

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

% Judgment Reserved on: March 07, 2011
Judgment Delivered on: March 10, 2011

+ **LPA 688/2008**

M.P.VERMA Appellant
Through: Mr.Apurb Lal, Advocate with
Kumari Alka, Advocate

versus

DIRECTOR INDIAN
INSTITUTE OF TECHNOLOGY Respondent
Through: Mr.T.Singhdev, Advocate

LPA 689/2008

PRAKASH CHAND Appellant
Through: Mr.Apurb Lal, Advocate with
Kumari Alka, Advocate

versus

DIRECTOR INDIAN
INSTITUTE OF TECHNOLOGY Respondent
Through: Mr.T.Singhdev, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

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

PRADEEP NANDRAJOG, J.

1. A short issue arises for consideration in the two captioned appeals: Whether removal of the anomaly resulting from erstwhile Mechanics Grade 'B' who were merged with

Mechanics Grade 'A' and the two groups were classified as Senior Mechanic being promoted as Assistant Foreman ahead of those who were erstwhile Mechanic 'A' resulting in the department removing the anomaly and giving the grade of Assistant Foreman to erstwhile Mechanics 'A' is a promotion or grant of a mere replacement scale?

2. Vide impugned judgment and order dated 22.4.2008 the learned Single Judge has returned a verdict against the appellants and has thus denied the claim for further promotion under the Recruitment and Career Progression Scheme 2006.

3. It is not in dispute that the Scheme of 2006 envisaged two assured upward movements/promotion in a career of a non-academic employee. The first was to be allowed after completion of 12 years of regular service and the second after a period of 12 years regular service from the date of first promotion.

4. Relevant facts are that under the respondent there existed two categories of post of Mechanic in different pay scales. Post of Mechanic 'B' was in the pay scale ₹330-480/- and that of Mechanic 'A' in the pay scale ₹380-560/-. Effective from 1.7.1982, both posts were merged and called Senior Mechanic and the pay scale given was that of erstwhile Mechanic 'A' i.e. ₹380-560/-. In other words effective from 1.7.1982, post of Mechanic 'B' got upgraded to the scale ₹380-560/- and lost the nomenclature Mechanic 'B' and the acquired the nomenclature Senior Mechanic. The post of Mechanic 'A' got no upgradation but lost its nomenclature and acquired the nomenclature Senior Mechanic.

5. Under the Career Personal Promotion Scheme 1983, Senior Mechanics having rendered 8 years' service were entitled to be promoted as Assistant Foreman, a post in the pay scale ₹425-800/-. The rule applicable envisaged service rendered as Mechanic 'B' to be reckoned as eligibility qualifying service in the grade of Senior Mechanic and thus Mechanic Grade 'B' who were re-designated as Senior Mechanics in the year 1982, earned promotions as Assistant Foreman resulting in those who were inducted in the cadre as Mechanic 'A', on account of not having rendered qualifying service becoming junior to the erstwhile Mechanic 'B'.

6. The department treated this to be an anomalous situation for the reason Mechanic 'B', a feeder post to Mechanic 'A', on re-designation of both posts as Senior Mechanic, resulted in erstwhile Mechanic 'B' being promoted to the next promotional post i.e. Assistant Foreman and those who entered the cadre as Mechanic 'A' becoming junior to the persons, who in the past, were junior to them.

7. An Anomaly's Committee was formed which recommended that erstwhile Mechanic 'A', who stood superseded on account of the promotion of the erstwhile Mechanic 'B' be also put in the same pay scale as that of Assistant Foreman, which we note is the pay scale ₹425-800/- and all such persons be called Assistant Foreman.

8. The language used by the Anomaly's Committee is imperfect and does not make it clear whether erstwhile Mechanic 'A' would be treated as promoted as Assistant Foreman or would it be treated as grant of a replacement pay scale, but the office order issued, contents whereof have been

noted by the learned Single Judge in para 9 of the impugned order, makes it clear as to what the department did. Relevant portion of the promotion order reads as under:-

“1. These promotions are made against supernumerary posts as per ladders provided in the Scheme.

2. Persons promoted to the next higher post/scale under these Rules will have no claim for seniority in the higher post. Appointments to regular vacancies from supernumerary positions on the same scale will not be a matter of right. Regular vacancies will be filled according to recruitment rules and subject to fulfillment of qualifications, experience, etc. Existing recruitment rules which provide only for seniority stand modified to include principles of selection.

3. The promotees under the Personal Promotion Scheme shall continue to discharge whatever duties and responsibilities assigned to them in the previous post in addition to any other duties or responsibilities that may be assigned to them on occupying the supernumerary post.

4. The pay on promotion will be fixed under Fundamental Rules separately.”

9. The Promotion Order is dated 3.8.1990. It makes it plain clear that the removal of the anomaly was by way of effecting promotion. The appellants accepted benefit and earned the designation of Assistant Foreman and received pay in the scale ₹425-800/-. As noted by the learned Single Judge nobody protested against the order clearly stipulating that the benefit under the order was by way of promotion.

10. The learned Single Judge has held that the process by which erstwhile Mechanic ‘A’ reached the post of Assistant

Foreman was irrelevant as long as it could be gathered that it was a case of promotion to the post of Assistant Foreman.

11. The single contention urged before the learned Single Judge was pressed in aid during argument in the appeals. The precise argument was that appellants were placed in the pay scale ₹425-800/- and were re-designated as Assistant Foreman to remove an anomaly and not by way of promotion. The respondents urged the very point which has been accepted in their favour by the learned Single Judge.

12. Our task is simple. Which of the two viewpoints is correct?

13. Since we uphold the decision of the learned Single Judge, we incorporate by reference the reasoning of the learned Single Judge as a part of our reasoning.

14. Suffice would it be to state that there may be varied reasons or situations or considerations that may be the basis for a decision to club two groups together, even though one was a feeder channel for the other. Such clubbing is permitted by law as held in the decision reported as AIR 2000 SC 2042 Bihar State Subordinate Industries Field Officers Association Vs. Kapildeo Prasad Singh. Thus, as per policy decision taken in the year 1982, post of Mechanic 'B', in the lower pay scale than that of Mechanic 'A' was upgraded and placed in the same scale as that of Mechanic 'A' and simultaneously the nomenclature of the two posts i.e. Mechanic 'B' and Mechanic 'A' was changed to that of Senior Mechanic. The next promotional post was that of Assistant Foreman in the pay scale ₹425-800/-. Eligibility condition was 8 years' service with a further clarification that service

rendered by persons in the grade of Mechanic 'B' would be reckoned as if it was service rendered as a Senior Mechanic and this resulted in persons who were junior to Mechanic 'A' stealing a march over Mechanic 'A' requiring the anomaly to be resolved. It was obvious that the anomaly was got resolved by promoting erstwhile Mechanic 'A' (re-designated as Senior Mechanic) to the post of Assistant Foreman.

15. It be noted that the appellants earned further promotion as Foreman and this has rightly been treated by the learned Single Judge as the second promotion earned by the erstwhile Mechanic 'A'. In other words the erstwhile Mechanic 'A' who got re-designated as Senior Mechanic earned first promotion when they were promoted as Assistant Foreman and earned second promotion when they became Foreman.

16. The appeals are dismissed but without any orders as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

MARCH 10, 2011
mm