

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

+ **WRIT PETITION (CIVIL) No. 10385/2015**

% **Reserved on: 15th January, 2016**
Date of Decision: 8th April, 2016

K.M. SAXENAPetitioner
Through Mr. C. Mohan Rao and Mr. Deepak Khataria,
Advocates.

Versus

DELHI DEVELOPMENT AUTHORITYRespondent
Through Mr. Arun Birbal, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

SANJIV KHANNA, J.

The petitioner-K.M. Saxena assails order dated 28th August, 2015 passed by the Principal Bench of the Central Administrative Tribunal, New Delhi (Tribunal, for short), whereby OA No. 2056/2014 for convening a meeting of the Departmental Promotion Committee (DPC) to consider him for promotion to the post of Director (Planning), as he was eligible under the Recruitment regulations, has been dismissed.

2. The short question that arises for consideration is whether the petitioner fulfils the eligibility qualification under the Recruitment Regulations for promotion as Director (Planning) in the Delhi Development Authority (DDA). It is obvious that the DDA disputes the said assertion. The Tribunal in the impugned order has agreed with the DDA.

In order to decide the controversy, we would first reproduce the relevant portions of the Recruitment Regulations enacted under Section 57 of the Delhi Development Act, 1968 prescribing the eligibility qualification for promotion to the post of Director (Planning):-

RECRUITMENT REGULATION TO THE POST OF JOINT DIRECTOR (PLANNING) IN THE DELHI DEVELOPMENT AUTHORITY (Prior to 15th May 2015)	
Name of post	Joint Director (Planning) Re-designated as Director (Planning)
Whether Selection post or non-selection post	Selection
Method of recruitment, whether by direct recruitment or by promotion on transfer or by deputation and percentage of the vacancies to be filled by various methods.	By promotion failing which by deputation.
In case of recruitment by promotion/transfer/deputation, grades from which promotion/transfer/deputation is to be made.	Promotion: From the post of Dy. Director (Planning) with at least 5 years service in the grade and a degree in physical planning/Town planning. Deputation: From such officers holding analogous posts under Central/State Govt. or other Urban Development Authorities.

RECRUITMENT REGULATION FOR THE POST OF DIRECTOR (PLANNING) IN DELHI DEVELOPMENT AUTHORITY (Post 15th May 2015)
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Name of Post	Director (Planning)
Method of recruitment, whether by direct recruitment or by promotion or by deputation/absorption and percentage of the vacancies to be filled by various methods.	By promotion failing which by deputation
In case of recruitment by promotion/deputation/absorption, grades from which promotion/deputation/absorption to be made.	<u>PROMOTION</u> From amongst the Deputy Directors (Planning) with five years' regular service in the grade and possessing Post Graduate Degree in the field of Physical/Town/City/Urban/Regional/Housing/Transport/Environmental Planning or equivalent from a recognised University/Institute. OR From the post of Deputy Director (Planning) having 07 years regular service in the grade possessing degree in Planning/Architecture/Civil Engineering or equivalent from a recognised university/institution. Note: The eligibility list for consideration for promotion shall be prepared with reference to the date of completion of the prescribed qualifying service, as prescribed above, in the respective grade/post. <u>DEPUTATION:</u> Officers holding analogous posts in the parent cadre/department on regular basis under the Central or State Govt. /Development Authorities/Public Sector Undertakings/Autonomous Bodies having 05

	years experience.
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4. Relevant portion of Recruitment Regulations relating to the post of Deputy Director (Planning) and Assistant Director (Planning) read as under:-

RECRUITMENT REGULATIONS FOR THE POST OF DEPUTY DIRECTOR (PLANNING) AND ASSISTANT DIRECTOR (PLANNING) IN DELHI DEVELOPMENT AUTHORITY		
Dy. (Planning)	Director	Column No. 11 Promotion: From the post of Asstt. Director (Planning): with at least 5 years service in the grade and a Post Graduate educational qualification in Planning. OR From the post of Asstt. Director (Planning) having at least 8 years service in the grade and Degree in Town Planning/Architecture. OR From the post of Asstt. Director (Planning) with a Diploma in Town Planning/Architecture/Civil Engineering and at least 10 years service in the grade.
Asstt. (Planning)	Director	Column No. 11 Promotion:- From the post of Planning Asstt. With at least 5 years service in the grade and a Degree in Town Planning/Architecture.

