

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

% Judgment reserved on: 26th July, 2012
Judgment delivered on: 30th July, 2012

+ W.P.(C) 4351/2010

D.P. SINGH & ORS. Petitioners
Through: Mr. Ashok Singh, Adv.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Sameer Aggarwal, Adv.

AND

+ W.P.(C) 4886/2010

AMIT RAI & ORS. Petitioners
Through: Mr. Ashok Singh, Adv.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Sameer Aggarwal, Adv.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide petition no. 4351/2010, petitioners 16 in number are seeking direction to the respondents to honour their scheme of proposal for up-gradation of employees of Building Materials and Technology Promotion

Council and implement the same granting financial benefits from the recommended dates with full consequential benefits to the petitioners and annual increments thereto.

2. In W.P(C) 4886/2010, petitioners 4 in number are seeking direction to respondents to honour their byelaws and immediately constitute Departmental Promotion Committee to complete the formalities and grant the dues of the petitioners with retrospective effect from the dates it became due with consequential benefits to petitioners and annual increments thereto.

3. Since the relief in both the petitions are qua the proposal for up-gradation of employees, therefore this Court has decided to dispose of both the petitions by way of common judgment.

4. Since the petitioners are working on different capacity with the respondent, therefore, their designations are not required to be mentioned herewith.

5. Respondents have filed response to the instant petition by stating that Petitioner D.P. Singh has already accepted his promotion from the post of Development officer in the Grade Pay of Rs.6,600/- (PB-3) in the Pay Scale of Rs.15,600 – Rs.39,100 to the post of Development Officer in the Grade Pay of Rs.7,600 (PB-3) in Pay Scale of Rs.15,600 to Rs.39,100 w.e.f from 08.04.2011.

6. Further it is stated that the respondent Council is governed by its Memorandum of Association and Rules (MOA) and Regulations. Rule 14 of the MOA stipulates that the Board may from time to time make byelaws

for carrying out the functions of the Council in pursuance of these Rules and Regulations.

7. The General Financial Rules and Fundamental Rules of Government of India shall be applicable mutatis-mutandis to the Council. The Board of Management (BOM) shall have the power to frame, amend or repeal byelaws not in consistent with these Rules for the administration and management of the affairs of the Council. Accordingly, the bye-laws of the Councils were framed, which came into force in 1983.

8. In 2005, BMTPC observed that the said bye-laws were not in conformity with the provisions of General Financial Rules, etc. of the Govt. of India etc. as stipulated in the Council's (MOA), therefore, proposed that the byelaws and other instruments may be amended to be in tune with the Govt. of India Rules, and initiated the process in this regard.

9. Therefore, the Rule 6.4.1 of the pre-revised byelaws provided for Promotion of the BMTPC officials employee, its Executive Director to the next higher scale after completion of eligible service ranking from -7 years in various Grades without linking to the availability of posts. These byelaws continued to govern promotions till the year 2003 when the last DPC was held.

10. In, 2009, proposals for promotion of incumbents in various grades to the next Scale under the aforementioned Rule of pre-revised byelaws were proposed / referred by Executive Director BMTPC to Chairman, Executive Committee of BMTPC i.e. Secretary, Ministry of Housing and Urban Poverty Alleviation.

11. Since it was noted that many provisions in the byelaws of BMTPC, including the provisions in the aforementioned promotions without linking to the availability of the posts, were not in conformity with the Govt. of India Rules as stipulated in the OMA of the Council, therefore, it was decided to first complete the process of amendment of byelaws of the Council and framing revised the Recruitment Rules of various post of BMTPC. For this reason, the proposal for promotions as per the pre-revised byelaws were not implemented.

12. It is further stated that the revised byelaws of BMTPC came into force on 14.06.2010 and revised Recruitment Rules came into force on 27.10.2010.

13. As per the revised byelaws, the Rule 6.4 providing for promotion to the next grade without linking to the availability of post has been amended to provide for promotion according to the vacancies in the sanctioned posts in the promotional Grade in accordance with the provisions in the relevant Recruitment Rules of the Council.

14. In order to address the issue of stagnation of incumbents in various posts for want of vacancies in the Council Clause 6.4.5 of the revised byelaws provides for Assured Career Progress Scheme (ACP) as applicable to the Central Govt. employees from time to time. This ACP scheme provides for grant of 3 financial up-gradation to all employees during 30 years of his or her service with reference to his direct entry in Council service at par with the Govt. of India employees.

15. The case of the promotion of the employees of BMTPC in various Grades will accordingly be processed as per the availability of the vacancies and in accordance with the eligibility criterion in the revised Recruitment Rules of BMTPC. Those who stagnate will be provided financial up-gradation as per the ACP Scheme.

16. The petitioners filed rejoinder to the reply filed by the respondent and stated that during last 18 years all the work in the Council such as appointment of ED, promotion of employees, house lease, travel of employees, telephone bills and medical reimbursement has been carried as per the provisions of old byelaws. Not even on a single occasion any employee has been informed about the any adverse remarks about any clause of the old byelaws. Therefore, the plea of the respondent no. 2 that the old byelaws were not in conformity with Rules and Regulations of Govt. of India is baseless.

