

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

+ **W.P.(C) No. 2420/2003**

% **14th March, 2017**

SHRI N.N. KABIRAJ Petitioner

Through: Mr. Navin Chawla and Mr.
Siddharth, Advocates.

versus

UNIVERSITY OF DELHI AND ANR. Respondents

Through: Mohinder J.S. Rupal, Advocate for
University of Delhi/R-1.
Mr. C. Mohan Rao, Advocate for R-
2.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of India, the petitioner seeks the relief of promotion to the post of Senior Technical Assistant. Promotion to the post of Senior Technical Assistant is sought because of the post of Senior Technical Assistant falling vacant on 30.4.1999 on account of Sh. R.L. Chawla who was a Senior Technical Assistant getting promoted as a Technical Officer. The three posts in the hierarchy are the posts of Technical Assistant at the lowest, then the next

higher post of Senior Technical Assistant and then thereafter the next higher post of Technical Officer.

2. The admitted position as per the contesting parties is that originally there were 15 posts of Senior Technical Assistants in the respondent no.1/University of Delhi/employer. The case of the respondent no. 1 was that the 15th post of Senior Technical Assistant was upgraded to the post of Technical Officer when promotion was granted to one Sh. R.P. Arora who was a Senior Technical Assistant. Another post of Senior Technical Assistant was also upgraded out of the original 15 posts of Senior Technical Assistants, and hence a total of two posts of Senior Technical Assistants were admittedly upgraded to Technical Officers on 25.5.1990 by the Executive Council Resolution of the respondent no.1. Therefore, there remained a total of 13 posts of Senior Technical Assistants of the respondent no.1. Out of the aforesaid 13 posts, for three posts of Senior Technical Assistants to be filled in, these three posts required special qualifications and were designated as Senior Technical Assistant (Radio Immunoassay), Senior Technical Assistant (GLC Counter) and Senior Technical Assistant (Photographer-cum-Artist). The three specialized designated posts of Senior Technical Assistants as stated above though however required additional qualifications for appointment to these

specialized posts, however, the feeder cadre still was from the post of Technical Assistants. Putting it in other words, in case certain Technical Assistants acquired the additional qualifications by which they met the requirements of the three special posts of Senior Technical Assistants, then such Technical Assistants could aspire for appointment not only in the nine general posts of Senior Technical Assistants but also to the three specialized posts of Senior Technical Assistants. I may note that there are no separate recruitment rules for the further promotion of the three special Senior Technical Assistants to the higher posts of Technical Officers i.e the three Special Technical Assistants so far as their entitlement to promotion is concerned, such persons were to stand along with the other general category Senior Technical Assistants, for their promotions/appointments to the higher posts of Technical Officers.

3. Out of the 13 posts of Senior Technical Assistants, the respondent no.1 directed vide Executive Council Resolution dated 30.4.1999 that 50% of the posts were to be filled by promotion and remaining 50% were to be filled by way of direct recruitment. Prior to 30.4.1999, the 200 points roster system had become applicable for appointment to the various posts in the respondent no.1. The point based

roster system was adopted by the respondent no.1 vide its resolution dated 30.4.1999 w.e.f 2.7.1999.

4. In the present case, the respondent no.1 has taken up two defences in the alternative. The first defence is that if the appointment is to the 14th vacancy in the post of Senior Technical Assistant in view of the 200 point roster system, then such 14th vacancy in the post is for a reserved category candidate and petitioner being an unreserved category candidate hence petitioner cannot seek appointment to such vacant post of Senior Technical Assistant in the reserved category. It is further the case of the respondent no.1 that even the 15th point vacant post of a Senior Technical Assistant is for a reserved category candidate and hence once again the petitioner as an unreserved category candidate cannot seek appointment to the 15th point vacant post.

5. The entire arguments which are urged on behalf of the petitioner rest upon the fact as to whether the three specialized posts of Senior Technical Assistants in the especially designated posts of Senior Technical Assistant (Radio Immunoassay), Senior Technical Assistant (GLC Counter) and Senior Technical Assistant (Photographer-cum-Artist) are or are not posts within the 13 sanctioned posts of Senior Technical Assistants and petitioner argues that these three specialized posts became ex-cadre

posts. Putting it in another way the petitioner has argued that the three posts of Senior Technical Assistants, specially designated, become ex-cadre posts and therefore fall out of the 13 posts of Senior Technical Assistants with the result that there would only remain 10 posts of Senior Technical Assistants.

