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

+ **W.P.(C) 1422/2016**

Date of decision: 30th March, 2016

MITHILESH KUMARI

..... Petitioner

Through: Mr. C. Hari Shankar, Sr. Adv. with
Mr. S.Sunil & Mr. N. Jagdish, Advs.

versus

REGISTRAR GENERAL, HIGH COURT OF DELHI

..... Respondent

Through: Mr. S.A.Saud & Mr. Milan Laskar,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL)

The petitioner relying on the judgment dated 23rd October, 2009 in W.P.(C) 4077-84/2004, *Atul Kumar Sharma and Others Vs. Hon'ble High Court of Delhi* (hereinafter referred to as Atul Kumar-I) claims that she should be considered for promotion against eight vacancies under the test quota for the post of Senior Judicial Assistant (SJA, for short) for the period 1988-2000 on the basis of the test result of the year 2007.

2. We have considered the said contention, but express our inability to agree.
3. SJA is a promotional post and prior to 16th March, 1988, 50% of the posts were to be filled by selection on the basis of test from members of the High Court establishment with five years' service. The other 50% posts in the SJA cadre could be filled by promotion on the basis of seniority-cum-suitability from the cadre of Treasurers/Upper Division Clerks (UDCs). The petitioner herein belongs to the cadre of UDCs, she having been appointed as a Lower Division Clerk on 26th June, 1991. This post was later on designated as Junior Judicial Assistant (JJA).
4. By amendment in the recruitment rules with effect from 16th March, 1988, the cadre of SJA was to be filled exclusively (100%) by way of promotion on the basis of seniority-cum-suitability from the cadre of Treasurers/UDCs possessing five years' of service.
5. 1988 amendment was challenged by the Junior Translators in CWP No.1218/1989 as they became ineligible for promotion to SJA under 50% test quota.
6. This writ petition was allowed after about a decade on 16th October, 1998 and it was held that the High Court should follow the pre amendment

rule, which provided promotional avenues to the Junior Translators as also to Assistant/Jr. Reader/Caretaker(s). In the said writ petition, by way of an interim order it had been directed that promotions, if any, made to the SJA cadre during pendency of the writ petition would be subject to the final outcome.

7. After the decision dated 16th October, 1988, promotions with effect from 16th March, 1988 to the SJA cadre to the extent of 50% would have required a reworking.

8. As on 30th April, 1999, there were 30 existing vacancies in the SJA cadre, out of which 15 posts each had to be filled by the two mechanisms. On 17th May, 1999, 15 persons were promoted to the post of SJA against 50% promotion quota on the basis of seniority. The other 50% test quota posts became the subject matter of litigation with the Junior Translators who had succeeded in the challenge to the 1988 Rules by making representations etc. Committees were formed for implementation of the decision.

9. Difficulty also arose on account of the fact that those appointed in the SJA cadre during the period 16th March, 1988 to 16th October, 1998 on the basis of seniority-cum-merit from the cadre of UDCs/Treasurers, had

been granted further promotion to the post of Administrative Officer (Judicial)/Court Master (AOJ/CM).

10. Junior Translators thereafter filed W.P.(C) 4077-84/2004 (i.e. Atul Kumar-I), inter alia, contending that no departmental examination under 50% quota were held for 16 years between 1984 to 2000 for promotion to the post of SJA. Another grievance raised was for denial of their claim to be appointed at the higher promotional post of AOJ/CM.

11. The claim of the most of the petitioners in Atul Kumar-I was that they had cleared and qualified the written examination for the post of Senior Judicial Translator three times, but were not granted promotion for lack of vacancies.

12. In the judgment Atul Kumar-I, the Division Bench, (of which one of us (Sanjiv Khanna, J.) was a member), agreed with the contention of the petitioners. It was noticed that 34 UDCs were promoted on 13th May, 1994; 5 on 14th July, 1995 and 16 on 30th September, 1995. These promotions were exclusively made from the cadre of Treasurers/UDCs. After the judgment in Atul Kumar-I, 19 UDCs/Treasurers were promoted on 17th May, 1999 and 7 were promoted on 21st July, 2000.

13. In these circumstances and noticing the time gap, a just and equitable

solution was required. It was noticed that between 1988-2000, 81 vacancies were filled in the SJA cadre, out of which, 40 posts ought to have been filled through the departmental exams. Thereafter, a total of 115 vacancies had been filled through application of the seniority-cum-suitability rule and 94 through the departmental exams. The Junior Translators concededly had qualified in the departmental test for promotion to the higher post as Senior Translators way back between 1987 and 1996. Junior Translators/Senior Translators had put in years of service and most of them were concededly senior to those in equivalent grades or in the combined seniority list. In these circumstances, the following directions were issued:-

“41. Today, only Junior Translators (most of them having been subsequently promoted, on later dates, as Senior Translators, and some, to higher posts of AOJ/CM) are before the Court. In view of the above facts, the Court is of opinion that there should be a review in respect of at least 20% of the posts that were filled up during 1988-2000 (i.e. of 81 vacancies filled up during that time). Although a strict implementation of the judgment would mean review in respect of 50% of the posts, or 40 such promotions (as recommended by the later committee of 2002), yet since only the Junior Translator’s cadre is seeking this review, the

court is of the opinion that ends of justice would be satisfied if 20% of those vacancies are filled (or treated as filled, as the case may be) in the manner indicated by this judgment. Therefore, the Court is of opinion that every fifth slot should be adjusted against the 50% departmental exam quota. These vacancies may be filled, or treated as filled, in the following manner:

(1) Firstly, from the cadre of Junior Translators, according to their inter-se seniority, subject to the individual concerned possessing the required 5 year experience, stipulated in the rules (in the relevant prescribed grade)- without their having to qualify in any further test.

