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IN THE HIGH COURT OF DELHI AT NEW DELHI

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DECIDED ON: 26.04.2016

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LPA 394/2012, C.M. APPL.9614/2012

GOVT OF NCT DELHI

..... Appellant

Through : Sh. H.S. Phoolka, Sr. Advocate with
Ms. Prabhsahay Kaur, Advocate.

versus

JAGDISH RANA & ORS

..... Respondents

Through : Sh. Rajat Aneja with Ms. Chandrika
Gupta, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

S.RAVINDRA BHAT, J. (ORAL)

C.M. APPL.9614/2012

1. The Court has considered the submissions on the merits of the appeal. Consequently, interest of justice would lie in condoning the delay of 673 days in filing the appeal; it is so directed. C.M. Appl.9614/2012 is allowed in the above terms.

LPA 394/2012

2. The Govt. of NCT of Delhi (GNCTD) appeals the judgment of a learned Single Judge dated 22.03.2010 in W.P.(C) 5686/1998, directing the implementation and extension of the benefits of the Central Government (UOI) Office Memoranda dated 16.10.1979 [hereafter “the 1979 OM”] and 20.03.1994 [hereafter “the 1994 OM”] and collectively referred to as “restructuring OMs”, which sought to restructure the cadre of Lower Division Clerks (LDCs) and Upper Division Clerks (UDCs) in the Central Secretariat Clerical Service (CSCS). The 1979 OM directed that the ratio of the entire cadre strength would be to the tune of 40% UDCs and 60% LDCs whereas the 1994 OM directed the restructuring to the extent of 50% in each cadre.

3. The facts necessary to decide the controversy are that the writ petitioners are all LDCs in the Delhi District Courts. They claimed the extension of the benefits of cadre restructuring by virtue of the said two OMs of the Central Government. They *inter alia* relied upon an official letter of the GNCTD dated 30.01.1987 which had in fact proposed that the provisions of the 1979 OM should be extended in principle to the District Court staff/LDCs. Apparently, the GNCTD’s proposal was not acted upon by the UOI. This led to the filing of a writ petition by a section of the District Court staff, i.e. *Rohitashva Sharma and Ors. v. UOI and Ors.* [CW 907/1996] against *inter alia* the GNCTD and the UOI. The writ petitioners in *Rohitashva (supra)* were from the cadre of *Naib Nazirs* and were entitled to and were drawing pay scales equivalent to that of LDCs. They contended that

the restructuring OMs were applicable to them. By an interim order of this Court dated 16.07.1996, a direction was issued in the writ petition for constitution of a Committee comprising representatives of the Registrar General of the High Court; the District Judge and the GNCTD to consider the demand and submit a report. In compliance of these directions, a report was in fact prepared and furnished to the High Court in the course of the proceedings dated 22.04.1997. This report recommended acceptance of both the 1979 OM and 1994 OM. On 05.12.1997, the Court accepted the report and issued a direction for the implementation of recommendations. Apparently, the GNCTD initially did not comply with the directions. Rohitashva and other *Naib Nazirs* who had initially approached the Court, filed contempt proceedings upon which GNCTD accepted the proposals *vis-a-vis* the restructuring OMs in question and carried out necessary upgradations in the cadre.

4. The writ petitioners who approached the Court in these proceedings made a similar demand which was turned down by the GNCTD. The District Judge had recommended acceptance of the request for upgradation on lines similar to what was given to *Naib Nazirs*. However, the GNCTD declined the proposal, contending that directions in *Rohitashva (supra)* were applicable only to *Naib Nazirs* and not to LDC cadre. This led to filing of the writ petition [W.P.(C) 5686/1998], which has ultimately emanated in the present appeal.

5. The GNCTD, in response to the writ petition firstly contended that the 1979 and 1994 OMs were *per se* applicable to the CSCS staff and even to other establishments within the UOI but much less to the

GNCTD. Since the OMs are based upon independent studies regarding the effects of stagnations felt by such CSCS officials, the directions contained in those OMs were inapplicable and their logic could not be extended to other establishments. It was further contended that even the GNCTD had not applied the OMs to its own employees and that consequently the Court staff, especially the LDCs could not seek upgradation of posts based upon the restructuring OMs which could not be ordered or directed by the Court without a similar analysis of stagnation in the service.