6. Learned counsel for the petitioner in support of the aforesaid arguments has placed reliance upon two judgments. The first is the judgment of a learned Single Judge of this Court, Hon'ble Mr. Justice Vikrmajit Sen (as he then was) in the case of *Ved Bhushan Sharma Vs. University of Delhi and Others 94 (2001) DLT 181* and second is the judgment of the Supreme Court in the case of *Jai Narayan Vyas University and Another Vs. U.R. Nahar and Others (2002) 10 SCC 514*.

7. At this stage, it will be useful to refer to paras 4 to 16 in the additional affidavit of respondent no.1 dated 19.1.2006 and these paras read as under:-

“4. It is stated that as on 2.7.1997, there were 12 Senior Technical Assistants working in the Department of Zoology, to which the petitioner belongs. The said 12 persons in position were:

1. Sh. R.L. Chawla
2. Sh. K.K. Gambir
3. Sh. R.N. Sharma
4. Sh. Y.P. Gupta
5. Sh. R.K. Bhandari
6. Sh. Laxmi Chand (SC)
7. Sh. B.P. Singh
8. Sh. S.S. Ukil
9. Sh. B.V. Sharma
10. Sh. E.J. William

11. Shri Jagrup Singh

12. Ms. Arun Bala

5. According to the petitioner, as appears from the averments in the writ petition, the total number of posts of Senior Technical Assistants in the department of Zoology at the relevant time were 15, out of which 3 posts were earmarked to be filled by persons with certain special qualifications and requirements, they being: (1) Senior Technical Assistant (Photographer-cum-Artist), (2) Senior Technical Assistant (Radio immunoassay), (3) Senior Technical Assistant (GLC Counter). According to the petitioner the above 3 posts are ex-cadre post and they can not be taken into consideration.

6. Firstly, it is stated that the three posts referred to above can not be kept out of consideration for the purpose of working out the roster, as the persons appointed against the said three posts are regular employees and are entitled to consideration for promotion to the higher post of Technical Officer like all other Senior Technical Assistants. Further, even in other Departments where there are similar such posts they are taken into consideration for the purposes of working out the roster.

7. The University in different communications has set out that the number of posts are 14. It is stated that by Executive Council Resolution dated 25.5.1990, two posts were upgraded to that of Technical Officers. There has been some confusion as to whether those posts are to be included in the cadre of Senior Technical Assistants for the purposes of working out the roster arising out of the judgment and order dated 6.1.1999 in Writ Petition No. 339 of 1997 etc.

8. It is stated that at the time two posts as stated above were upgraded as Technical Officers there were 11 posts of Senior Technical Assistants and three posts of Senior Technical Assistants with special qualifications as stated above. If the above two posts were kept out of consideration, the number of posts of Senior Technical Assistants would be 12.

9. Whether the total number of posts are 15 or 14 or 12, it is submitted that the petitioner would not get promotion as a Senior Technical Assistant earlier to respondent No. 2 Rajpal Singh.

10. If the total number of posts are 15, as claimed by the petitioner, the position would be as under:-

11. The applicable roster in that event would be 200 point roster. In regard to the manner of working post based roster, initially all existing persons would be required to be adjusted in roster. As stated earlier as on 2.7.1997, twelve persons were serving as Senior Technical Assistant in the department of Zoology, out of whom Shri Laxmi Chand was a person belonging to the Scheduled Caste. The adjustment of the said 12 persons in the 200 point roster would be as under:

1. UR Sh. R.L. Chawla
2. UR Sh. K.K. Gambir
3. UR Sh. R.N. Sharma
4. UR Sh. Y.P. Gupta
5. UR Sh. R.K. Bhandari
6. SC Sh. Laxmi Chand
7. UR Sh. B.P. Singh
8. UR Sh. S.S. Ukil
9. UR Sh. B.V. Sharma

10. UR Sh. E.J. William
11. UR Shri Jagrup Singh
12. UR Ms. Arun Bala

The roster point No. 13 is unreserved. Roster point 14 is for ST and roster point 7 and 15 is for SC.

