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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) No.361/2014 & CM Nos.713-714/2014**

% Judgement Reserved on: 21st January, 2014

Judgement pronounced on: 29th January, 2014

PRINCE GARG Petitioner

Through Mr.M.K. Bhardwaj, Adv.

versus

GOVT OF NCT & ORS. Respondents

Through: Nemo.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MS. JUSTICE DEEPA SHARMA

DEEPA SHARMA, J.

C.M.No.714/2014 (for exemption)

Exemption is allowed subject to just exceptions.

Application is disposed of.

W.P.(C) No.361/2014 & CM Nos.713/2014 (for stay)

1. The petitioner was appointed as Pollution Level Test Inspector ('PLTI') on 19th January, 1990. The respondents made appointments in the separate cadre of Motor Vehicle Inspector ('MVI'). The petitioner's contention had been that all the said appointees in the cadre of MVI had been promoted to the higher post of Motor Licensing Officer ('MLO') whereas the petitioner is still continuing as PLTI.

2. The petitioner made a representation dated 21st December, 2010 requesting for merger of PLTI cadre and MVI cadre. He had first filed an O.A.No.2120/2012 before the Central Administrative Tribunal ('CAT'), stating that he had not got promotion for the last 25 years because he was part of PLTI Cadre whereas the Inspectors in the Cadre MVI/DTI/RSIs have got third promotion. The learned Tribunal vide its order dated 29th June, 2012 disposed of the said application with the direction to decide the representation dated 21st December, 2010 of the petitioner.

3. Vide an order dated 27th July, 2012 passed by the respondents, the representation of the petitioner was disposed of whereby rejecting the request of merger of two Cadres. The petitioner was also relieved from his posting vide an order dated 30th July, 2012 with the direction to report for duties in Taxi Unit, Burari. The petitioner challenged both these orders before the learned Tribunal in O.A. No.2519/2012. The learned tribunal passed its order on 4th October, 2012 whereby the application of the petitioner was dismissed.

4. The petitioner has assailed the said order of the learned Tribunal before us on the grounds that the tribunal had committed grave error of law in passing the said order as it had not considered the law laid down by the Hon'ble Supreme Court in the case of ***Lt.Governor of Delhi vs. SI Roop Lal*** AIR 2000 SC 594 wherein it had been held that the Tribunal is required to follow the view taken by the Coordinate Bench. It is submitted that the Division Bench of the learned

Tribunal not only in one but two decisions i.e. in O.A.NO.2491/2008 and 1427/1995 held that the transfer outside the cadre in a different wing is bad in law being violative of conditions of service.

5. It is further contended that the learned Tribunal had not considered all the issues in a proper manner. It is submitted that his posting in the Taxi Unit, Burari amounts to change of cadre. It is further submitted that the directions of Hon'ble the Supreme Court in SLP no.22909/1996 in March, 1997 had not been taken into consideration and the order is liable to be set aside. Request is also made to quash the orders dated 27th July, 2012 and 30th July, 2012.

6. In the alternative, it is prayed that in the eventuality of refusal to merge two Cadres being independent to each other, the petitioner be not transferred out of Pollution Control Branch (PCB) as it would amount to serving under junior officers of MVI bench.

7. We have heard the petitioner and have gone through the record.

8. The issues raised by the petitioner are:

(a) Whether rejection of the representation dated 21st December, 2010 to merge PLTI and MVI cadres into one vide order dated 27th July, 2012 is unjustified,

(b) Whether his transfer to Taxi Unit, Burari vide order dated 30th July, 2012 amounts to forcing him to work under his juniors.

9. The petitioner had challenged the orders dated 27th July, 2012 and 30th July,

2012 before the learned Tribunal and raised the same contentions, as have been raised before us. On a consideration of the rival contentions of the parties and relying on the factual position of the case, the Tribunal has observed as under:

“8. The factual contentions of the applicant have also been rebutted by the respondents. In their short reply, while affirming about the two cadres being separate; the claim regarding the applicant being senior to the Motor Licensing Officer has been rebutted. It is averred that the contention of the applicant that he is senior to that of Motor Licensing Officer just because of his joining earlier is not a valid one. To reinforce the point further, the fact of the post of PLTI being a Non-Gazetted one with a lower pay scale and that of Motor Licensing Officer being a Group ‘B’ Gazetted post with higher pay scale has also been stated.

It has also been submitted that the applicant had been continuing in the existing post for more than 10 years. The instant transfer to Taxi Unit, Burari is stated to be in public interest. It has also been averred that among its various activities, testing of pollution is also one of them undertaken by the Taxi Unit, Burari. The factum of the applicant having not joined his new post despite having been relieved in utter disregard of the directions of the authority has also been submitted by the respondents.

9. As regards the specific aspects contended by the applicant’s counsel against the impugned transfer, the respondents have made certain submissions by their Additional Affidavit dated 25.9.2012. In the matter of availability of a sanctioned post, it is submitted that presently there are a total of 38 posts of Pollution Level Test Inspector under the Department. Without any unit-wise bifurcation, posting of the applicant is stated to be against out of the sanctioned post of PLTI. The respondents have reiterated that even in the event of his transfer to the Taxi Unit, Burari, the applicant would be working as PLTI only in his cadre and

there will be no change of change of cadre. As regards the nature of work, the respondents have submitted that “considering reservations of the applicant, specific instructions can be issued to Taxi Unit that only pollution related work to be taken from the Applicant”. Their stand that by virtue of his transfer, the applicant would not be made to work under a junior officer has been reiterated.”

The Tribunal has carefully considered both submissions of the petitioner and given sound reasons for rejection.

10. The judgment of the hon’ble Supreme Court in *SI Roop Lal (supra)* relied upon by the petitioner has no relevance in this case as the findings in that case are based on entirely different set of facts.

11. In view of the above, it is apparent that the impugned order of the Central Administrative Tribunal, Principle Bench, New Delhi does not suffer with any infirmity. There are no grounds to interfere with the findings of learned Tribunal. The present writ petition is dismissed with no orders as to costs. The stay application also stands disposed of.

DEEPA SHARMA, J.

GITA MITTAL, J.

JANUARY 29, 2014

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