6. Learned Single Judge negated the GNCTD's contentions. It was noted by the impugned judgment that the petition had lingered for an unduly long period due to defaults by the GNCTD who had repeatedly sought opportunities but did not avail them in filing its return/counter affidavit. The Court noted that during the hearing on 24.02.2000, it expressed *prima facie* opinion that the LDCs could not be deprived opportunities provided to others who were similarly circumstanced. Learned Single Judge also noticed that the GNCTD had on that occasion sought time to obtain instructions. Yet, no response was received. Based upon the materials on the record, and the District Judge's position - who had supported the writ petitioners' cause, the learned Single Judge found as follows:

"12. From the aforesaid, a clear lack of will to resolve the controversy which has been raging now for the last 30 years is made out. The GNCTD was itself agreeable to the upgradation as provided in the office memorandums aforesaid and for this reason only had sought sanction therefore of the Government of India. Even if GNCTD subsequently discovered that the office memorandums were

not applicable to it or meant for it, the very fact that the proposals/recommendations therein were found suitable enough to be recommended to the Government of India for according sanction for implementation shows that independently of whether the said office memorandum was applicable to GNCTD or not, the same was found to be reasonable. This is also evident from the fact that the said proposal/recommendation has already been implemented qua the petitioners in CWP No.907/1996. The GNCTD did not choose to challenge the order/directions for implementation of the said recommendations in the said writ petition before a Division Bench of this Court or before the Supreme Court and rather chose to comply with the same. Having done so, it cannot maintain a stoic silence as is evident in the present case. What was good for Naib Nazirs is good for the petitioners herein also. A clear case of lack of initiative on the part of the officials of GNCTD to deal with the matter is made out. The officials responsible for taking the decisions forget that their such lackadaisical attitude/conduct demoralizes the large number of workers affected thereby. Because of such conduct, the recommendations which have already been implemented vis a vis a small section of employees as far back as in 1997-98 still remain to be implemented qua others. A large number of them may have retired since then without enjoying the benefits of up-gradation of their posts. This writ petition was made to remain pending by meeting out assurances, for the last 10 years inspite of being squarely covered by the order in CWP No.907/1996 which has already been implemented.

13. The Supreme Court in Delhi Judicial Services Association Vs. Delhi High Court AIR 2001 SC 2102 has held that stagnation for very many years for lack of a promotional avenue, inherent in the nature of service, and limitation of other openings, results in the judicial officers, in that case, being less than contented in the absence of incentive and hope for a better future; such a situation was

held to be not conducive to bring out the best in them; it was held that it is desirable from every point of view to maintain morale & efficiency of judicial officers at the highest throughout their tenure. In my view, the same equally applies to the staff also. The Supreme Court also had recommended acceptance/adoption of an anti stagnation formula adopted in public corporations by creating special grades carrying a better scale than the existing grade for those who had invested twelve years of service.

14. The plea of GNCTD of the matter in controversy in this petition being covered by the matter pending before the Supreme Court or by recommendation of the Shetty Commission is also not found to be correct. From the documents filed along with the affidavit no such case is made out. The counsel for petitioners has handed over copy of order dated 7th October, 2009 of the Supreme Court in the All India Judges Association case whereby it is noted that in some of the states, based on various other Pay Commission Reports benefits have been given to the members of the staff; it was directed that those benefits shall be in addition to the recommendations given by the Shetty Commission.”

7. Sh. H.S. Phoolka, learned senior counsel for the GNCTD submits that the impugned judgment has rendered erroneous findings. According to the learned senior counsel, learned Single Judge overlooked the fact that what applied to CSCS cadre based upon the peculiarities of the service conditions of its LDCs, could not automatically be applied to other establishments, such as the Courts. Learned senior counsel sought to rely upon the pay scale and the grade pay extended to LDCs in the two departments/establishments - on the one hand, the GNCTD and on the other, the District Court staff. He argued that the District Court staff in Delhi is in enjoyment

