

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

+ **W.P.(C) No. 2060/2004**

% **28th March, 2017**

SUNITA KHATOLIA Petitioner
Through: Mr. K.C. Mittal and Ms. Ruchika
Mittal, Advocates.

versus

DELHI SC/ST/OBC/MINORITIES & HANDICAPPED FINANCIAL
& DEVELOPMENT CORPORATION LTD. & ORS.

.... Respondents
Through: Ms. Avnish Ahlawat and Ms.
Palak Rohmetra, Advocate for
R-1.
Mr. N.S. Arora, Advocate for R-
2.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

C.M. Appl. No. 7103/2016 (for restoration)

1. This is an application seeking restoration of the W.P. (C) No. 2060/2004 which was dismissed for non-prosecution.
2. For the reasons stated in the application and no opposition on behalf of the opposite counsel, the application is allowed and W.P. (C) No. 2060/2004 is restored to its original number.
3. C.M. stands disposed of.

W.P.(C) No. 2060/2004

4. By this writ petition under Article 226 of the Constitution of India, petitioner seeks the following reliefs:-

- “a) quash the amendment dated 15.3.1996 being not in consonance with the procedure;
 - b) issue a writ in the nature of mandamus directing the Respondent No. 1 Corporation to re-draw the seniority list as per the recruitment rules existing at the time of the entry of the Petitioner into the service of Respondent no. 1 Corporation;
 - c) direct the Respondents to regularize the promotion of the Petitioner to the post of Deputy Manager (G) from 13.5.1996 i.e. from the date when she was eligible to be considered for promotion and grant all consequential benefits;
 - d) direct the Respondent No. 1 Corporation to produce the records and minutes of meetings of the Board of Directors held on 15.3.1996;
 - e) direct the Respondent No. 1 Corporation to produce the records of the communication between the Respondent No. 1 Corporation and the Respondent No. 2 wherein the Respondent No. 1 Corporation have justified their stand in amending the recruitment rules on 15.3.1996;
 - f) direct the Respondent No. 1 to promote her as Manager being the senior-most person in the feeder grade;
- AND
- g) pass any other order/orders as this Hon’ble Court may deem fit in the facts and circumstances of the case.”

5. The effect of the prayer clauses is that if the petitioner is successful in quashing the amendment to the recruitment rules dated 15.3.1996, and quashing of which are a *sine qua non* for the petitioner to succeed, then petitioner will get promotion as per the unamended rules. In order to decide the issue which thus arises it is necessary to refer to the circular of the respondent no. 1 dated 24.7.1996, and this circular gives the hierarchy of posts as per the unamended rules as also as per the amended rules. This circular reads as under:-

“DELHI SCHEDULED CASTES FINANCIAL &

DEVELOPMENT CORPORATION LIMITED
(A GOVERNMENT OF DELHI UNDERTAKING)
2-BATTERY LANE RAJPURA ROAD, DELHI -54

No. F. 9 (213)/96-DSFDC/17179 to 17194

Dated 24.7.96

O R D E R

Consequent upon passing a resolution by the Board of Director in its 56th meeting held on 15.3.96 & 3.6.96 the existing nomenclature of posts of Delhi Scheduled Castes Financial & Development Corporation Ltd., are hereby changed/revised with immediate effect. As per new hierarchy approved by the Board of Director, some new posts are also hereby created. The new nomenclature of posts of this Corporation in future will be reads as under:-

PRESENT NOMENCLATURE OF POST(S)

REVISED NOMENCLATURE OF
POSTS(S) CREATION OF POST(S) AS PER
NEW HIERARCHY APPROVED BY B.O.D.

S. No.	Name of post	No. of post	Pay scale	Name of post	No. of post	Pay scale
1.	Chairman		Nominated by the Govt. of N.C.T. of Delhi			
2.	Managing Director (IAS)	1	7300-7600	Managing Director	1	7300-7600
3.	General Manager (DANILCS)	1	4100-5300	General Manager (DANILCS)	1	4100-5300
4.	Company Secretary	1	3000-4500	Company Secretary	1	3000-4500
5.	Not Existing	-	-	Manager (Loan & Advances)	1	3000-4500
6.	Not Existing	-	-	Manager (Accounts & Finance)	1	3000-4500
7.	Not Existing	-	-	Manager (Personnel & Training)	1	3000-4500
8.	Not Existing	-	-	Manager (Planning & Evaluation)	1	3000-4500
9.	Not Existing	-	-	Manager (Enforcement & Recovery)	1	3000-4500
10.	Executive Engineer	1	3000-4500	Not Existing	-	-
11.	<u>Manager</u>		<u>illegible-4000</u>	<u>Not Existing</u>	-	-
12.	Accounts Officer	1	2375-3500	Deputy Manager (Accounts & Finance)	1	2375-illegible
13.	<u>Field Officer</u>	<u>5</u>	<u>2000-3500</u>	<u>i. Deputy Manager</u>	<u>1</u>	<u>2000-3500</u>

