

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

Reserved on: 10.10.2014
Pronounced on: 03.11.2014

+ **W.P.(C) 7337/2013, C.M. NO.15773/2013**
THE CHIEF SECRETARY, GNCTD AND ANR.

..... Petitioners

Through: Ms. Ruchi Sindhwani, Addl. Standing
Counsel, GNCTD with Ms. Meghna Bhavana,
Advocate.

Versus

SH. NARENDER KUMAR GUPTA Respondent
Through: Sh. D.R. Gupta, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE VIPIN SANGHI

MR. JUSTICE S. RAVINDRA BHAT

%

1. The petitioners in these proceedings under Article 226 of the Constitution, challenges an order dated 5.4.2013, of the Central Administrative Tribunal (hereafter "CAT") in O.A. No. 3560/2012. The CAT directed the petitioner (hereafter "GNCTD") to consider the case of the Respondent ("applicant") for promotion as a Grade III employee w.e.f. 9.5.1988 without insisting upon the condition of qualifying through a typing test.

2. The brief facts are that in 1977, the Applicant was appointed as a Grade IV employee (DASS) on a temporary basis, via direct recruitment. By an order dated 12.10.1995, he was placed under suspension, pending an investigation by the CBI. In 2002, the CBI filed a closure report, and the proceedings against the Applicant were dropped by the Tis Hazari Special court. Consequently, on 4.6.2003,

the suspension order dated 12.10.1995, was revoked. On 13.4.2005, the Applicant was granted an exemption from passing a required typing test, because he had turned 45, w.e.f 25.11.1997. This was done vide a Services Branch-III order. In the meantime, the Applicant's junior, one Ajit Singh Kataria, had been promoted to Grade III on a regular basis, w.e.f. 9.5.1988. Therefore, on 22.3.2011, the Applicant filed O.A. No. 927/2011 before the CAT, seeking promotion at par with his junior, as well as the benefit of financial upgradation in terms of the ACP scheme w.e.f. 28.6.2000, and the treatment of suspension period as spent on duty with full pay and allowances. On 29.9.2011, the CAT disposed off the petition, directing the Petitioner to ensure that all statutory obligations were adhered to, and to settle the claims of the Applicant in accordance with the rules.

3. Accordingly, on 17.2.2012, the GNCTD issued an order stating that the Applicant's suspension period would be treated as spent on duty (with consequential benefits), and on 29.3.2012, it promoted him to the post of Grade III (DASS) w.e.f. 27.5.1998. The Applicant represented against this, arguing that the Grade III promotion should take effect from 9.5.1988, and not 27.5.1998. On 26.2.2012, the GNCTD rejected the applicant's representation. Aggrieved by this, the applicant preferred O.A. No. 3560/2012, before the CAT. The GNCTD's argument was that the applicant's junior was promoted to Grade III w.e.f. 1988, because he had qualified through the typing test. On the other hand, the applicant argued that the Recruitment Rules did not provide for any such requirement for promotion to Grade III, and in fact, the Government of India's Office Memorandum, dated 14.9.1995, expressly stated that such a requirement ought to be

prescribed in the recruitment rules. According to that Memorandum, it was stated:

“It is clarified that [LDCs] can be considered for promotion only after they have passed the Typing Test or granted exemption in accordance from the prescribed procedure from doing so and any such promotion will have prospective effect. If the Recruitment Rules for the post of UDC does not contain such a provision, necessary action may be taken to amend the Recruitment Rules to incorporate a suitable provision in this regard.”

4. On 5.4.2013, the CAT disposed off the O.A., directing the GNCTD *“to assess the suitability of the applicant for his promotion as grade III (DASS) without insisting upon the condition of qualifying the typing test by him.”* It accepted the applicant’s argument, holding that:

“In the present case, it is not so that the method of recruitment to Grade III (DASS) was ever amended by the respondents before 1988 to provide for requirement of qualifying a typing test before promotion to said posts.... it is stare decisis that the administrative instructions issued by the department cannot have overriding effect over statutory rules. Once it was not so provided in the RRs that only such grade IV (Dass) who had qualified the typing test were eligible for promotion to Grade III (DASS), applicant could not be denied consideration on this ground.”

5. The CAT further held that, in any event, the Office Memorandum was prospective in nature, and applied only post-1995. Consequently, it could not apply to a promotion that was w.e.f. 1988.

