

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

Date of decision: 3rd May, 2011

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W.P.(C) 12650/2009

% **SH. BHAGAT SINGH & ORS.**

..... Petitioner

Through: Mr. Arun Bhardwaj with Ms. Ritika
Chawla & Ms. Aarti Sharma,
Advocates

Versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Amiet Andlay, Adv. for R-2 to 6.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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

RAJIV SAHAI ENDLAW, J.

1. The five petitioners working as Senior Mechanic or Senior Lab Assistant with the respondent Netaji Subhas Institute of Technology (NSIT) and claiming to be entitled to be considered for next promotion to

the post of Senior Scientific Assistant (SSA), filed this writ petition seeking directions for convening a Departmental Promotion Committee (DPC) after determining the year wise vacancies and further direction for considering them for promotion to the said post with effect from the date they became eligible therefor. The writ petition was accompanied with an application seeking interim relief of restraining the respondents from holding a DPC or from taking any steps for granting Assured Career Progression (ACP) Scheme benefits. Notice of the writ petition and the application for interim relief was issued. On 27th April, 2010, the counsel for the respondents informed that no date for DPC had been fixed and no DPC would be held till the next date. The said statement was continued further vide order dated 18th May, 2010. On 26th November, 2010, the petitioners No.1,3,4 & 5 stated that pursuant to certain steps taken by the respondent *pendente lite*, their grievance no longer survived and they withdrew from this writ petition. It was the contention of the counsel for the respondents on that date that the benefits owing whereto the other petitioners had withdrawn from the petition had been extended to the sole surviving petitioner No.2 Mr. Avaneesh Srivastava also and the writ

petition did not survive qua him also. However, the counsel for the petitioner No.2 Mr. Avaneesh Srivastava (who was working as a Senior Mechanic) controverted. Vide order dated 9th March, 2011, the respondents were permitted to proceed with the proposed DPC subject however to the condition that any decision taken therein with regard to the nine posts in question to be filled up by promotion was ordered to be subject to the outcome of this writ petition surviving qua petitioner No.2 Mr. Avaneesh Srivastava. Liberty was also granted to the petitioner No.2 to participate in the process as currently adopted by the respondents, without prejudice to his rights and contentions in the present writ petition.

2. The petitioner No.2 Mr. Avaneesh Srivastava preferred intra court appeal being LPA No.357/2011 against the order dated 9th March, 2011 permitting the holding of DPC. The said appeal was disposed of vide order dated 18th April, 2011 with a direction to this Bench to dispose of the writ petition expeditiously, preferably by the end of May, 2011. The agreement of the parties to the effect that the petitioner No.2 Mr. Avaneesh Srivastava

will appear in the selection process without prejudice to his rights and contentions was also recorded.

3. The counsels for the parties have been heard.

4. The counsel for the sole surviving petitioner No.2 Mr. Avaneesh Srivastava has contended that the matter in controversy is limited i.e. whether the norms for considering the eligibility for promotion to the post of SSA, as contended by the respondents, stood amended on 12th December, 2007 or not. Attention is invited to the Notification dated 12th December, 2007 of respondent NSIT filed as Annexure R-1 to the counter affidavits of the respondents. It is contended that the only question for adjudication is whether the said Notification applies to promotion from the post of Senior Mechanic to SSA, as contended by the respondents or the same applies only to the posts of Section Officer, Chief Store Keeper, Lab Technician (Pathology), Library Attendant, Nursing Orderly, Daftri & Binder.

5. The said Notification dated 12th December, 2007 is as under:-

“Dated: 12/12/07

NOTIFICATION

Sub: Approval for draft Recruitment Rules for Groups B, C & D posts in NSIT, vetted by Services Deptt., GNCTD.

A proposal on the above subject was placed before the Board in its meeting held on 12.9.2007 vide item No.5/32(ix). Board approved the proposal. The relevant minutes/resolution of the Board under reference is reproduced below for information / further necessary action by all the concerned:

“Resolved to approve the Norms for considering the eligible candidates for future promotion to all Groups B, C, & D posts as per Annexure-7(a) of agenda and draft Recruitment Rules for various Groups B, C, & D posts as per Annexure-7(b) of agenda.

Further resolved that BOG is the competent authority to approve or make any changes in the Recruitment Rules for all Groups A, B, C, & D posts in the Institute.”

6. Attention is however invited to the following portion of Agenda item No.5/32(ix) annexed to the aforesaid Notification dated 12th December, 2007:

“The norms for considering the eligible candidates for promotion for Groups B, C & D posts is enclosed as Annexure-7(a). The revised RRs for the posts of Section Officer, Chief Store Keeper, Lab Technician (Pathology), Library Attendant, Nursing Orderly, Daftri & Binder are placed at Annexure-7(b) for approval of the Board.

Further, it may be mentioned here that, NSIT being an autonomous body, the Institute may create all the Group A, B, C & D posts with the concurrence of Finance Department, Govt. of NCT of Delhi. However, the framing of Recruitment Rules of such posts may be framed at Institute with the approval of BOG.

In view of the above the Board may consider and approve RRs for the above mentioned posts, norms for promotion to all Groups B,C & D posts and framing of Recruitment Rules for all the Groups A,B,C & D posts at Institute with the approval of Board”.

It is contended that though the same refers to the post of Section Officer, Chief Store Keeper, Lab Technician (Pathology), Library Attendant, Nursing Orderly, Daftri & Binder but does not mention the posts of Senior Mechanic or SSA. It is thus contended that the said Notification cannot be applied to the case of the petitioner.