	OR From the post of Planning Asstt. With a minimum of 8 years of service in the grade.
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5. Recruitment Regulations relating to the post of Deputy Director (Planning) and Assistant Director (Planning) would indicate that Assistant Director (Planning) is a promotional post, and Planning Assistants with a degree in Town Planning/Architecture and five years experience in the grade or Planning Assistants with eight years experience in the grade without a degree in Town Planning/Architecture are eligible for appointment. Deputy Director (Planning) is again a promotional post from the post of Assistant Director (Planning) with at least five years' service in the grade with a post graduate qualification in Planning or Assistant Director (Planning) with eight years' service in the grade with degree in Town Planning/Architecture or Assistant Director (Planning) with diploma in Town Planning/Architecture/Civil Engineering and at least ten years' service in the grade. Thus, it can be noticed that for promotion to the post of Deputy Director (Planning) distinction is made between Assistant Director (Planning) with post graduate qualification in Planning, degree in Town Planning/Architecture and diploma in Town Planning/Architecture/Civil Engineering. Different time periods have been prescribed for each qualification for promotion to the post of Deputy Director (Planning). For promotion to the post of Joint Director (Planning), which has been re-designated as Director (Planning) under the pre-amended Regulation, Deputy Director (Planning) with at least five years in the grade and a degree in Physical Planning/Town Planning were eligible. Director (Planning) was

a promotional post, failing which it would be filled by way of deputation from officers holding analogous posts under Central/State/other government authorities. The eligibility requirement, therefore, for promotion to the post of Director (Planning) was a degree in Physical Planning/Town Planning. By necessary implication, a degree in Architecture has been excluded from the essential requirement as stipulated. Similarly, persons holding the post of Deputy Director (Planning), who were only diploma holders, were not eligible.

6. With effect from 15th May, 2015, the eligibility qualification for promotion to the post of Director (Planning) has undergone a change. Post 15th May, 2015, Deputy Director (Planning) possessing a post-graduate degree in the fields of Physical/ Town/ City/ Urban/ Regional/ Housing/ Transport/ Environment Planning or Environment from a recognised university with five years regular service in the grade, or Deputy Director (Planning) possessing a degree in Planning/Architecture/Civil Engineering or Environment from a recognised university with seven years regular service in the grade are eligible. The amendments made with effect from 15th May, 2015 are substantive and not merely declaratory or clarificatory in nature. We, therefore, do not agree with the counsel for the petitioner that the amendments made with effect from 15th May, 2015 in the eligibility requirements for promotion to the post of Director (Planning) were merely to clear up and explicate what was ambiguous and latent in the pre-amended Regulation. By the aforesaid amendment, Deputy Directors (Planning) holding post graduate degree in the specified fields with five years regular experience and those possessing a bachelors degree in a specified field

having seven years of regular service as Deputy Director (Planning) are eligible. The Regulation in question has seen significant and designated modification. The modification may have been desirable and possibly alludes to and corrects the earlier shortcomings and failings, nevertheless it is specific and of substance. It expounds the eligibility requirements and refixes the experience requirements. As far as the degree is concerned, the amended Regulation now treats degrees in Planning, Architecture, Civil Engineering or equivalent from a recognised university/institution, as eligible. Under the earlier recruitment regulation, a degree in Architecture was excluded and not specified. Only those with a degree in Physical Planning or Town Planning were eligible. Thus, the earlier stipulation of Deputy Director (Planning) with at least five years service in the grade and a degree of Physical Planning/Town Planning was modified to Deputy Director (Planning) with seven years regular service in the grade with a degree in Planning, Architecture or Civil Engineering and equivalent degrees from recognised universities or institutions. Deputy Director (Planning) with post graduate degrees in the specified fields with five years regular service in the grade are also eligible.