17. Till November, 2010, BMTPC was funding the Research Studies, Construction Projects and appointing the contract employees as per the financial and administrative freedoms given to the Administration and ED as per the old byelaws. Respondent no. 2 himself claiming the benefits from the old byelaws, but in case of the petitioners, the respondents cannot be permitted to apply new byelaws so as to deny the benefits to the petitioners.

18. It is further stated that the respondent no. 2 has failed to explain why not even a single DPC was held during the year 2004 to 2010 except one DPC in the year 2009, the results of which have not been implemented.

19. Ld. Counsel for the petitioners has relied upon a law laid down by the Apex Court in ***Grid Corporation of Orissa & Ors. v. Rasanand Das 2003 10 SCC 297***, wherein it is held that:

“The conditions of the service cannot be altered to the disadvantage of the employees.”

20. It is further submitted that as per the new byelaws, the promotions will be given after putting 5 years of service in the present scale whereas the employees are promoted from current date i.e. April, 2011, the date of promotion, while in the past the promotions were given retrospectively from the date, it became due. There are still number of employees, who have not got the promotions since last 9 year in violation of old as well as the new byelaws.

21. Since the organization is young and technical in nature of work, established in the year 1990, have staff strength of only 46 at this point of time, therefore, there are bleak chances of further vacancies in future and thus no chance of promotions.

22. If the petitioners accept the new byelaws by making the post base promotion and at the same time resorting to direct recruitment so as to make the vacant post available for promotions, the respondent no. 2 recently issued advertisement for the post of Assistant Account Officer with the intend to fill the same by direct recruitment. That even the new byelaws prescribed that the said posts are to be filled by promotions. Therefore, the respondent no. 2 itself neither following the old nor the new byelaws.

23. Learned counsel for the petitioners has pointed out that case of Rajiv Pant, petitioner No.8 in W.P.(C) No.4351/2010, who joined the organization in 01.11.2002 as Jr. Account Assistant and till date has not been given single promotion neither as per old byelaws or new byelaws. The said Rajiv Pant was eligible for promotion as per DPC held in 2009, which has not been implemented.

24. It is further submitted that the act of respondent no. 2 will hamper the future prospect of the petitioner and reduce the motivation level to zero and thus adversely affect the working of the organization.

25. The petitioner cannot be denied to their due promotions as per old byelaws especially when the petitioners are not getting all the other benefits such as Govt. Accommodation, Pension, CGHS benefits and Posting on higher pay-scale on deputation in other Departments, which are being provided to the other employees.

26. After hearing learned counsel for the parties, it is emerged that the last DPC was held in 2003. Thereafter, the respondents are trying to make their house in order by changing bye-laws. To honour the emprise of the respondents, scheme of proposal for up-gradation of employees of Building Materials and Technology Council brought into, but the respondents failed to comply the same or to go by the old bye-laws.

27. No doubt, Rule 14 of the MOA stipulates that the Board may, from time to time, make bye-laws for carrying out the functions of the Council in pursuance of these Rules and Regulations. But the settled law is that the condition of service cannot be altered to disadvantage of the employees.

Every service requires promotion avenues. In absence of the same, the moral of the employees go down which amount to finish their initiative in the service.

28. Though as per the Rules, bye-laws of BMTPC and revised Recruitment Rules has a provision of Assured Career Progress Scheme in Council under Clause 6.4.5 as applicable to the Central Government employees from time to time. But this type of Scheme works out only where the promotion avenues are there and due to certain reasons, the promotion stagnation comes in between.

29. In case of the petitioners, when they entered in service as per the old bye-laws, the time bound promotion was there, therefore, the petitioners joined keeping in view the future prospects. This organization is very young and technical in nature of work, established in the year 1990 having staff strength of only 46 at this point of time. As per the revised bye-laws and revised Recruitment Rules which came into force on 14.06.2010 and 27.10.2010 respectively, the promotion shall be subject to the availability of the posts.

30. Simultaneously, the respondent No. 2 recently issued an advertisement for the posts of Assistant Accounts Officer with intent to fill the same by direct recruitment despite the fact that even the new bye-laws prescribe that the said posts are to be filled by promotions.

31. The case of the petitioners cannot be brought at par with the Rules and Regulations of the Government of India. The respondents Council is not providing accommodation, pension, CGHS benefits and posting on higher

pay-scale on deputation in other Departments, therefore, enforcement of the new revised bye-laws and revised Recruitment Rules would hamper the future prospects of the petitioners and reduce the motivation which certainly adversely affects the working of the organization.

32. To the change of bye-laws and Recruitment Rules even the respondents have not given the retrospective effect, therefore, the petitioners cannot be put under the new revised bye-laws and revised Recruitment Rules which change the conditions of service and alter the advantage of the employees.

33. In view of discussion above, the respondents are directed to immediately constitute a Departmental Promotion Committee to complete the formalities and grant the dues to the petitioners with retrospective effect from the dates it become due with consequential benefits under the old bye-laws and Recruitment Rules.

34. The directions issued by this Court shall be complied with within a period of eight weeks from the receipt of this judgment.

35. The instant petitions are allowed on the above terms.

36. No orders as to costs.

CM No.9658/2010 (for stay) in W.P.(C) No. 4886/2010

In view of the above, instant application has become infructuous and the same is disposed of as such.

SURESH KAIT, J

JULY 30, 2012

Jg/sb