6. Aggrieved by the order of the CAT, the GNCTD has approached this Court. The key question before the Court is whether it was illegal for the GNCTD to insist on qualification through the

typing test as a precondition for promotion to Grade III.

7. The GNCTD has argued that the application before CAT was barred due to limitation, because he approached it highly belatedly. This Court does not find merit in that submission. As the CAT correctly pointed out, the applicant's name was not considered for promotion in due course, because of the non-availability of service records. These particulars were obtained through a series of letters between 2006 and 2011. Furthermore, following the decision of the tribunal in O.A. No. 927/2011, the GNCTDs – in 2012 – set up a review DPC committee, which considered the case of the applicant for promotion to Grade-III (DASS), and recommended promotion w.e.f. 1998. It was after the applicant's representation against this decision had been rejected, that he approached the CAT in O.A. No. 3560/2012. Therefore, the claim of limitation is ill-founded, and the CAT had to proceed to consider the matter on merits.

8. This Court notes that the DASS Rules of 1967, stipulates that for appointment to the post of Grade-IV (DASS), a candidate must qualify through a typing test (in English or Hindi) at the prescribed speed, unless exempted by the Chief Secretary. Subsequently, promotion to Grade III will be on the basis of three years of regular service in the grade, on the basis of seniority-cum-merit. The applicant was appointed in 1977 on temporary basis, and he had not fulfilled the typing test qualification under the DASS Rules. The relevant exemption was accorded to him on 13.4.2005, on having attained the age of 45 years, by the Services Branch-III, w.e.f. 1997.

9. The fact that the applicant was appointed as a Grade-IV employee, without having qualified through the typing test, as

specified in the DASS Rules, and that too on a temporary basis, would imply, in this Court's opinion, that he had no antecedent right to be considered for promotion to Grade-III. Rule 6 of the DASS Rules makes it clear that the promotion must be based on regular service, as well as seniority-cum-merit. Given that qualification through a typing test is a mandatory requirement for regularized appointment in Grade-IV, and given that the exemption accorded to the Applicant was w.e.f. 1997, this Court holds insubstantial the applicant's contention that he had a right to be considered for promotion w.e.f. 1988, because his junior in the grade had been awarded promotion from that date. The record makes it clear that his junior had passed the required typing test. There is, therefore, a tangible difference between the two situations.

10. The occasion of the applicant's junior – or juniors – being promoted out of turn, in itself would not create a right to be considered for promotion on part of the applicant. At that relevant time, the applicant was facing inquiry and investigation in criminal proceedings; his non consideration could not be said to be unreasonable. Furthermore, the applicant does not say that his junior – considered and given promotion, did not qualify in the typing test. Therefore, such incumbent would - unless the contrary were established - be assumed to have cleared the typing test, and have held the feeder post as a “regular” employee. It is apparent, therefore, that the applicant's submission rests upon a conception of negative equality, which has consistently been rejected by the courts. For instance, it was held by the Supreme Court in *State of Bihar vs Kameshwar Prasad Singh*, (2000) 9 SCC 94 as follows:

“The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals other cannot claim the same illegality or irregularity on ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits. “

11. Similarly, in *Fuljit Kaur vs State of Punjab* (C.A. No. 5292 of 2004), the Supreme Court observed:

*“[Equality] cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a Judicial Forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim the benefits on the basis of the wrong decision. Even otherwise Art.14 cannot be stretched too far otherwise it would make function of the administration impossible. [vide *Coromandel Fertilizers Ltd. Vs. Union of India & Ors.* AIR 1984 SC 1772; *Panchi Devi Vs. State of Rajasthan & Ors.* (2009) 2 SCC 589; and *Shanti Sports Club & Anr. Vs. Union of India & Ors.* (2009) 15 SCC 705]... Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. (Vide *Chandigarh Administration & Anr Vs. Jagjit Singh & Anr.*, AIR 1995 SC 705; *Smt Sneh Prabha Vs. State of U.P. & Ors.*, AIR 1996 SC 540; *Jalandhar Improvement Trust Vs. Sampuran Singh*, AIR 1999 SC 1347; *State of Bihar & Ors. Vs. Kameshwar Prasad Singh & Anr.*, AIR 2000 SC 2306; *Union of India &**

Ors. Vs. Rakesh Kumar, AIR 2001 SC 1877; Yogesh Kumar & Ors. Vs. Government of NCT Delhi & Ors., AIR 2003 SC 1241; Union of India & Anr. Vs. International Trading Company & Anr., AIR 2003 SC 3983; M/s Anand Button Ltd. Vs. State of Haryana & Ors., AIR 2005 SC 565; K.K. Bhalla Vs. State of M.P. & Ors., AIR 2006 SC 898; and Maharaj Krishan Bhatt & Anr. Vs. State of Jammu & Kashmir & Ors., (2008) 9 SCC 24).”

