

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

% *Date of decision : July 21, 2015*

+ **LPA 462/2015**

DEVENDER KUMAR Appellant
Represented by: Mr.Manoj Kumar, Advocate.

versus

CMD OF M/S DELHI TRANSCO LTD Respondent
Represented by: Mrs.Avnish Ahlawat,
Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CM No.12654/2015 (Delay in filing)

1. For the reasons stated in the application 60 days delay in filing the appeal is condoned.
2. Application is disposed of.

CM No.12655/2015 (Delay in refiling)

1. For the reasons stated in the application 437 days delay in refiling the appeal is condoned.
2. Application is disposed of.

LPA 462/2015

1. Aggrieved by the order dated November 13, 2013 whereby the writ petition filed by the Appellant Devender Kumar seeking relief of being promoted to the post of Junior Engineer (Electrical) w.e.f November 2000 was dismissed, the Appellant prefers the present appeal.
2. In the writ petition Devender Kumar pleaded that he joined as a ITI

Helper with erstwhile DESU/DVV on August 06, 1996 and was promoted and transferred in the Protection Department after 15 months of his joining as Junior Testator. The departmental promotion examination for the post of Junior Engineer (Electrical) was conducted on April 22, 2001 and a list was declared to promote five candidates by the Respondent on June 07, 2001 thereby promoting candidates at S.Nos.12 to 16; vide the second list three candidates from S.Nos.17 to 19 were declared promoted on May 25, 2002 and vide the third list declared on October 29, 2003 one more candidate was promoted at S.No.20. Thus according to Devender Kumar the list was kept operational for two years six months for candidates who had qualified the departmental test for promotion on April 22, 2001. Devender Kumar appeared in the departmental examination for promotion on October 13, 2006 however, he was not given promotion though he secured 36 marks more than the qualifying standard fixed by the department. Devender Kumar expected that he would be considered for promotion in the next vacancy which was to arise on May 21, 2009 however, he was not considered. Despite vacancies being available the case of Devender Kumar had not been considered for promotion and hence the writ petition. It is stated that Devender Kumar belongs to schedule caste category and thus infringing the departmental promotion quota rules promotions were made and the Appellant was denied the benefit thereof.

3. In the counter affidavit the Respondent stated that after the departmental promotion examination was conducted on April 22, 2001 a panel of 79 candidates was prepared on May 10, 2001. 37 candidates of which 28 were General, six SC and 3 ST were promoted vide order dated June 07, 2001 whereas 13 candidates were promoted vide order dated July

30, 2001/August 02, 2001 which included 12 General and one SC candidate. Further 22 candidates were promoted by order dated May 20, 2002 of which General candidates were 17, SC were 3 and ST were 2. The validity of the panel dated May 10, 2001 was upto November 09, 2002, that is, 1½ year. It is further stated that in the meanwhile DVB was unbundled and one candidate came on the rolls of DTL. As regards departmental examination held on October 13, 2006 in which the Appellant appeared, a merit list of 110 candidates was prepared on November 09, 2006. As per the merit list though the Appellant was reflected at Sr.No.38 however, he scored 37% marks. The cut off percentage approved by the competent authority for promotion for General category was 50% or more and for SC/ST was 45% or more. The promotions were made from the candidates selected as per the cut off however as the Appellant did not fulfil the necessary cut off requirement his promotion was not directed. It is reiterated that reservation to the eligible category of employees including SC/ST is always given as per the policy of the Government. Further the post of Junior Engineer (Electrical) is a selection post with 66% vacancies from direct recruitment through DSSSB and 33% for departmental technical employees.

4. The learned Single Judge vide the impugned order dismissed the writ petition for two reasons, that is, firstly even if there are more number of people in the panel list than the post, once the necessary number of advertised posts are filled in, the panel exhausts itself and there is no right in the wait listed candidates left and that there is no averment in the writ petition that all the posts which were advertised pursuant to the notice dated October 20, 2007 have not been filled in.

5. We have heard learned counsel for the Appellant at length. In the writ

petition there is no averment that persons junior to the Appellant have been promoted or persons who ranked below the Appellant in the departmental promotion examination were promoted. Neither in the writ petition nor before this Court the Appellant has been able to point out existence of any vacancy in the promotion quota much less reserved for SC category on which the Appellant could be promoted. As noted above the appellant failed to obtain the qualifying marks i.e. 45% and above and thus even if a vacancy was available he could not be promoted. Further the averments showing the validity of the earlier panel for two and half year are also incorrect.

6. It is trite law that an empanelled candidate does not acquire any indefeasible right of appointment and empanelment is at best a condition of eligibility for the purpose of appointment and by itself does not amount to selection or create any vested right to be appointed unless the relevant service rules say to the contrary. Except saying that promotions were made from the select list as a precedent for two years six months no rule, no provision has been pointed out that the panel would be valid for more than 1½ years. Further even if the validity of the panel existed the appellant could not be appointed due to the lack of requisite qualifying marks.

7. Appeal is dismissed. No costs.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

JULY 21, 2015/‘vn’