12. After 2.7.1997, the first vacancy arose on 10.11.1998 on the death of Shri Jagrup Singh. In terms of the roster, the said vacancy would be filled up by a general category candidate. The DPC for filling up the said vacancy was held on 4.11.1999 and one Ramgopal who is senior to the petitioner was promoted against the said vacancy. Accordingly, he would occupy roster point No. 13.

13. On 30.4.1999 the Executive Council of the University provided that 50% would be by way of promotion and 50% by way of direct recruitment. A copy of the said Resolution is annexed hereto as Annexure-R2.

14. The first vacancy which arose after 30.4.1999 is a vacancy arising out of the promotion of Shri. R.L. Chawla as Technical Officer on 6.5.1999. In terms of the Resolution of the Executive Council dated 30.4.1999 this would be filled up by way of promotion. This would be roster point 14 which as per the applicable roster has to go to a Scheduled Tribe candidate. There was no eligible Scheduled Tribe candidate at that point of time. The petitioner does not belong to a reserved category. As such he can not claim appointment against the said roster point meant for a Scheduled Tribe Candidate. In the event of a Scheduled Tribe candidate being not available the same could be filled up by a Scheduled Caste candidate. In the DPC held on 4.4.2003 respondent No. 2 Rajpal Singh an Scheduled Caste candidate was recommended for promotion as a reserved category candidate and he was promoted.

15. Two vacancies arose thereafter on 26.12.2001 on account of the promotion of Shri Gambir and Shri Sharma as Technical Officers. Roster Point No. 15 was earmarked for a Scheduled Caste. Out of the two posts in terms of the Executive Council Resolution No. 39 dated 30.4.1999, the earlier vacancy having been filled up by way of promotion, first out of the two was required to be filled up by direct recruitment and the next by way of promotion. As such against roster point 15 both on account of the fact that it was meant for a Scheduled Caste candidate and that it was to be filled up by way of direct recruitment, the petitioner would not have any claim against the same. In the DPC held on 21.3.2005 the petitioner Kabiraj was recommended for promotion against the said vacancy which would be roster point No. 16.

16. It would be seen from the above that even if the total posts were regarded as 15 the petitioner could not have claimed promotion earlier to respondent no. 2 for want of a vacancy in the general category. The vacancy against which Rajpal Singh was promoted arose on 6.5.1999 earlier in point of time as compared to the vacancy in the general category which arose on 26.12.2001, against which the petitioner Kabiraj was promoted. In so far as the entitlement of a person for promotion is concerned, a pre-condition is that a post should be available. After a post becomes available, a person who fulfills the eligibility requirement could be considered for promotion and promoted and not earlier. Applying the said twin requirements, in so far as respondent no. 2 Rajpal Singh is concerned, a vacancy became available on 6.5.1999 and he became eligible on 7.1.2000 and as such

could have been promoted on or with effect from 7.1.2000 whereas in so far as the petitioner is concerned a post became available only on 26.12.2001.”

8. At this stage, it is also relevant to note that petitioner has already got promotion to the post of Senior Technical Assistant pursuant to the DPC held on 21.3.2005 and the issue in the present case is limited to the claim of promotion of the petitioner to the post of Senior Technical Assistant that this promotion be granted to the petitioner not from 21.3.2005 but from earlier date of 6.5.1999 when the post of Senior Technical Assistant had fallen vacant on account of promotion of Sh. R.L. Chawla as a Technical Officer.