12. Therefore, whether or not the applicant is entitled to consideration for promotion without the requirement of qualifying through a typing test must be examined on its own merits. As stated above, and as the GNCTD has clarified, a person appointed as Grade IV (DASS) is treated as a regular only after qualifying through the typing test; in the intervening period, he is not allowed increments, draws pay at the minimum, and, therefore, cannot be in the zone of consideration for promotion to Grade-III. This argument has not been considered by the CAT.

13. The Court notes that it is a well-established principle of law that the scope of judicial interference with promotion decisions is highly circumscribed, and is limited to cases of *mala fides* or of unreasonableness. For instance, in *Badrinath vs State of Tamil Nadu*, (2000) 8 SCC 395, the Supreme Court held that judicial interference with a DPC decision is justified only when it is *mala fide* or based on insignificant/irrelevant/inadmissible material, or one that no reasonable person could come to. Given the fact that the typing test was an essential prerequisite to employment in Grade IV (DASS) category, as per the recruitment rules, this Court feels that by invoking it as necessary for promotion to Grade III, the GNCTD acted well within the statutory framework, and its conduct was neither

unreasonable, nor based on irrelevant material.

14. It is an equally well-established principle that in cases of a seniority-cum-merit requirement for promotion, the promotions are to be made only after assessing the minimum necessary merit for such promotion, and that the benchmark be *bona fide* and reasonable, and in those circumstances, the benchmark would not be open to challenge, being a matter of policy (see, e.g., *Rajendra Kumar Srivastava vs Samyut Kshetriya Gramin Bank*, (2010) 1 SCC 335; *Rupa Rani Rakshit vs Jharkhand Gramin Bank*, (2010) 1 SCC 345); *Balbir Singh Bedi vs State of Punjab*, (2013) 11 SCC 746). Once again, in light of the fact that qualifying through the typing test was – according to the recruitment rules – an essential requirement for Grade-IV (DASS) employment, we see nothing arbitrary or *mala fide* in the GNCTDs’ decision in the present case. The Supreme Court pertinently stated in *R. Prabha Devi v Govt of India* AIR 1988 SC 902 that eligibility conditions cannot be overridden:

“When qualifications for appointment to a post in a particular cadre are prescribed, the same have to be satisfied before a person can be considered for appointment. Seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfils the eligibility condition prescribed by the relevant rules. A person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion. Seniority will be relevant only amongst persons eligible. Seniority cannot be substituted for eligibility nor it can over-ride it in the matter of promotion...”

15. The Office Memorandum of 1995 was of a clarificatory nature, and that in any event, cannot amend or change the relevant

Recruitment Rules. This court's finding is based on a reading of the relevant recruitment rules, and the nature of the rights that it vested in employees in the position of the Applicant. Furthermore, the specific part of the Central Government's Memorandum that the GNCTD relies upon is complementary to the recruitment rules, and not in contravention of them. Insofar as it requires that the case for promotion can be only be considered by the next DPC, in the ordinary course of things, after the grant of exemption (from qualification in the typing test), it merely prescribes the procedure determining promotions in the case of exemptions. In this case, the applicant's exemption – granted on 2005 – was w.e.f. 1997. The next DPC – after 1997 – was in 1998. Consequently, the GNCTD's promotion order, being w.e.f. 27.5.1998, does not suffer from any infirmity, or violation of the recruitment rules.

16. For the above reasons, the writ petition has to succeed; consequently the impugned order of the CAT, dated 5.4.2013, in O.A. No. 3560/2012, is set aside. The writ petition is allowed. No costs.

S. RAVINDRA BHAT
(JUDGE)

VIPIN SANGHI
(JUDGE)

NOVEMBER 3, 2014