to

restore back the benefits of first financial up-gradation/ACP granted by the office by order dated 04.09.2003

3. Briefly stating the facts of this case are that the petitioners No.2 and 4 were appointed in the year 1986-87 as Process Servers on regular basis while petitioners No.1,3, 5 and 9 were appointed as Peon on regular basis. Thereafter in the year 1987-1988, they competed for departmental post for appointment to the post of LDC under 15% quota. It was one of the conditions for the recruitment for the post of LDC that only the regular Group 'D' employees who were eligible to be recruited as LDC under 15% post quota would only be considered for the post of LDC.

4. Pursuant to the aforesaid decision of the respondents, the petitioners applied for the post of LDC. At the same time on account of the circular dated 29.01.1987 some appointments were also sought to be made on contract basis. The petitioners as well as the persons who were appointed directly to the post of LDC, as per the order dated 09.05.2003, were treated as direct appointees. Even though they were promoted from Group 'D' to Group 'C' post, ACP was granted to them vide order dated 19.09.2003 along with the direct recruits. However, the said ACP had been withdrawn on 24.06.2008 and it is against the said order the petitioners had approached the Tribunal.

5. The entire controversy stands mentioned and clarified by the Tribunal in terms of observation made in paragraphs 5,6,7 and 12 of the order which we reproduce for the sake of reference:

5. By their counter reply the respondents have stated that out of 34 employees 23 were from muster roll/work charge categories and they were given opportunity to appear in the departmental test. They were treated as direct appointees as the post/cadre of muster roll/work charge employees is not the feeder channel for promotion to the post of LDC as per the Recruitment Rules. On the other hand in the case of the applicants it is stated that the relevant Recruitment Rules prescribe promotion quota to be filled up on the basis of departmental exam. Therefore, such appointments shall be counted as promotion for the purchase of benefit under ACP scheme. There is no question of junior or senior in the matter of ACP benefit.

6. It is further clarified that the withdrawal of the benefit of the 1st ACP granted to the applicants was justified because their elevation from the post of Peon and Process Server to the post of LDC in 1987-1988 was by way of promotion and the benefit would not be available to those promoted as LDC through test. As such 1st financial upgradation had been given to them in the pay scale of Rs. 4000-6000 erroneously which was detected by the Screening Committee while examining the case of another employee and upon its recommendation as well as in terms of Government of India guidelines permitting review of wrong extension of ACP benefit, the impugned orders were issued and recovery was also ordered.

7. By their rejoinder the applicants have reiterated that they were the regular Class-IV employees and the only ones eligible for the post of LDC in terms of the Recruitment Rules but others on work charge/muster roll/ ad hoc/ daily wager who were not entitled to be considered were allowed to take the test contrary to the statutory rules and even the ACP benefit given to them has been maintained whereas the same has been withdrawn from the applicants. Thus, not only have the respondents acted illegally but in violation of the principles of natural justice and fair play.

12. We find that as per the Recruitment Regulations the channel through which the applicants have been appointed as LDC is that of promotion from regular Group-D employees. Apparently, the respondents have incorrectly treated the applicants as direct recruits instead of promotees. Therefore, the withdrawal of the grant of 1st ACP benefit be the impugned order dated 24.06.2008 cannot be faulted. It is settled law that a mistake could always be corrected and if upon giving opportunity of hearing it is possible to arrive at a different finding, the principle of natural justice must be complied with. In the facts of the present case, we are of the considered opinion that in terms of the provisions of the Recruitment Regulations two views could not be possible in this regard. Further, if the other employees were wrongly appointed as LDC and given ACP benefit, this would not impart to the applicants any legal right as Article 14 of the Constitution does not envisage negative equality. However, as the grant of 1st financial upgradation under ACP scheme was not due to any fault or misrepresentation on the part of the applicants it would be iniquitous to impose recovery upon them keeping in view also the judgment of the Hon'ble Supreme Court in *Shyam Babu Verma Vs. Union of India*, 1994 SCC (2) 521. It is, therefore, directed that no recovery shall be made from the applicants and the amount recovered, if any, shall be refunded within a period of two months from the date of receipt of a certified copy of this order.

6. It is thus, apparent that the petitioners had already got an opportunity of promotion when they were appointed as LDC's from the post of Peon whereas it was not so in the case of those who were recruited as LDCs and were thus, given ACPs because there being no further promotion.

7. There may be a truth in the allegations of the petitioners that appointment of those persons were illegal as observed by the Tribunal in paragraph 11 but the directions which have been given to the respondents qua those persons is not the subject matter of challenge before us.

8. The very fact that the petitioners were not entitled to ACP for the simple reason that it was not a case where no promotion was granted to the petitioners within a period of 12 years which is the basis of the grant of ACP, they were not entitled to the ACP but had been conferred the said benefit wrongly and thus, it has been withdrawn.

9. The order upholding such action on the part of the respondent does not suffer from any infirmity which calls for any interference from this Court while exercising powers under Article 226 of the Constitution of India. Accordingly, the writ petition is dismissed with no orders as to costs.

MOOL CHAND GARG, J.

MARCH 16, 2010
'anb'

ANIL KUMAR, J.