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

Decided on : 30.01.2015

+ **W.P.(C) 7021/2013, C.M. NO.15194/2013**

NEW DELHI MUNICIPAL COUNCIL Petitioner
Through : Ms. Jyoti Singh, Sr. Advocate
with Sh. Vaibhav Agnihotri, Ms. Tinu
Bajwa, Sh. Vikramaditya Singh and Sh.
Sameer Sharma, Advocate.
versus

MAN CHAND AND ORS. Respondents
Through : Ms. Rashmi Chopra, Advocate.

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

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. This matter is listed today since 23.01.2015 was declared a Court holiday.

2. The New Delhi Municipal Council (NDMC) – the writ petitioner in these proceedings - is aggrieved by an order of the Central Administrative Tribunal (CAT) in T.A. No.754/2009 dated 14.02.2012 and subsequently in review proceedings, R.A. No.140/2012. It is contended that the CAT fell into error in its appreciation that there could not have been a post or cadre-based reservation, but that in a case of recruitment through different

channels, the quotas have to be worked on the basis of available vacancies.

3. Since this Court proposes to dispose of this petition, a detailed narrative of the facts is inessential. The dispute concerns seniority in the grade of Superintendent (Technical); this was to be filled by Junior Engineers in the quota of 75% from amongst engineering graduates and diploma holders, and 25% from amongst those who are not qualified. The respondents belong to the latter category. The CAT, while considering the merits of the dispute, relied on the Office Memorandum dated 02.07.1997 – which was based upon the Constitution Bench decision in *R.K. Sabharwal and Ors. v. State of Punjab* 1995 (2) SCC 745. The CAT thereafter observed as follows:

“.....We are of the considered view that while filling up the vacancies of Supdt. (Tech), respondents ought to have ensured that 25% posts in the grade were filled up by promotion of unqualified JE(E) thus, it is held that the respondents should have taken into account the total number of posts of Supdt. (Tech) and the number of posts occupied by the promotee from either stream before arriving at the number of vacancies require to be filled up during the period from 1991 to 2001.....”

In its operative order, the CAT held as follows:

“12. In view of the aforementioned facts and discussion, we dispose of present TA with the following directions:

- (1) Respondents would verify the total number of vacancies of Supdt. (Tech) for the period between 1991 till 28.9.1999 required to be filled up by promotion of unqualified JE(E), keeping in view the fact that total sanctioned strength of Supdt. (Tech) was 49. While doing so, they would ensure*

that unqualified JE(E) are promoted to the extent of 25% of 49 posts, i.e. 12 in number.

(2) In case as a result of such verification, it is found that during the aforementioned period 1991 till 28.9.1999, the unqualified JE(E) were promoted against less than 25% posts of Supdt (Tech), such of applicants no. 1, 4, 5 and 6 who were eligible for their promotion on relevant date in accordance with relevant RRs against the vacancies of Supdt (Tech) available in their quota as per prescribed procedure shall be considered for their promotion against vacancies/posts available in their quota.

(3) Such of the applicant nos. 1, 4, 5 and 6 found eligible to be considered and fit to be promoted as Supdt (Tech) would be entitled to promotion on said posts notionally and would actually get benefit of higher posts only prospectively, i.e. for the purpose of revision/re-fixation of pension alone.

(4) If as a result of aforementioned exercise any of the applicant Nos.1, 4, 5 and 6 are considered fit to be promoted as Supdt (Tech) and it is found that any of their junior unqualified JE(E) was given next higher promotion either on ad hoc or regular basis from the date when they were in service, they would also be considered for such promotion and other benefits notionally from the date such benefits were given to any such junior. With the aforesaid directions, TA stands disposed of. No cost."

4. Learned senior counsel submitted, at the outset, that where the cadre is to be filled from different sources for the purpose of maintenance of the service, there cannot be a post-based roster and that the filling up of the vacancies is on a different basis. She relied upon the ruling in *State of Punjab and Ors. v. Dr. R.N. Bhatnagar and*

and Anr. 1999 (2) SCC 330. In the said decision, the Supreme Court held as follows:

“It has, therefore, to be appreciated that when posts in a cadre are to be filled in from two sources whether the candidate comes from the source of departmental promotees or by way of direct recruitment once both of them enter a common cadre their birth marks disappear and they get completely integrated in the common cadre. This would be in consonance with the thrust of Article 16(1) of the Constitution of India. No question of exception to the said general thrust of the constitutional provision would survive as Article 16(4) would be out of picture in such a case. Consequently the decision rendered by the Constitution Bench in R.K. Sabharwal's case (supra) in connection with Article 16(4) and the operation of roster for achieving the reservation of posts for SCs, STs and BCs as per the scheme of reservation cannot be pressed in service for the present scheme of Rule 9(1) is not as per Article 16(4) but is governed by the general sweep of Article 16(1). The attempt of learned counsel for the respondent to treat a quota rule as reservation rule would result in requiring the State authorities to continue the birth-marks of direct recruits and promotees even after they enter the common cadre through two separate entry points regulating their induction to the cadre. Therefore, the roster for 3 promotees and one direct recruit is to be continued every time a vacancy arises and there is no question of filling up a vacancy arising out of a retirement of a direct recruit by a direct recruit or on the retirement vacancy of a promotee by a promotee. Consequently, the question of rotating the vacancies as posts or for treating the posts mentioned in the rules of recruitment as necessarily referable to total posts in the cadre at a given point of time in the light of R.K. Sabharwal's judgment (supra), therefore, cannot survive for in the case of a quota rule between direct recruits and promotees the same is to be judged on the touchstone of Article 16(1) and the statutory rules governing the

recruitment to the posts of Professor constituting the Punjab Medical Education Service (Class-I) and not on the basis of Article 16(4). The Division Bench in the impugned judgment with respect wrongly applied the ratio of R.K. Sabharwal's case (supra) governing Article 16(4) to the facts of the present case which are governed by Article 16(1)."

5. It is, therefore, evident that the premise on which CAT proceeded to discuss the merits and ultimately issue the operative directions (which are impugned) is incorrect. Learned counsel for the applicants submitted that whilst the CAT's erroneous appreciation cannot be now disputed, in view of the settled legal position, nevertheless, their claim for promotion as Assistant Engineers would have to be independently gone into on merits. Though the NDMC expressed reservations, it was not disputed that there are no findings on this aspect. In the circumstances, we are also of the opinion that these claims have to be independently adjudicated – once the entire basis of the CAT's decision is held to be on a misappreciation of law. Accordingly, the CAT is hereby directed to hear and decide the respondents/applicants' grievances in accordance with law. The matter is remitted for this purpose. The impugned order is accordingly set aside. The writ petition is allowed in the above terms.

S. RAVINDRA BHAT
(JUDGE)

VIPIN SANGHI
(JUDGE)

JANUARY 30, 2015/ajk