7. The petitioner holds an associate membership of the Indian Institute of Architecture. As per the notification dated 5th August, 1992, issued by the Ministry of Human Resource Development, Department of Education, Government of India, the said certificate is equivalent to and at par with a Bachelors Degree in Architecture for the purpose of employment to posts and services under the Central Government. The petitioner therefore holds a degree or certificate equivalent to a Degree in Architecture. However, the

petitioner does not possess a degree in Planning/Town Planning. Associate membership of Indian Institute of Architecture is not equivalent to a degree in Planning or Town Planning. This is not even the case or claim of the petitioner.

8. Recruitment Regulations for the post of Deputy Director (Planning), Assistant Director (Planning) and Deputy Director (Architecture) prescribe different and distinct qualifications. The educational qualification required for promotion as Deputy Director (Architecture) reads as under:-

Dy. Director (Architecture)	Column No. 1:- Promotion: (i) From the post of Asstt. Director (Architecture) with at least 5 years service in the grade and minimum educational qualifications prescribed for direct recruitment for the post of Asstt. Director (Architecture). OR From Asstt. Directors (Architecture) with 8 years regular service in the grade and Graduate qualifications in Architecture. OR From Asstt. Director (Architecture) with 10 years regular service in the grade.
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Assistant Directors (Architecture) with at least five years service in the grade with minimum educational qualification prescribed for the post of Assistant Director are eligible for promotion as Deputy Director (Architecture). Similarly, Assistant Directors (Architecture) with eight years' regular service in the grade and a graduate qualification in Architecture are eligible. The minimum qualification prescribed for the post of Assistant Director (Architecture) reads as under:-

Asstt. Director (Architecture)	Column No. 11:- Promotion: (i) From the post of Architectural Asstt./Assistant (Architectural Deptt.) with at least 3 years service in the grade and a Degree in Architecture or equivalent. OR From the post of Architectural Asstt./Assistant (Architectural Deptt.) with at least 8 years service in the grade.
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The aforesaid Regulations would indicate that it makes a specific reference to a Degree in Architecture or equivalent. These Regulations do not refer to/include a Degree in Town Planning. We have referred to these Regulations, to demonstrate and show the intended and conscious differentiation made in the Regulations itself.

9. The contention that the DDA has always considered a Degree of Bachelors in Architecture equivalent to a degree in Planning/Town Planning, for earlier promotions to the post of Director (Planning) were made from officers in the grade of Deputy Director (Planning) with a degree of Bachelors in Architecture, has to be rejected. We would record and hold that an earlier lapse or failure on the part of the respondent to adhere to the minimum eligibility qualifications prescribed in the Recruitment Regulations has to be deprecated and not treated as conferring a right. A lapse and failure would not confer a right on a third person to urge that a similar wrong should be committed again.

10. The Supreme Court in *State of Gujarat and Others versus Arvindkumar T. Tiwari and Another*, (2012) 9 SCC 545 has held that the appointment made to a post in contravention of the statutory requirements, i.e., eligibility, cannot be approved and once appointment is bad since inception, the same cannot be preserved or protected. When a person does not possess requisite qualification, he cannot even apply for recruitment for the reason that his appointment is contrary to the statutory Regulations and, therefore, void in law. Lack of eligibility for a post cannot be cured by appointment of a person who is not eligible. This is a serious illegality and not a mere irregularity. Earlier in *Pramod Kumar versus U.P. Secondary Education Services Commission and Others*, (2008) 7 SCC 153, it was observed that qualification for holding a post once specified and laid down in the statute, any appointment in violation thereof would be a nullity. If essential educational qualification for recruitment to a post is specified, ordinarily the same cannot be condoned nor can such an act be rectified. The

petitioner must establish a legal right in himself and a corresponding legal duty in the State. If the petitioner does not possess requisite qualification to hold a post, he could not have any legal right to continue.