				(SC/ST)		
				ii. Deputy Manager (O.B.C.)	1	2000-3500
				iii. Deputy Manager (Planning & Evaluation)	1	2000-3500
				iv. Deputy Manager (Enforcement follow up & recovery)	1	2000-3500
14.	Administrative Officer	1	2000-3500	Dy. Manager (Admin. & Training)	1	2000-3500
15.	Assistant Engineer	1	2000-3500	Not Existing	-	-
16.	P.R.O.	1	2000-3200	Not Existing	-	-
17.	P.S. to Chairman	1	2000-3200	P.S. to Chairman	1	2000-3200
18.	P.S. to Managing Director	1	2000-3200	P.S. to Managing Director	1	2000-3200
19.	Law Officer (Pay of Assistant Law Officer in the pay scale of Rs.1640-2900 is being drawn)	1	2000-3200	Assistnat Manager (Law)	1	1640-2900
20.	Research Officer	1	1640-2900	Assistant Manager (Evaluation/ Monitoring & Research)	1	1640-2900
21.	Not Existing	-	-	Assistant Manager (General Loan)	1	1640-2900
22.	Not Existing	-	-	Assistant Manager (N.S.L.R.S.)	1	1640-2900
23.	Not Existing	-	-	Assistant Manager (TSR & DLY Taxl)	1	1640-2900
24.	Not Existing	-	-	Assistant Manager (STA/NSFDC)	1	1640-2900

25.	Not Existing	-	-	Assistant Manager (Planning)	1	1640-2900
26.	Not Existing	-	-	Assistant Manager (Recovery)	1	1640-2900
27.	Accountant	2	1640-2900	i. Assistant Manager (Disbursement & Bills)	1	1640-2900
				ii. Assistant Manager (Audit & Budget)	1	1640-2900
28.	Assistant Programmer	1	1640-2900	Assistant Manager (Programming)	1	1640-2900
29.	<u>Field Inspector</u>	<u>10</u>	<u>1640-2900</u>	<u>Field Inspector</u>	<u>10</u>	<u>1400-2300</u>
30.	Assistant	5	1400-2300	Assistant	8	1400-2300
31.	Liasion Assistant	1	1400-2300	Liasion Supervisor	1	1400-2300
32.	Not Existing	-	-	Recovery Assistant	1	1400-2300
33.	Not Existing	-	-	Accounts Assistant	2	1400-2300
34.	Draftsman Gr-II	1	1400-2300	Not Existing	-	-
35.	Junior Engineer	7	1400-2300	Not Existing	-	-
36.	Statistical Assistant	1	1400-2300	Statistical Assistant	3	1400-2000
37.	P.A. to General Manager	1	1400-2600	P.A. to General Manager	1	1400-2300
38.	Not Existing	-	-	Senior Stenographer	2	1400-2300
39.	U.D.C	9	1200-2040	U.D.C.	9	1200-2040
40.	Care-Taker	1	1200-2040	Not Existing	-	-
41.	Accounts Clerk	4	1200-2040	Accounts Clerk	4	1200-2040
42.	Statistical Investigator	2	1200-2040	Statistical Investigator	4	1200-2040
43.	Junior Stenographer	9	1200-2040	Junior Stenographer	7	1200-2040
44.	Sr. Data Processor	1	1200-2040	Sr. Data Processor	1	1200-2040
45.	Draftsmen Gr-III	1	1200-2040	Not Existing	-	-
46.	Data	1	950-1500	Data Processor	1	950-

	Processor					1500
47.	L.D.C.	54	950-1500	L.D.C.	31	950-1500
48.	Compiler	1	950-1500	Data Compiler	2	950-1500
49.	Machine Operator	1	950-1500	Machine Operator	1	950-1500
50.	Driver	12	950-1500	Driver	7	950-1500
51.	Motor Cycle Messenger	1	950-1500	Motor Cycle Messenger	1	950-1500
52.	Electrician	3	950-1500	Not Existing	-	-
53.	Mason	3	950-1500	Not Existing	-	-
54.	Carpenter	3	950-1500	Not Existing	-	-
55.	Plumber	3	950-1500	Not Existing	-	-
56.	Bailiff	11	800-1150	Bailiff	8	800-1150
57.	Peon	35	750-940	Peon	28	750-940
58.	Farash-cum-Water carrier	Illegible	750-940	Farash-cum-Water carrier	4	750-940
59.	Baldar	Illegible	750-940	Not Existing	-	-