of considerably higher pay scales and in these circumstances, benefits of cadre restructuring would not arise. He next highlighted that the order in *Rohitashva (supra)* was not based on any reasoning but was based on a broad understanding that the OMs in question applied to court staff. However, *Rohitashva (supra)* was dismissed subsequently without rendering any findings on 10.04.2002. Learned senior counsel submitted that this completely escaped the attention of the learned Single Judge who proceeded on the assumption that *Rohitashva (supra)* was accepted in totality. Here, it was urged that the dismissal of writ petition in such circumstances means that interlocutory or interim orders made in the course of the proceedings would absolve and merge with the final order (refer *R. Jayarama & Ors. v. State of Kerala* 2010 (12) SCALE 563 in this regard). It was emphasized that with the dismissal of the writ petition, the rights, if any, accruing on account of the interim orders stood extinguished. It was next argued that the cadre restructuring of the District Court staff was affected by virtue of promulgation of new rules with effect from 02.12.2013. The stagnation, if any, of those in the cadre of LDCs stood addressed by the new rules and consequently, the question of accepting or complying with the OMs in question did not arise. It is now established that *Naib Nazirs* are not equivalent to the cadre of LDCs. It was emphasized that the said decision ruled that *Naib Nazirs* were not entitled to be promoted to the cadre of UDCs. In these circumstances, the present writ petitioners' claim for extension of benefits of the restructuring OMs, could not have been acceded to.

8. Lastly, it was urged that the impugned judgment will have

grave financial implications and repercussions in as much as the salary bill/outgoing bills of GNCTD would increase by ₹106 crores. Elaborating on this, it was submitted that when initial note of 30.01.1987 was given, it was submitted to the UOI recommending extension of the benefits of the restructuring OMs. There was an erroneous understanding that it would not lead to any financial repercussions. These were re-examined and eventually on 18.01.2012 the GNCTD was of the opinion that the financial repercussions in this case would be considerable and consequently declined the request for the restructuring sought.

9. Sh. Rajat Aneja, learned counsel for the petitioners relied upon the findings of the learned Single Judge, It was submitted that even though an interim order was made on 05.12.1997 in *Rohitashva (supra)*, the fact remained that the report of the Committee set up by the Court was accepted and consequently action towards implementation of its recommendations were made. As a result, a cadre restructuring by way of upgradation of *Naib Nazir* posts proportionately was carried out by consequential orders of GNCTD. It was in the light of these that the original writ petitioners in *Rohitashva (supra)* did not want to press their claim. However, that did not mean that the upgradation/restructuring in the *Naib Nazir* case was rolled back or resiled by the GNCTD at any point of time. Learned counsel also submitted that even the decision sought to have been taken in 2012 with respect to the restructuring was confined to denial to the LDCs from amongst the Court staff and not with respect to *Naib Nazirs*. Learned counsel submitted that by two judgments of

Division Bench of this Court, the first being *Mirza Zahid Beg and Ors. v. UOI and Ors.* [W.P.(C) 484/1988, decided on 02.05.2008] [hereafter referred to as “Beg-I”] on parity of LDCs of the subordinate courts on the one hand, and LDCs of this Court and UDCs of the subordinate courts and UDCs of this Court, and W.P.(C) 1177/2012, concerning the parity of UDCs [hereafter referred to as “Beg-II”] the issue of parity was established. They have become conclusive and final since the GNCTD has accepted and implemented those judgments. It was submitted in the first instance that the LDC cadre matter went even to the Supreme Court where the GNCTD’s special leave was declined. Therefore, it was submitted that what is an issue in these proceedings is not parity but rather cadre restructuring with the resultant career benefits of the LDCs. It was further argued that if the Court were to disturb the findings of the learned Single Judge, the LDCs in District Courts would have to wait for inordinately long periods of time for promotion. Many of them have attained the age of superannuation without a single promotion in their entire career life - many more would end their career in an identical manner if the restructuring OM benefits are not given to them. Learned counsel highlighted that the GNCTD has in fact and in reality accepted and given effect to the cadre restructuring OMs; he relies upon the reply to the RTI query furnished by the PIO of the Services Department of GNCTD in this regard. The reply to the query states that the total sanctioned posts of Grade-III (DASS)/UDC and Grade-IV (DASS)/LDC are 4127 and 4135 respectively. It was submitted that these clearly show that there is an identity in the cadre