9. In my opinion, the argument urged on behalf of the petitioner for taking the three specialized posts out of the total posts of Senior Technical Assistants, and for such separate posts called as ex-cadre posts for not being merged with the total number of 13 posts of Senior Technical Assistants is a misconceived argument and is rejected for the following reasons. The first reason for rejecting the argument is that promotion of Senior Technical Assistants to the post of Technical Officers is from all the 13 posts of Senior Technical Assistants and there is no separate channel of promotion from Senior Technical Assistants to Technical Officers so far as the three special designated posts requiring special qualifications are concerned. Therefore, whereas having additional qualifications than the

qualifications which are generally required by Technical Assistants for promotion to the post of Senior Technical Assistants, those Technical Assistants who have additional qualifications can seek promotion not only to the nine general posts of Senior Technical Assistants but the Technical Assistants having special qualifications will have an additional chance of promotion on account of the additional qualifications to the three specialized posts of Senior Technical Assistants. The matter, however, rests there and there is no separate channel which is created for promotion of three specialized Senior Technical Assistants to the further posts of Technical Officers because there are no specialized posts carved out of the general posts of Technical Officers in the respondent no. 1.

10. The second reason for rejecting the argument urged on behalf of the petitioner for carving out the three special designated posts of Senior Technical Assistants out of the general cadre of Senior Technical Assistants is that an employer because of special requirements of a particular post may out of the total number of posts carve out certain posts as those which would require additional qualifications. Once additional qualifications are acquired by a Technical Assistant then such a person is entitled to be considered for higher promotion posts not only in the nine general category of the higher promotion posts of Senior Technical Assistants but also to the specialized

category three posts carved out in the higher promotion posts of Senior Technical Assistants, and by adopting such process the employer is only fulfilling its special requirements and the employer however is not in any manner carving out the specialized qualification posts as a separate channel posts forming a feeder cadre for appointment to the higher posts of Technical Officers. Therefore, once there is arbitrariness in the action of the respondent no.1/employer in requiring additional qualifications for certain limited/three specialized posts in the higher category promotion posts of Senior Technical Assistants, then the action of the respondent no.1/employer in treating these posts requiring special qualifications as part of the general category posts of Senior Technical Assistants cannot be questioned by the petitioner.

11. The third reason for not accepting the argument of the petitioner is that if the three posts requiring additional/special qualifications for appointment to the posts of Senior Technical Assistants are taken out of the total number of posts of Senior Technical Assistants, then the same will result in breach of the 200 point roster based appointment system. These three posts if carved out will cause prejudice to the reserved category candidates because out of the 200 posts which formed the roster point appointment system of the respondent no.1, the reserved category

candidates will lose out for appointment in their ordinary turn in the reserved category posts because the effect of removing three posts would be to cause a delay and postponement in the appointment of reserved category persons in the reserved posts in the 200 point roster system.

12. Therefore, for all the aforesaid reasons I cannot accept the arguments urged on behalf of the petitioner for treating three posts of Senior Technical Assistants requiring special qualifications for being treated as a totally separate channel and being ex-cadre posts as carved out of the general category posts of Senior Technical Assistants.

13. The judgment in the case of *Ved Bhushan Sharma (supra)* relied upon by the petitioner only holds that a specially qualified Senior Technical Assistant must be given duties as per his specialized post qualifications and to which he was appointed, and that such a candidate cannot be given duties of a general candidate post of a Senior Technical Assistant. The judgment in the case of *Ved Bhushan Sharma (supra)* therefore in no manner furthers the case of the petitioner.

14. The judgment of the Supreme Court in the case of *Jai Narayan Vyas University (supra)* relied upon by the petitioner also cannot help the petitioner because in the said case in view of the statutory provisions contained in Rajasthan University's Teachers and Officers (Selection for

Appointment) Act, 1974, it was held by the Supreme Court that there cannot be mingling of *inter se* seniority of such persons who have been treated as being appointed to ex-cadre posts with the general cadre posts, inasmuch as, the ex-cadre posts were treated as a specific channel even with respect to further promotions. In view of the specific language of the concerned Act it was held that ex-cadre posts have to be treated separately and, therefore, the said judgment in the case of *Jai Narayan Vyas University (supra)* will have no application to the facts of the present case wherein there is no statute or even a recruitment rule of the respondent no.1 for treating the specialized posts of Senior Technical Assistants as a separate channel and separate ex-cadre posts for promotion to the post of Technical Officers.

15. In view of the above, there is no merit in the petition and the same is therefore dismissed leaving the parties to bear their own costs.

MARCH 14, 2017

AK/ib/Godara

VALMIKI J. MEHTA, J