

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 10.09.2012

+ **W.P.(C) 3588/2012**

KAPTAN SINGH & ORS

... Petitioners

versus

UNION OF INDIA & ORS

... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Himanshu Upadhyay

For the Respondent : Mr Ankur Chibber

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

BADAR DURREZ AHMED, J. (ORAL)

1. The petitioners, who are eight in number, are aggrieved by the order dated 11.10.2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No.2952/2010. The petitioners were initially appointed as Chowkidars/Mazdoors/Sweepers in the year 1971 in the office of the Garrison Engineer (West), Delhi Cantonment, in the pay-scale of ₹70-1-80-EB-1-85. Subsequently, they were appointed as Motor Pump

Attendants (MPAs) in the year 1976. Thereafter, the said post of MPA was re-designated as Refrigeration Mechanic on 10.12.1982 in the pay scale of ₹260-6-326-EB-8-350. Subsequently, the petitioners were also promoted to the post of Refrigeration Mechanic (Highly Skilled) in the year 2003 in the pay scale of ₹4000-100-6000.

2. The petitioners are seeking the second financial upgradation under the Assured Career Progression Scheme (ACP) on having completed 24 years of regular service. They are claiming financial upgradation to the pay scale of ₹5000-8000 under the said ACP scheme on 09.08.1999.

3. The only point of contention is whether the appointment of the petitioners to the post of MPAs was on promotion or by way of direct recruitment. If it was a case of promotion, then the petitioners would not be entitled to the second financial upgradation, inasmuch as, they would have had the benefit of two promotions. On the other hand, if it was a case of direct recruitment, then the petitioners would be entitled to the second financial upgradation under the said ACP scheme.

4. The learned counsel for the petitioners drew our attention to a letter dated 15.07.2005 issued by the Headquarters, Commander Works Engineer, Delhi Cantonment, which is to the following effect:-

“Headquarters
Commander Works Engineer
Delhi Cantt-10

1030/NBACP/277/EIP

15 Jul 2005

GE (North) Delhi-54

RECLASSIFICATION: INDL STAFF

1. Reference this office letter No.1030/NB/561/E1P dt 09 Jan 1975, 1030/NB/LRS/68/E1P dt 04 Apr 1977 and 1102/NB/2033/E1P dt 15 Jan 1981.
2. The following amendments may please be carried out in this HQ letters quoted above:-
 - (a) Delete the existing word **“Promoted”** and substitute **“Reclassified”**.
3. All other entries will remain unchanged.

Sd/-
(S.K. Jain)
SE
Commander Works Engineer

Copy to:-

- | | | |
|-----------------------------------|---|-----------------|
| 1. HQ CE WC Chandimandir | } | For info please |
| 2. HQ CE Delhi Zone, Delhi Cantt. | | |
| 3. AAO CE (North) Delhi.” | | |

5. Based on the said letter, the learned counsel for the petitioners submitted that the petitioners were not promoted to the post of MPAs but that the posts of Chowkidars/Mazdoors/Sweepers were reclassified as MPAs. Therefore, the petitioners would be entitled to the second financial upgradation under the said ACP scheme.

6. The learned counsel for the petitioners also submitted that in fact certain other employees who were similarly situated, have been granted the second financial upgradation on the ground that the post of MPA was reclassified. It was, therefore, contended on behalf of the petitioners that the petitioners were entitled to the second financial upgradation under the said ACP scheme and that the similarly placed individuals had already been granted the benefit. Consequently, the learned counsel submitted that denial of the second financial upgradation under the said ACP scheme was illegal and the Tribunal had erred in rejecting the petitioner's said Original Application.

7. The learned counsel appearing on behalf of the respondents submitted that earlier the Tribunal by virtue of the order dated 20.10.2008 in O.A. No.646/2008 had directed the respondent to pass a speaking order after considering the petitioners' claim for the grant of the second financial upgradation under the said ACP scheme.