11. In *State of Rajasthan and Others versus Lata Arun*, (2002) 6 SCC 252, it was observed that it is not for the Court to determine whether a particular educational qualification possessed by a candidate should or should not be recognised as equivalent. In the present case, the petitioner had not challenged the Recruitment Regulation as it existed prior to 15th May, 2015. The eligibility qualification for admission to a course or recruitment/promotion, etc., are normally matters to be considered by the appropriate authority and Courts would not venture and themselves decide whether a particular educational qualification should or should not be held equivalent to the qualification prescribed. Further, we agree with the Tribunal that mere notings on the file, which was relied upon by the petitioner before the Tribunal would not by itself create any right when the Statutory Regulations were to the contrary. These were individual opinions. The noting itself would not matter. (See *Bachhittar Singh versus State of Punjab*, 1962 Suppl. 3 SCR 713 and *State of Bihar and Others versus Kripalu Shankar and Others*, (1987) 3 SCC 34).

12. At this stage, we would like to deal with two judgments relied upon by the petitioner. In *Union of India and Others versus N. R. Parmar and Others*, (2012) 13 SCC 340 in paragraph 41, the Supreme Court has opined that OM dated 3rd March, 2008 was in the nature of a clarification and did not introduce anything new to the existing position in law. Such clarifications always relate back to the date of the instrument, which is

sought to be clarified. The said observations are of no relevance in the present case. The statutory Regulations amended with effect from 15th May, 2015 are, as noticed above, substantive amendments and not clarificatory. ***Zile Singh versus State of Haryana and Others***, (2004) 8 SCC 1, holds that the presumption against retrospective operation is not applicable and of relevance to declaratory statutes. This decision also holds that when the statute is passed for the purpose of supplying an obvious omission in a former statute or to explain a former statute, the subsequent statute relates back to the time when the prior Act was passed. We do not think the said principle can be applied to the factual matrix of the present case for the reason that it is not a case of mere omission. We are dealing with the eligibility requirements stipulated in the Recruitment Regulations. It is a case where substantive amendments were made, though possible the amendments were desirable. Amendments were comprehensive and significant for new eligibility criteria including experience in the grade was evolved and notified. The amendments in force with effect from 15th May, 2015 have not been applied retrospectively.

13. In ***P. Mahendran and Ors. Vs. State of Karnataka & Ors.*** (1990) 1 SCC 411, the question whether the amended rules had retrospective effect was examined. It was held that in the absence of any express provision contained in the amending rules, they must be held to be prospective in nature. The important factor being that the rules when prospective, ensure that the rights under the earlier rules are not taken away and impaired. In this context, it was held as under:

“5. It is well settled rule of construction that every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the rule must be held to be prospective. If a rule is expressed in language which is fairly capable of either interpretation it ought to be construed as prospective only. In the absence of any express provision or necessary intendment the rule cannot be given retrospective effect except in matter of procedure. The amending Rules of 1987 do not contain any express provision giving the amendment retrospective effect nor there is anything therein showing the necessary intendment for enforcing the rule with retrospective effect. Since the amending Rules were not retrospective, it could not adversely affect the right of those candidates who were qualified for selection and appointment on the date they applied for the post, moreover as the process of selection had already commenced when the amending Rules came into force, the amended Rules could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment moreover construction of amending Rules should be made in a reasonable manner to avoid unnecessary hardship to those who have no control over the subject matter.”

The said principle is equally applicable to the present case. One Deputy Director (Planning) with the degree of physical planning/Town planning, was selected and appointed as Director (Planning) against the two vacant vacancies in the planning cadre on 1st May, 2014. It is apparent that the Departmental Promotional Committee in the meeting had recommended one Atinder Kumar Bharti, Deputy Director (Planning) to be promoted as Director (Planning), as per the extant Recruitment Regulations. The petitioner subsequently retired from service on 30th June, 2014. The recruitment regulations were amended w.e.f. 15th May, 2015. The petitioner

obviously is not entitled to the benefit of the said regulations. The vacant post of Director (Planning) would be filled under the amended Regulations.

14. In view of the aforesaid discussion, we do not find any merit in the present writ petition and the same is dismissed. No costs.

(SANJIV KHANNA)
JUDGE

(ASHUTOSH KUMAR)
JUDGE

APRIL 8th, 2016
VKR/ssn