6. A reading of the aforesaid circular of the respondent no. 1 dated 24.7.1996 shows that as per the unamended rules, after the post of Field Inspector which had the pay-scale of Rs. 1640-2900/- the next post with the higher pay-scale was that of a Field Officer in the pay scale of Rs.2000-3500/-. After the post of Field Officer the next higher post was the post of Manager with the pay-scale of Rs. illegible-4000/-. Also, it requires to be noted that between the post of Field Inspector and Field Officer there are various other posts given from serial numbers 14 to 28, and all of which posts carry the same pay-scale of Rs.1640-2900/-, and which was also the pay-scale of Field Inspector. Essentially, therefore, the posts from serial numbers 20 to 29, including the post of Field Inspector to which petitioner was

initially appointed, have to be taken as one set of group/common post. Above these posts from serial numbers 20 to 29, are the group of posts with the pay-scale of Rs. 2000-Rs.3200/3500/- and which are from serial numbers 13 to 19. The petitioner admits that so far as the petitioner is concerned her promotion from Field Inspector has to be to the Field Officer. Above the post of Field Officer is one solitary post of Accounts Officer with the pay-scale of Rs.2375-3500/- and thereafter is the post of Manager at the pay-scale of Rs.illegal-4000/-.

7. In view of the wide variance of posts and pay-scales and designations hence amendments were carried out by the respondent no.1 in accordance with the rules in order to rationalize the posts structure and the promotion structure in the posts. It is seen that as per the amended rules the Field Inspector's post is a post below the post of Assistant Manager and the next higher promotion post after Assistant Manager is the post of Deputy Manager. After Deputy Manager's post the next post is of Manager.

8. The aforesaid hierarchy as per the unamended rules and amended rules are required to be referred to as they would have bearing in the facts of the present case as discussed below. Petitioner, admittedly, was appointed as a Field Inspector with the respondent

no.1 with effect from 13.5.1991. Petitioner was appointed as a Field Inspector in the pay-scale of Rs.1640-2900/-. This pay-scale of Rs. 1640-2900/- as per the amended rules was brought down to Rs.1400-2300/-, however, existing employees of the respondent no. 1 at the post of Field Inspectors, including the petitioner, who had existing higher pay-scale than the lower pay-scale as per the amended rules were not prejudicially affected so far as monetary emoluments are concerned, because, the earlier higher pay-scales of such Field Inspectors, including the petitioner, were protected by the respondent no. 1.

9. Petitioner admittedly after the amended rules were brought in force was promoted to the post of Assistant Manager (General) on 29.10.1997 and this promotion post of Assistant Manager (General) carried the pay scale of Rs.1640-2900/-. Hence, the grievance of the petitioner begins for the higher post of Assistant Manager (General) to which the petitioner was promoted on 29.10.1997 that the same carried the same pay-scale being already drawn by the petitioner of Rs. 1640-2900/-. It may be however noted that admittedly the petitioner has not challenged her promotion given to her to the post of Assistant Manager (General) as per the amended rules on 29.10.1997 either in this writ petition or otherwise.

10. After petitioner got the promotion to the post of Assistant Manger (General) on 29.10.1997, petitioner thereafter got promotion on 11.6.2001 to the post of Deputy Manager (General) in the pay-scale of Rs.6500-10500/- and original equivalent pay-scale of which was Rs.2000-3500/- as per the unamended rules. This promotion granted to the higher post of Deputy Manger (General) from the post of Assistant Manager (General) granted to the petitioner on 29.10.1997, was with effect from 11.6.2001, but it was subsequently amended in favour of the petitioner in view of the recommendation of the Review Departmental Promotion Committee (DPC) dated 14.10.2003 and which granted promotion of the petitioner to the post of Deputy Manager (General) with effect from an earlier date of 4.9.1998 instead of 11.6.2001 which had been granted earlier.

11. In sum and substance, therefore, what the petitioner pleads and argues is that the petitioner should be granted promotion to the post of Deputy Manager (General) not from 4.9.1998 but earlier from 13.5.1996 and which entire grievance is because of higher pay-scale drawn by the petitioner under the unamended rules and which if old pay-scale would continue then petitioner on applicability of amended rules would, as per the petitioner, bring about deemed promotion to the post of Assistant Manager (General) and thus accelerated promotion to

the post of Deputy Manager (General) w.e.f 13.5.1996. The petitioner hence wants to interpolate the pay-scales of the unamended rules by the application of amended rules on the ground of petitioner drawing higher pay-scale of the higher post as per the unamended rules. Petitioner will get this relief only if the amended rules dated 15.3.1996 are held to be illegal by this Court and otherwise petitioner can only get promotions and pay-scales as per the amended rules.

