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

Date of decision: July 08, 2013

+ **W.P.(C) 5081/2012**

UNION OF INDIA AND ORS. Petitioners
Represented by: Mr. Sankar N. Sinha, Advocate
versus

MADAN MOHAN Respondent
Represented by: Mr. A. K. Trivedi, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (Oral)

1. The challenge in the writ petition is to the order dated January 12, 2012 passed by the Central Administrative Tribunal, Principal Bench in Review Application No. 322/2012 in Original Application No. 892/2008. The Original Application No. 892/2008 was filed by the respondent herein challenging his non-promotion to the post of Technician Grade-III. Since the issue of non-promotion was related to the controversy as to whether the respondent belonged to the category of Diesel Cleaner or Store Khallasi, the same was decided in favour of the respondent herein by the Tribunal in terms of order dated February 13, 2009 wherein the Tribunal, in paragraphs 6 and 7 held as under:-

“6. This is a peculiar case in which the basic facts are not disputed, what is disputed is only their interpretation. It is true that the applicant had been

screened in 1985 for the post of Store Khallasi, which appears to be a different post from that of Diesel Khallasi since it has its promotional avenues in the Ministerial cadre and not the Artisan cadre. However, it is also a fact that the applicant has never been made to work as a Store Khallasi. Even when the name of the applicant was included in the seniority list of Diesel Cleaners in 2001, this was neither challenged by any other employee nor corrected by the administration itself. The applicant was further promoted in 2003 as a Helper Diesel Cleaner after duly passing a Trade Test. He has been working in that post since then. Again in 2006, he was asked to undergo a six months' promotional course, which he completed and passed the written test.

The stand of the respondents to reverse the position prevailing for the last more than two decades suddenly relying upon a screening of 1985 appears a little difficult to gulp down. The initial mistake on the part of the respondents in allowing the applicant to work as a Diesel Khallasi, then as a Diesel Cleaner was further compounded by his promotion as Helper Diesel Cleaner and the preparatory process for promotion to the post of Technician Grade-III. Even though, the respondents have tried to allege concealment on the part of the applicant, given circumstances of the case, this seems farfetched. It has been averred on behalf of the applicant that shifting the category to that of Store Khallasi would virtually mean foreclosing all further promotional avenues for him, even grant of ACP is submitted to be a compassion for the loss.

7. It is settled law that the Executive is free to rectify its bonafide mistake. However, it is an equally settled proposition that a needless unsettling of a settled position has to be avoided. Considering the facts, we find it a fit case for our intervention. In the interest of equity and justice, the OA is allowed and the respondents are

directed to consider the change of the applicant to the category of Diesel Cleaner as “a deemed change” with due consideration of his further promotion to the post of Technician Grade-III from the date of promotion of juniors with consequential benefits, including arrears of difference of pay and allowances. This is to be done by a speaking and reasoned order within three months from the date of receipt of a copy of the order. No orders as to costs”.

2. Pursuant to the order of the Tribunal the petitioners issued order dated July 09, 2009 whereby the request of the petitioner was not acceded to. This resulted in filing of a contempt petition by the respondent herein. The contempt petition was disposed of by the Tribunal directing the petitioners to pass a fresh order strictly complying with the earlier order dated February 13, 2009.
3. The petitioners filed a writ petition in this Court registered as WP(C)No.8062/2010 challenging the order dated February 13, 2009. The said writ petition was withdrawn on July 18, 2011 with liberty to approach the Tribunal to seek review of order dated February 13, 2009.
4. While deciding the Review Petition the Tribunal noted that the stand of the petitioners is at variance with the stand in the Original Application, by observing that “none of the factual submissions now being made and extracted above (para 9(c) of the RA) found a place in the counter reply”. Further applying the opinion rendered by the Supreme Court reported as (2008) 9 Scale 504 State of West Bengal & Ors. v. Kamal Sen Gupta (paras 18 and 35) the Tribunal held that the case in hand does not fall in the category of “matter or evidence that was not within the knowledge of the Review Applicant or even after exercise of due diligence could not be

produced before the Tribunal”. In fact the Tribunal held that there is no such averment in the Review Application. Accordingly, the Tribunal dismissed the Review Application.

5. We note that on merit while deciding the Original Application the Tribunal in paragraphs 6 and 7, which has been reproduced above, was of the view (i) that the respondent had never been worked to made as a Store Khallasi; (ii) his name was included in the seniority list of Diesel Cleaners in 2001 which was never challenged by any other employee nor corrected by the administration itself; (iii) he was further promoted in 2003 as a Helper Diesel Cleaner after duly passing a trade test. He has been working on that post since then; and (iv) again in 2006 he was asked to undergo six months promotional course which he completed and passed the written test. The above being the factors which weighed with the Tribunal to allow the Original Application we do not see any reason to interfere with the impugned order, more so when the respondent has retired. He has earned promotions in the cadre of Diesel Cleaners and it is too late in the day for the petitioners to allege that they were in the wrong all throughout.

5. We dismiss the writ petition with no order as to costs.

CM Nos.10409/2012 & CM No.10410/2012

Dismissed as infructuous.

(V.KAMESWAR RAO)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

JULY 08, 2013/mm