7. Per contra, the counsel for the respondents has invited attention to Annexure-7(a) to the aforesaid Notification to contend that it applies to all

Group B, C & D posts. It is not disputed that the Senior Mechanic is a Group B post.

8. The respondents have as Annexure R-II to their counter affidavit also filed a subsequent Notification dated 18th June, 2009 of respondent NSIT constituting a two member Committee to look into the various issues arising from the representations of the employees for re-consideration of written test at the time of promotion from Group B, C and D posts. Reliance thereon is placed to show that the Notification dated 12th December, 2007 applies to all Group B, C & D posts including that of Senior Mechanic and not to the posts of Section Officer, Chief Store Keeper, Lab Technician (Pathology), Library Attendant, Nursing Orderly, Daftri & Binder alone.

9. The norm prevailing in NSIT for promotion to the post of SSA was eight years service as a Sr. Mechanic. The Notification dated 12th December, 2007 (supra), introduced the norm of written test and interview. The case of the petitioner is, that if the Notification dated 12th December, 2007 does not apply to Sr. Mechanic / SSA, then on completing eight years

as Sr. Mechanic and without being required to take a written test, he would be eligible for promotion. It may be noticed that on the recommendation of the Committee constituted pursuant to Notification dated 18th June, 2009 (supra), the requirement of written test has been waived but the requirement of interview remains.

10. I am of the opinion that the Rules for promotion from Senior Mechanic to SSA did stand amended vide Notification of 12th December, 2007. The agenda item No.5/32(ix) was with respect to all Group B, C & D posts and not only with respect to the posts of Section Officer, Chief Store Keeper, Lab Technician (Pathology), Library Attendant, Nursing Orderly, Daftri & Binder. In fact while Annexure-7(a) to the Notification deals with all Group B, C & D posts; however the Recruitment Rules were proposed to be revised only with respect to Section Officer, Chief Store Keeper, Lab Technician (Pathology), Library Attendant, Nursing Orderly, Daftri & Binder in terms of Annexure 7(b), which has not even been placed before this Court. The counsel for the petitioner is mixing up the norm for promotion with Recruitment Rules. While the norm for

promotion for all Group B,C & D posts (and which includes Sr. Mechanic/SSA) as per Annexure-7(a) stood changed to written test, interview etc., the Recruitment Rules were revised only for posts of Section Officer, Chief Store Keeper, Lab Technician (Pathology), Library Attendant, Nursing Orderly, Daftri & Binder. I have therefore no hesitation in holding that the norm for promotion qua petitioner stood amended on 12th December, 2007 and he was after the said Notification entitled to be considered for promotion not merely on the length of service but also on the basis of written test and interview.

11. The counsel for the petitioner No.2 Mr. Avaneesh Srivastava has also invited attention to:

- (a) Letter dated 21st July, 2006 of respondent NSIT, Annexure P-6 to the writ petition, informing that then seven promotion posts of SSA were lying vacant.

- (b) Letter dated 12th June, 2008 of the respondent NSIT also Annexure P-6 to the petition, stating that then 10 posts of SSA to be filled through promotion were lying vacant.
- (c) “Final Seniority List” of Senior Mechanic “as on 10th October, 2006” containing the name of the petitioner Mr. Avaneesh Srivastava at serial No.7; it is contended that while the persons at serials No.1, 2 & 6 do not have the necessary eligibility for promotion to SSA, the person at serial No.3 has retired and thus the petitioner was eligible for promotion to the vacant posts.

12. The counsel for the petitioner has relied on ***Y.V. Rangaiah Vs. J. Sreenivasa Rao*** AIR 1983 SC 852 to contend that the vacancies which occurred prior to the amendment would be governed by the old rules and not by the amended rules. He has thus alternatively contended that since even prior to the amendment on 12th December, 2007 there were vacancies to the promotional post of SSA, the said vacancies are to be filled up

merely on the basis of seniority / length of service and for which the petitioner is eligible and without requiring the petitioner to take a written test or an interview.

13. I am unable to agree with the said contention also. ***Y.V. Rangaiah*** (supra) made the observation aforesaid on the basis of the rules with which the Court in that case was concerned and which required a panel of the vacancies to be prepared every year in the month of September. It is not the case of the petitioner herein that any such panel of vacancies under the Recruitment Rules of respondent NSIT was also required to be prepared. Faced with the same, the counsel for the petitioner sought adjournment to look into the matter. However, the Division Bench having directed expeditious disposal, at the instance of the petitioner, it is not deemed expedient to adjourn the matter. The counsel for the respondents also points out that the proposition in ***Y.V. Rangaiah*** would apply to vacancies for which the candidate would be eligible; the petitioner in the present case became eligible for promotion only in 2008 (having admittedly been appointed Sr. Mechanic on 7th February, 2000) and thus cannot claim any

right to the vacancies even if any prior thereto and in particular prior to the amendment in the year 2007.

14. The counsel for the petitioner, as a last resort, has sought to argue that the Recruitment Rules are defective having not provided for rota-quota. However, there are no pleadings to the said effect and no such plea can be taken during the arguments especially after failing in the case pleaded.

15. The petitioner is thus not found entitled to the relief claimed. There is no merit in the petition. The same is dismissed. However, the petitioner who claims to have appeared in the DPC already held, if selected, in accordance with changed norms, would have the benefit thereof.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

MAY 03, 2011

‘gsr’

(Corrected and released on 12th May, 2011)