

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

Reserved on: 15th September, 2011

% Date of decision: 22nd September, 2011

+ **W.P.(C) NO.1483/2002**

LAKSHMI CHAND Petitioner
Through: Mr. R.V. Sinha, Advocate with
Mr. A.S. Singh, Advocate.

-versus-

UNION OF INDIA & OTHERS Respondents
Through: Mr. Asit Tiwari, Advocate for
Ms. Barkha Babbar, Advocate for
Respondent No.1 to 4.
Mr. J.C. Malik, Advocate for
Respondent No.5.

CORAM:

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

SIDDHARTH MRIDUL, J.

1. The instant Writ Petition is preferred against the Order dated 13th February, 2002 whereby the Central Administrative Tribunal (hereinafter referred to as 'Tribunal') allowed the

O.A. No.2054/1998 filed on behalf of the Respondent No.5, Sh. Jagan Nath. The impugned Order, in effect, directed the reversion of the Petitioner from the post of Assistant Store Keeper (ASK) to his substantive post (in this case 'Lascar') within two months of receipt of the Order dated 13th February, 2002.

2. Shorn of unnecessary details, the facts leading to filing of the present Writ Petition are adumbrated as below:

(a) In the year 1984, the Petitioner herein was appointed to the post of Lascar in the office of the Respondents (Indian Air Force). The next promotion was to the post of ASK.

(b) Subsequently, the Respondents (Indian Air Force) vide advertisement dated 21st April, 1990 released one vacancy of ASK, Group 'C' for being filled by Group 'D' employees on the basis of selection through limited departmental qualifying examination to be conducted by the concerned department. The departmental examination was to be conducted as per the Circular dated 25th

November, 1983. The Circular in Paragraph-4 prescribed the following condition:

“With regard to vacancies (10%) served for Group ‘D’ lascars it has been decided that the vacancies will be allotted to units concerned. Units will conduct a qualifying limited departmental examination, after calling for applicant from eligible Group ‘D’ lascars.....

.....The only difference being that the candidate obtaining a minimum qualifying marks fixed by the unit Authority for passing the exam will be placed in a list in accordance with the Seniority as Lascar and not as per the marks obtained in the examination.....”

- (c) The departmental examination of Group ‘D’ employees was held on 26th May, 1990. Thereafter, the interview for the post of ASK was conducted on 28th May, 1990 which resulted in Petitioner being appointed to the post of ASK. Vide order dated 12th July, 1990 the Petitioner was appointed as ASK in temporary capacity in the Air force.
- (d) Relevant it is to note that the Petitioner obtained 60% marks in the departmental examination whereas the Respondent No.5 obtained 52% marks.

- (e) The Board of Officers fixed 60% marks as qualifying marks. The Petitioner, on obtaining the qualifying marks fixed by the Board of Officers, was duly appointed to the post of ASK vide appointment letter dated 12th July, 1990. The Counter Affidavit filed on behalf of the Respondent Department in the instant Writ Petition as well as the stand of the department before the Tribunal is consistent in as much as it postulates that as per circular dated 25th June, 1990, the Board of Officers at No.56 ASP, Air Force, Faridabad fixed the minimum qualifying marks as 60% for the selection of Assistant Store Keeper.
- (f) Thereupon, Respondent No.5, Sh. Jagan Nath lodged a protest before the concerned department on 14th July, 1990 raising grievance against the appointment of the Petitioner herein to the post of ASK, in spite of him being below the Respondent No.5 in seniority.
- (g) In response to the representation, the Headquarters Maintenance Command issued a letter dated

20.10.1990 *inter alia* pointing out that the qualifying marks of 60% fixed by the Examination Board were inordinately high and therefore advised appointing authority to consider 50% as the cut-off.

- (h) It is not in dispute that Respondent No.5, Mr. Jagan Nath is senior to the Petitioner herein. As Respondent No.5 was senior to the Petitioner, the Appointing Authority on the advice tendered by the Headquarters Maintenance Command demoted the Petitioner back to the post of Lascar and appointed Respondent No.5 as ASK as he had secured more than 50% by order dated 18th February, 1991.
- (i) The Petitioner aggrieved by the order of reversion dated 18th February, 1991 approached the Tribunal by filing O.A. No.2569/1992 on the pretext that the concerned department before passing the reversion order had not given him any notice.
- (j) The Tribunal by Order dated 31st December, 1997 allowed the O.A. of the Petitioner herein, thereby

setting aside the reversion order dated 18th February, 1991. The reversion order of the Petitioner herein was set aside solely on the ground that the concerned department while passing the reversion order had not afforded the Petitioner an opportunity of being heard and, therefore, the rules of natural justice had not been complied with. The Tribunal while upturning the reversion order dated 31st December, 1997 directed the department to act in accordance with law thereto.

- (k) Pursuant thereto, Respondent No.5, Sh. Jagan Nath approached this Court against the Order of the Tribunal dated 31st December, 1997 by filing a Writ Petition which was dismissed by this Court on 26th March, 1998.
- (l) The Petitioner herein was reinstated to the post of ASK on 27th June, 1998 by the concerned department. The reinstatement was carried out in order to give effect to the direction of the Tribunal in the Order dated 31st December, 1997.

- (m) In the turn of events, the Respondent No.5, Sh. Jagan Nath challenged the cancellation of reversion order as well as the appointment of the Petitioner herein before the Court by means of a Writ Petition captioned as W.P.(C) No.3612/1998. The said Writ Petition was dismissed on 11th August, 1998 on the premise that the Respondent No.5 ought to have approached the Tribunal first before approaching the Court.
- (n) Thereafter, the Respondent No.5, Sh. Jagan Nath approached the Tribunal by preferring O.A. No.2054/1998 and the same was dismissed by the Tribunal vide Order dated 30th October, 1998.
- (o) As it transpires, after the dismissal of the O.A. No.2054/98, the Respondent No. 5 assailed the Order dated 30th October, 1998 passed by the Tribunal by way of a Writ Petition. On 19th January, 2001 the Court disposed of the Writ Petition by remitting the matter back to the Tribunal with a

direction to the Tribunal to hear O.A. No.2054/1998 afresh.