8. Thereafter, the respondent/Competent Authority had passed a speaking order on 05.02.2009. From a reading of the said speaking order it is apparent that the petitioners' claim was reconsidered/reviewed by the Competent Authority as per the extant Government Rules/various Policies.

In the said speaking order, with regard to the petitioner Kaptan Singh, the following factual position was narrated:-

“4. In view of the information held on record, the facts of the case for grant of ACP in your case are as under:-

- (a) You were appointed as Chowkidar on 01 Apr 1971 in GE (West) Delhi Cantt in the Pay Scale of Rs.70-1-80-EB-1-85. An extract of PTO entry as recorded on Page 5 of SB Pt-1 is enclosed. (Exhibit-I)
- (b) You were subsequently promoted as MPA on 03 Feb 1976 as per provisions contained in Recruitment Rules. The MPA comes in the direct line of promotion of Mazdoor/Chowkidar as per SRO No.215, as such one promotion was granted to you. An extract of PTO entry as recorded on page 17 of SB Pt-I is enclosed. (Exhibit-II)
- (c) You were re-designated as Refg. Mech from MPA with effect from 10 Dec. 1982 in the pay scale of Rs.260-6-326-EB-8-350. An extract of PTO entry as recorded on Page 27 of SB Pt-I is enclosed. (Exhibit-III)
- (d) Thereafter you were also promoted to Mech Refg. Highly Skilled with effect from 20 May 2003 in the pay scale of Rs.4000-100-6000. An extract of PTO entry as recorded on Page 26 of SB Pt.-III enclosed. (Exhibit-IV)”

9. The said speaking order also indicated that as per paragraph 13 of the of the Engineer-in-Chief's branch, Army Headquarters, standing order, appointment of service employees to a higher post, which is not in direct line of promotion, is to be treated as re-classification. It was clarified that in other words the definition of re-classification is direct recruitment to a

particular post. It was further stated in the said speaking order that, therefore, the petitioners' case was not covered under the definition of re-classification. The conclusion arrived at in the speaking order was as under:-

“6. In view of above, it is crystal clear that you have already been granted two promotions, one of MPA (re-designated as Refg. Mech) and 2nd of Refg. Mech HS. Hence benefit of further financial up-gradation under ACP scheme in the pay scale of Rs.5000-8000 can not be extended to you.”

10. Thus, according to the learned counsel for the respondents, the petitioners were not entitled to the second financial upgradation, inasmuch as their appointments as MPAs was on the basis of promotion and not through direct recruitment.

11. The learned counsel for the respondents also drew our attention to paragraph 11.3 of the impugned order wherein the relevant portion of the Recruitment Rules for filling up the post of Motor Pump Attendant were extracted. The said paragraph 11.3 of the impugned order is as under:-

“11.3 The relevant portions of the Recruitment Rules for filling up the post of Motor Pump Attendant (MPA) are extracted below:

Name of the Post	Classification	Scale of Pay	Whether selection post of non-selection post	Age limit for direct recruits	Educational and other qualifications required for direct recruits

1	2	3	4	5	6
Motor Pump Attendant	Military Engineer Services Class Non-Gazetted Industrial	Rs.75-2-85-EB-2-95	Non-selection post	25 years	Essential Middle standard pass

Whether age and qualifications prescribed for direct recruits will apply in the case of promotees	Period of probation, if any	Method of recruitment whether by direct recruitment or by promotion or transfer and percentage of vacancies to be filled by various methods	In case of recruitment by promotion transfer grades from which promotion to be made	If a DPC exists what is its composition	Circumstances in which UPSC is to be consulted in making recruitment
7	8	9	10	11	12
Age- No. Qualifications Yes	Six months	100% by promotion failing which by transfer and failing both by direct recruitment	<i>Promotion:</i> Mazdoors, chowkidars, sweepers who have passed recruitment trade test for the post prescribed by the Engineer-in-Chief, with three years service in the grade. <i>Transfer:</i> Persons working in similar, equivalent or higher grades in the lower	Class IV Departmental Promotion Committee	Not Applicable

			formations of Defence Services		
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12. It was, therefore, contended by the learned counsel for the respondents that the movement of the petitioners from Chowkidars/Mazdoors/Sweepers to MPAs was on account of promotion and not on account of direct recruitment.