(2) After accommodating the junior translator's cadre, the balance vacancies – which would be about eight, shall be filled through a special review departmental test, where those entitled to be considered, and eligible, for the purpose, during the relevant period, i.e 1988-2000 alone shall be permitted to compete. Those successful shall be accommodated against the last 8 slots.

(3) The promotions by following the above procedure, shall be notional; the incumbents shall not be entitled to arrears of pay, but shall be entitled only to consequential fixation/fitment in the grade.”

14. Subsequently, applications were filed by those, who had been promoted as AOJ/CM to claim that they would be adversely affected by the directions given in Atul Kumar Sharma-I. These applications were disposed of by a detailed order dated 1st June, 2012, which for the sake of convenience will be referred to as Atul Kumar Sharma-II. In paragraph 23 of the said order, several directions were given. These read:-

“(i) The High Court shall assign notional dates of promotion to the writ petitioners and other Sr. Judicial Translators on the basis of the main judgment i.e. Atul Kumar-II*. This is subject to any of the Translators having appeared in departmental tests before 1998 to the post of Sr. Judicial Translator and having qualified in the departmental test. In such case, the notional date assigned shall be with effect from the date when the candidate qualified in that test (even though he might not have been promoted, for reason of want of vacancy, etc.);

(ii) For the purpose of promotion to the post of AO (J), such of the candidates amongst the Translators who were permitted to apply and participate shall be given ranking in the select list purely for the purpose of seniority on the basis of performance in the departmental test;

(iii) As a corollary to the above, if any of the Translator candidate in fact did not qualify in the test held on 9.9.2000 or 26.8.2001, his or her promotion shall be postponed till the time he or she qualified in the test on actual basis;

(iv) Direction nos.(ii) and (iii) are subject to the further orders that in the case of Translators who appeared in the departmental test in 2000-2001 since interview marks were not awarded, the average of all the interview marks actually given to other selected candidates divided by the total number of selected candidates who were interviewed shall form the basis of the interview marks to be awarded to the Translator cadre employee and the writ petitioners who actually appeared in those departmental test; and

(v) The above directions are only for the purpose of fixing the inter se seniority of appointees to the post of AO (J) from the Translators and other feeder cadres to that post. This will regulate their inter se seniority. If as a result of this exercise, any official or employee from the other cadres needs to be pushed down in the seniority list, the High Court Administration shall ensure that minimum disturbance or displacement takes place. It is further directed that actual date of appointment for all other purposes shall remain the same.”

(*Reference is to Atul Kumar Sharma-I, in the present order).

15. One of the important clarifications or directions issued in Atul Kumar Sharma-II was that notional dates of promotion will be assigned to Junior Translators if they had appeared in the departmental test before 1998 and qualified. Similarly, the Translators, who had not cleared tests on 9th September, 2000 or 26th August, 2001, his or her promotion shall be postponed till the time he or she had qualified in the test on actual basis.

16. Decision in Atul Kumar Sharma-II was made subject matter of challenge before the Supreme Court. Decision in Atul Kumar Sharma-I was not challenged. The challenge was rejected and the judgment was upheld observing that Atul Kumar Sharma-II had created a right balance between equitable claims and demand in law. [see *K.K. Sharma Vs. High Court of Delhi and Ors.*, (2014) 16 SCC 96]

17. We have discussed the long history of litigation just to highlight the difference in case of the Junior Translators/Senior Judicial Translators and the case of the petitioner, who belongs to the Lower Division Clerk/Junior Judicial Assistant cadre. Members of the said cadre are entitled to promotion under seniority-cum-suitability criteria. The said cadre had enjoyed the benefit of 100% promotions from the said cadre from 1988 till 2000. It is obvious and clear that the petitioner, who belongs to the said cadre, cannot claim parity with the Translators' cadre. More importantly,

we have noticed and recorded above the findings recorded in Atul Kumar Sharma-II to the effect that the Junior Translators should have qualified in the Senior Judicial Translator test before 1998 and Translators, who did not qualify the test held on 9th September, 2000 or 26th August, 2001, his or her promotion shall be postponed till the time he or she qualifies in the test on actual basis. The Translators were not given any special privilege or advantage. What was sought to be done was to restore the balance in a just and equitable way. This has been to the advantage of the Lower Division Clerks/Junior Judicial Assistant cadre. There is no question of the petitioner claiming parity or equivalence with the Translators' cadre.

18. What is pertinent and relevant is the fact that the petitioner had appeared for selection in the test quota in the year 2000, 2003 and 2006 and had failed on the three occasions. She had cleared the examination in 2007, but could not make it to the final list as there were only 7 vacancies and she was at serial number 12 on merit. This test in 2007 cannot be made the basis for promotion in the years 1988-2000. Thus, the petitioner's claim for promotion in the year 1988-2000 against the 8 vacancies under the test quota on the basis of the test conducted in the year 2007 is entirely misconceived and has to be rejected.

19. There is no merit in the present writ petition and the same is dismissed.

SANJIV KHANNA, J.

NAJMI WAZIRI, J.

MARCH 30, 2016
NA