strength of LDCs and UDCs which assures that those entering the service as LDCs are granted promotion within a reasonable time as UDCs. Learned counsel contrasted this with the figures furnished by the District and Sessions Judge on 27.01.2016 which shows that the total sanctioned strength of UDC who are now designated as Judicial Assistants is 541 and those in the cadre of LDCs (now designated as Junior Judicial Assistant) is 2295. Learned counsel relied upon a letter of the GNCTD dated 31.10.2012 in the context of the present case and whether it would result in any financial implication. Learned counsel highlighted that according to the reply given by the Department of Law and Justice of GNCTD, “the perusal of the financial implications reveals that the overall financial implications from 1979 to 2012 is (minus) ₹16,82,86,993/- *vis-a-vis* District Court staff. This minus figure is due to revision of pay scales of LDCs from 01.01.1996 in compliance with the orders of Hon’ble Supreme Court in *Beg (supra)*).

Analysis and conclusions:

10. As is evident from the above discussion, the only controversy is whether the writ petitioners’ claim for parity with CSCS staff with respect to the applicability of the two cadre restructuring OMs were justified and if so, whether the findings in that regard, are erroneous as complained by the GNCTD. There is no dispute that *per se*, these restructuring OMs are applicable only to CSCS staff cadre employees. Equally, the GNCTD is correct when it contends that these OMs were based on some empirical set of analysis. The question is, however, whether the enquiry as to the justness of the writ petitioners’ claim

has to begin and end with that fact alone.

11. In the opinion of this Court, the answer has to be in the negative. The rationale of the cadre restructuring OMs was that the existing numbers of sanctioned posts in the concerned service at the higher or promotional levels were inadequate to address the career progression of LDCs. The first OM of 1979 directed the ratio as between UDCs and LDCs to be 40:60. The later OM of 20.03.1994 sought to address this imbalance further and mandated a parity in that the entire cadre of LDC/UDC was to be at the ratio of 50:50. In other words, for every post of LDC there had to be a promotional post of UDC. This assured a basic promotional opportunity to everyone indicated in the cadre of LDCs. The GNCTD contends that let alone District Court staff, its own establishment was not covered by the OMs. As observed by the Court earlier, undoubtedly, a facial reading would show that the OMs were applicable to the establishments they spoke for. However, there is no material on the record that the GNCTD did not comply with that OM thereafter, in that, the reply to the RTI query which has been relied upon by the writ petitioners completely belays this assertion. The GNCTD's current employees' strength of Grade-III DASS/UDC and Grade-IV DASS/LDCs is almost equivalent - as against 4125 posts of UDCs, the sanctioned strength of LDCs is 4135. The Court also finds insubstantial the argument that an independent study was necessary to establish that Court employees in the cadre of LDCs in fact faced stagnation. The reason is not far to seek; given the cadre strength of the number of employees of the Central Government or even the GNCTD whose

cadre base of UDCs/LDCs is probably twice that of the Court staff would apply with equal force to similar numbers. Rather in the case of court staff, the proportion between the UDCs/LDCs at least upto the promulgation of new rules in 2013, was roughly 75 LDCs : 25 UDCs. This would mean that the “travel time” for LDCs to reach the higher post of UDC would be correspondingly two or three times the time taken by the CSCS employee or a GNCTD employee. There are judgments of the Supreme Court (*CSIR v. K.G.S. Bhatt & Anr.* AIR 1989 SC 1972 and *Delhi Judicial Services Association v. Delhi High Court*, AIR 2001 SC 2102) which have highlighted the need to provide for adequate assured promotional avenues, in the larger public interest and also as an integral part of right to equality and employment to avoid dissatisfaction on account of stagnation in one post. Thus, the desire to make an onward movement is not merely aspirational at least at certain level of public service, which is now considered an entitlement. If one keeps these considerations in mind there can be no doubt that the learned Single Judge’s findings that the stagnation relieving OMs of 1979 and 1994 had to be made applicable to Court staff such as LDCs, was based on sound reason. This Court finds no rationale to differ with them. Nor does it discern any error in the findings.