- (p) On the basis of the Order of the Court dated 19th January, 2001 the O.A. No.2504/1998 was heard afresh by the Tribunal which culminated in passing of the impugned Order before us.

3. The gravamen of the decision of the Tribunal is based upon the Letter/Circular dated 6th May, 1986 issued by the Respondent Department for advancement from Group 'D' to Group 'C' post. The relevant portion of the letter is reproduced below:-

"ADVANCEMENT FROM GROUP "D" TO GROUP "C" POST"

.....

2. The matter regarding promotion of Group D employees to the post of LDC has been further examined. Following procedure may be adopted for selecting Group 'D' candidates:-

- a) A qualifying examination may be conducted among eligible Gp 'D' employees of that Unit where vacancy is released.
- b) **A select list may be prepared of those candidates who obtain 40% marks and they may be selected**

LDC as per their seniority in Gp. 'D' grade."

4. On the strength of the letter produced above it had been contented by Respondent No.5, Sh. Jagan Nath before the Tribunal that the qualifying marks to be obtained in the departmental examination for promotion to the post of ASK is 40% and not 60%.

5. On the basis and strength of the letter dated 6th May, 1986 the Tribunal returned the following finding which is being reproduced below:-

".....it cannot be denied that the selection was based upon a departmental qualifying examination and not a departmental competitive examination. Those eligible candidates who secured the qualifying marks were to be brought on to the select panel in order of seniority. In respondents' circular dated 6.05.86 for appointment from Gp D to Group C posts, the qualifying marks has been fixed at 40 %, while in Respondents' letter dated 20.10.1990 the unit authority was informed that the qualifying marks was 50%. There is no materials to support the proposition that the qualifying marks were to be 60% and under the circumstances, the letter dated 20.10.1990 correctly pointed out that 60% qualifying marks was inordinately high, when even in professional examinations the qualifying marks are 50%. We are of the considered opinion that fixation of the qualifying marks at 60% for the aforesaid departmental examination for appointment of eligible Group D personnel as Assistant Store Keeper (Group C) was wholly

unreasonable and arbitrary and therefore warrants our judicial interference."

6. The Petitioner herein has premised his contention on the Counter Affidavit filed by the Official Respondents which reiterates the stand projected by it before the Tribunal. It is pertinent to note that in Paragraph-2 of the said Affidavit the Department has negated that stand of Respondent No.5, Sh. Jagan Nath that the letter dated 6th May, 1986 prescribes the eligibility criterion for promotion to the post of ASK from Group 'D' namely 40% marks in the qualifying departmental examination. The Counter Affidavit on behalf of the Official Respondents further states that *"it is pertinent to mention that 40% minimum qualifying marks are for selection of LDC and not for ASK whose duties and responsibilities are entirely different from those of LDC."*

7. On the other hand, on behalf of the Respondent No.5, Sh. Jagan Nath, predicated on the letter dated 6th May, 1986, it is submitted that for the advancement from Group 'D' to Group 'C' post the qualifying marks were 40%.

8. We are in agreement with the submission made on behalf of the Petitioner for two reasons. **Firstly**, although the letter dated 6th May, 1986 refers to advancement from Group 'D' to Group 'C' post, in Paragraph 2 thereof it clearly postulates as follows: *"The matter regarding promotion of Gp D employees to the post of LDC has been further examined "*. This lends credence to the submission made on behalf of the Official Respondents that the *"40% minimum qualifying marks are for selection of LDC and not for ASK whose responsibilities are entirely different from those of an LDC"*. **Secondly**, it has been pointed out by the Official Respondents that the duties of ASK necessitated the holding of all nature of equipments inclusive of airborne equipments in a preservative manner costing crores in Indian currency and that for this reason the duties and responsibilities of ASK and LDC are entirely different. The Official Respondents have further stated in the Affidavit filed by them that 60% qualifying marks were fixed because the work involved various categories of duties and responsibilities including holding of physical stores, their preservation, maintenance of records and timely receipt and issue of dispatch of ex-board/indigenous equipment to different operating bases in defence

establishment. Also, the post of ASK reaches up to the rank of Civilian Gazetted Officer (Equipment) Group 'B' and Civilian Staff Officer (Equipment) Group 'A' and deals with very important duties and responsibilities of provisioning, issue and receipts, maintenance and accounting of Air Force stores and all the correspondence relating to this. From the aforesaid it is clear that though the pay scales of ASK and LDC were identical yet their duties and responsibilities are quite different. Consequently, the submission made on behalf of the Official Respondents that the 40% minimum qualifying marks are for selection of LDC and not for those of ASK assumes importance.

9. We are thus of the opinion on the strength of the foregoing deposition that the qualifying marks required for selection to the post of ASK were 60% and not 40%, as urged by Respondent No.5. In the result, the impugned Order is erroneous inasmuch as it came to a contrary decision and directed the reversion of the Petitioner. In view of the foregoing discussion we are of the opinion that the present Writ Petition filed on behalf of the Petitioner deserves to be allowed. Resultantly, Rule is made absolute and the impugned Order dated 13th February, 2002

passed by the Tribunal in O.A. No.2054/1998 is hereby quashed
and set aside. No costs.

SIDDHARTH MRIDUL, J.

A.K. SIKRI, J.

SEPTEMBER 22, 2011
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