12. Petitioner has, in the writ petition for challenging of the amended recruitment rules, urged a total of six grounds, for seeking all the reliefs in the writ petition, and which grounds read as under:-

“A. For that the amendment to the recruitment rules was purposefully done to enable certain employees of the Respondent No. 1 Corporation to attain seniority over the employees who were employed prior to them in the Respondent No.1 Corporation.

B. For the officers, who were junior to the Petitioner, have been considered and promoted prior to that of the Petitioner, though, they were not eligible for promotion as per the recruitment rules since they had not completed five years of regular service in their initial post before being considered for promotion, though, the Petitioner had completed five years of regular service in her initial post at that time.

C. For that the Petitioner was promoted to the post of Deputy Manager (General) in 2001 i.e. almost after ten years of regular service with effect from 7.6.2001 and subsequently after the recommendation of the Review Departmental Promotion Committee meeting with effect from 4.9.1998. No cogent reasons have been set forth by the Respondent No. 1 Corporation with regard to the said artificial date of regular promotion, since the Petitioner was eligible for the said promotion on 13.5.1996 and therefore, her date of regular promotion to the post of the Deputy Manager (General) ought to have been 13.5.1996, especially when a next higher post of Field Officer was available on that date.

D. For that it is reliably learnt that the Services Department, Government of Delhi has categorically indicated that the promotional avenues for a category of posts cannot be blocked and the service condition of an employee as prevalent at the time of his appointment cannot be changed to the disadvantage of an employee.

E. For that there were no proper notification with regard to the amendment that was carried out on 15.3.1996 and was not in compliance with the procedure. There was no gazette notification and no prior concurrence of the Service Department, Government of Delhi to the said amendment.”

13. A reading of the grounds A and B show that challenge to the amended rules is on the ground that recruitment rules have been amended to benefit certain employees. In my opinion, such type of bland statement cannot be a basis for the petitioner to successfully challenge amendment of the recruitment rules and the hierarchy of the structure of appointments/promotions to posts in the respondent no. 1. It is undisputed that an employer has always a right to change the service rules and this was so because in the unamended rules there was unnecessary variance of the hierarchy of posts and their pay-scales. In some cases service rules are amended which give benefit to the employees of the higher pay-scales and in some cases amendments bring down the pay-scales, but such bringing down of the pay-scales is not illegal if because of the amendment existing pay-scale of an employee is not reduced, and which is the position in the present case so far as the petitioner is concerned because even after the amendment of the rules giving a lower pay-scale to the post of Field Inspector which the petitioner was occupying, petitioner however continued to receive the higher pay-scale as per the unamended rules.

14. Therefore, self serving grounds A and B cannot be a valid basis for the petitioner to question the amended recruitment rules and the fresh hierarchical and organizational structure of the respondent no.1.

15. Ground D is also meaningless because there is no prejudice to the petitioner, inasmuch as, the petitioner herself admits that her higher pay-scale was continued in spite of the amended recruitment rules bringing about the pay-scales of the posts of Field Inspectors.

16. For the self same reasons given above ground C is also liable to be rejected because ground C is only on the basis of a self serving *ipse dixit* and it is again reiterated that an employer has always a right to change the service conditions and hierarchical/organizational structure in an employer, and more so in the facts of this case of the respondent no.1's varied and cumbersome hierarchical and pay-scales as per the unamended rules.

17. So far as ground E is concerned, no such argument has been urged before this Court on behalf of the petitioner.

18. In view of the above discussion, it is seen that amended rules, and whose hierarchical structure has been given as per circular of

the respondent no. 1 dated 24.7.1996, cannot be challenged by the petitioner. Petitioner also cannot seek appointment to the post of Deputy Manager (General) from 13.5.1996, inasmuch as, before the post of Deputy Manager (General) is the post of Assistant Manager (General) and petitioner has not challenged the promotion granted to her to the post of Assistant Manager (General) granted w.e.f 29.10.1997. Once promotion of the petitioner to the post of Assistant Manager (General) as per the amended rules is final with effect from 29.10.1997, then surely the petitioner cannot get the next post above the post of Assistant Manager (General) being the post of Deputy Manager (General) from a date even earlier than 29.10.1997 i.e from 13.5.1996 as prayed for by the petitioner.

19. In view of the above said discussion, there is no merit in the present writ petition and the same is therefore dismissed. No costs.

MARCH 28, 2017

AK.

VALMIKI J. MEHTA, J