12. So far as the second main submission urged by the GNCTD is concerned, i.e. the financial implications or repercussions which would entail the implementation of the directions in the impugned judgment, this Court notices that the judgments in *Beg-I* and *Beg-II* have directed a parity as between the Court staff in the District Courts

and the court staff of this Court. These include the cadres of LDCs and UDCs. The GNCTD's challenge to *Beg-I* was unsuccessful. Its accepted the judgment and implemented it by releasing arrears with effect from 01.01.1996. Furthermore, the GNCTD's letter dated 31.10.2012 (quoted in the preceding part of this judgment) clearly shows that upon an analysis, the likely financial implications of the judgment on account of implementation of the main judgment would be (-) ₹16.82 crores. This clearly negates the GNCTD's submission with respect to the unfeasibility of the impugned judgment so far as its financial implications are concerned.

13. The GNCTD had urged that there was no parity between the *Naib Nazirs* and the LDCs and it relied upon the judgment in *S.K. Baharalal & Ors. v. The Administrator of Delhi & Anr.* (1993) 27 DRJ. Two observations are necessary in this regard. In that case, the question was neither pay parity nor cadre restructuring. What the petitioner had demanded in *S.K. Baharalal (supra)* was that as *Naib Nazir* he was entitled to be promoted as UDC. The Court noted that according to the prevailing disposition, based upon administrative instructions, those in the cadre of *Naib Nazir* could not be considered for promotion as UDCs. Having regard to the nature of controversy, the observations with respect to denial of parity were logical. However, as far as the present case is concerned, the question is neither of pay parity nor parity with *Naib Nazirs*. What is an issue here is stagnation alleviation more specifically with reference to the applicability of the two OMs of 16.10.1979 and 20.03.1994. Therefore, the said judgment has no relevance. The other argument

urged by the GNCTD was that with the dismissal of the petition in *Rohitashva (supra)*, the interim arrangement directed was no longer relevant in that it stood effaced and the interim order was dissolved because of the principle of merger.

14. This Court is of the opinion that such an argument overlooks an important fact, i.e. that the recommendations made by the Court-appointed Committee comprising Registrar General of this Court, District Judge and a representative of the GNCTD had uniformly recommended that *Naib Nazirs* ought to be given the benefit of stagnation alleviation circulars. That report was accepted in totality and posts were in fact upgraded. It was in the light of these facts that the petitioners in *Rohitashva (supra)* did not press their claim as is evident from the following order dismissing the writ petition:

“Sh. NL. Bareja has been appearing for the applicants and not for the petitioners in the present petition. It thus appears from the order sheet that no body has been prosecuting this petition for quite sometime. It is stated that the petitioners in the present petition have already got the relief and that is why the petitioners did not seem interested in prosecuting the petition. Dismissed for non prosecution.

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In view of the dismissal of the writ petition these applications filed for intervention would not survive for consideration. The applications stand disposed of.

Needless to say it is open to the applicants to take out appropriate proceedings in their individual rights as may be permissible in law.”

15. The GNCTD does not contend that with the dismissal of *Rohitashva (supra)* petition, the benefits extended to *Naib Nazirs* so far as cadre restructuring was concerned, was withdrawn. It nowhere states that the promotion given or pay scales released were taken back. Furthermore, by all accounts, the interim order which resulted in the recommendations which were accepted have attained finality and were never challenged. In these circumstances, the doctrine of merger does not aid the GNCTD's case one whit. The argument, is therefore, rejected.

16. This Court is also of the opinion that there is one more powerful reason why the GNCTD's appeal has to be rejected. It is a matter of public record that the OM issued by the DOPT on 01.09.1999 introducing ACP scheme - which was also interestingly implemented in the establishment of GNCTD meant that the pay scales applicable to and prescribed for promotional posts were to be automatically given to every existing employee upon the completion of specified years. What is significant is that these pay scales were released. However, the claim in this case is not for the pay scale - as repeatedly observed earlier - any increase in cadre strength of promotional post would result in other benefits such as opportunity to compete in the regular manner for higher positions. The release of ACP benefits and subsequently the MACP benefits, i.e. with effect from 01.09.2008 means that it automatically applies to public servants covered by them and that they would be recipients of higher pay scales upon fulfilment of the requisite period or periods of service.

Therefore, the question of financial implications on account of cadre restructuring really becomes academic.

17. For the foregoing reasons, the Court holds that the appeal is without merit. It is consequently dismissed without any order as to costs.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

**APRIL 26, 2016
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