13. The Tribunal examined the entire controversy and came to the conclusion that the petitioners were appointed as MPAs on promotion and, therefore, they were not entitled to the second financial upgradation under the said ACP scheme. Being aggrieved thereby the petitioners are before us.

14. After having heard the learned counsel for the parties and having examined the matter at some length, we are of the view that the document dated 15.07.2005 which had been shown to us by the learned counsel for the petitioners and which indicates that the petitioners were not promoted but that they were simply reclassified, is contrary to the Recruitment Rules. The Recruitment Rules have been set out above and they clearly indicate that the post of Motor Pump Attendant is to be filled up 100% by promotion failing which by transfer and failing both by direct recruitment. It is an admitted position that all the petitioners were in service as

Chowkidars/Mazdoors/Sweepers. It is also to be seen from the Recruitment Rules, that the promotion to the post of MPAs was to be from the feeder post of Chowkidars/Mazdoors/Sweepers and the criteria for promotion was that such Chowkidars/Mazdoors/Sweepers should have passed the recruitment trade test prescribed by the Engineer-in-Chief and they were also required to have three years service in the said grade.

15. From this it is clear that direct recruitment to the post of Motor Pump Attendant could only be undertaken if there were no individuals available in the category of Chowkidars/Mazdoors/Sweepers who had served three years in that grade and had passed the recruitment trade test. But, the facts of the present case indicates that all the petitioners were qualified for promotion in the sense that they were Chowkidars/Mazdoors/Sweepers; they had passed the recruitment trade test for the post of MPA as prescribed by the Engineer-in-Chief; and, each of them had three years service in the grade of Chowkidars/Mazdoors/Sweepers. Therefore, their movement from the post of Chowkidars/Mazdoors/Sweepers to the post of Motor Pump Attendant cannot but be regarded as promotion. The contention of the learned counsel for the petitioners that they were appointed through the process of direct recruitment, runs counter to the Recruitment Rules.

Consequently, we agree with the Tribunal in its finding that the so-called re-classification was contrary to the recruitment rules and, therefore, cannot be given effect to.

16. Another point which ought to have been noted by the Tribunal but has not been noticed is the fact that insofar as direct recruitment to the post of MPA is concerned, the age limit has been stipulated as 25 years. It is an admitted position that the petitioners were all above the age of 25 years on the date on which they were promoted to the post of Motor Pump Attendant. Thus, had it been a case of direct recruitment, the petitioners would not, in any event, have been eligible. This is another pointer in the direction that the petitioners were promoted as Motor Pump Attendants and had not been directly recruited as such.

17. The submission of the learned counsel for the petitioners that there were others who were similarly situated and who have been given the benefit of second financial upgradation under the said ACP scheme on the ground that the post of MPA was a re-classification of the post of Chowkidars/Mazdoors/Sweepers had been rightly rejected by the Tribunal, inasmuch as the petitioners cannot claim negative quality contrary to the Recruitment Rules. Had the Recruitment Rules permitted this, perhaps, the

petitioners may have had a case but, in view of the fact that the Recruitment Rules do not permit a re-classification of Chowkidars/Mazdoors/Sweepers as MPAs, this argument of the learned counsel for the petitioners is also untenable.

18. Therefore, in view of the fact that the petitioners had been promoted as MPAs, there is no question of them being entitled to the second financial upgradation under the said ACP scheme inasmuch as, admittedly, they have also been promoted as Refrigeration Mechanics (Highly Skilled) during this period of 24 years. Hence, the petitioners, having had two promotions, would not be entitled to any financial upgradation. Consequently, the impugned order cannot be faulted.

19. The writ petition is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

SEPTEMBER 10, 2012

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