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

+ W.P.(C) 3823/2017 and C.M. No. 16822/2017 and 16823/2017

NORTH DELHI MUNICIPAL CORPORATION Petitioner

Through Ms. Mini Pushkarna, Standing
Counsel along with Ms. Anushruti
and Ms. Vasundhara Nayyar,
Advocates.

versus

NARENDER Respondent

Through Ms. Rekha Palli, Senior Advocate
along with Ms. Shruti Munjal and
Mr. S.A. Akhtar, Advocates.

37

+ W.P.(C) 3828/2017 and C.M. Nos. 16830/2017 and 16831/2017

NORTH DELHI MUNICIPAL CORPORATION & ANR

..... Petitioners

Through Ms. Mini Pushkarna, Standing
Counsel along with Ms. Anushruti
and Ms. Vasundhara Nayyar,
Advocates.

versus

DEVENDER SINGH (MALI) Respondent

Through Ms. Rekha Palli, Senior Advocate
along with Ms. Shruti Munjal and
Mr. S.A. Akhtar, Advocates.

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+ W.P.(C) 3831/2017 and Cav. No. 445/2017 and C.M. Nos.
16835/2017 and 16836/2017

NORTH DELHI MUNICIPAL CORPORATION Petitioner

Through Ms. Mini Pushkarna, Standing
Counsel along with Ms. Anushruti
and Ms. Vasundhara Nayyar,
Advocates.

versus
 JAY PRAKASH Respondent
 Through Ms. Rekha Palli, Senior Advocate
 along with Ms. Shruti Munjal and
 Mr. S.A. Akhtar, Advocates.

39

+ W.P.(C) 3832/2017 and Cav. No. 446/2017 and CM Nos. 16837/2017
 16838/2017

NORTH DELHI MUNICIPAL CORPORATION Petitioner

Through Ms. Mini Pushkarna, Standing
 Counsel along with Ms. Anushruti
 and Ms. Vasundhara Nayyar,
 Advocates.

versus
 VIRENDER SINGH Respondent
 Through Ms. Rekha Palli, Senior Advocate
 along with Ms. Shruti Munjal and
 Mr. S.A. Akhtar, Advocates.

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+ W.P.(C) 3833/2017 and C.M. Nos. 16839/2017 and 16840/2017

NORTH DELHI MUNICIPAL CORPROATION Petitioner

Through Ms. Mini Pushkarna, Standing
 Counsel along with Ms. Anushruti
 and Ms. Vasundhara Nayyar,
 Advocates.

versus
 DESH PAL Respondent
 Through Ms. Rekha Palli, Senior Advocate
 along with Ms. Shruti Munjal and
 Mr. S.A. Akhtar, Advocates.

+ W.P.(C) 3834/2017 and C.M. Nos. 16841/2017 and 16842/2017

NORTH DELHI MUNICIPAL CORPORATION Petitioner

Through Ms. Mini Pushkarna, Standing
Counsel along with Ms. Anushruti
and Ms. Vasundhara Nayyar,
Advocates.

versus

JAGAT SINGH Respondent

Through Ms. Rekha Palli, Senior Advocate
along with Ms. Shruti Munjal and
Mr. S.A. Akhtar, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **03.05.2017**

1. The North and East Delhi Municipal Corporations had preferred the present batch of writ petitions to assail the common order dated 08.11.2016 passed by the Central Administrative Tribunal (Tribunal) in several original applications preferred by the respondents and others, whereby the Tribunal has allowed the said original applications and quashed the order dated 19.02.2016 and also directed that the respondents/applicants remained entitled to grant of ACP benefits in pay scales granted to them by the different Municipal Corporations vide their orders of different dates in light of the judgment dated 1.03.2012 of this Court in W.P. (C) No. 2621/10 (MCD vs. Ram Avatar & Ors.) & W.P. (C) No. 2671/10 (MCD vs. Virender

Singh & Ors.)

2. The respondents were appointed in the Delhi Development Authority (DDA) as Malis, Chowkidars, Pump Operators on different dates between the period 1976 to 1989. During the period 1988 to 2002, they were transferred to the Municipal Corporation of Delhi (MCD) on different dates vide various transfer orders. Their orders of transfer stated that the employees of the DDA after transfer to MCD would hold office by the same tenure, remuneration and on the same terms and conditions of service as they would have held, had they continued to be in the DDA unless and until such tenure, remuneration and terms and conditions are duly altered by the Corporation. It also provided that the same shall not be to the disadvantage of the transferred employees without the previous sanction of the Corporation.

3. The Assured Career Progressive (ACP) Scheme was introduced in the MCD on 09.08.1999 and the MCD granted benefit of the 1st ACP to the respondents vide order dated 23.08.2005. However, they were placed in the pay scales lower than the one granted to their counterparts who were working in the DDA. This was challenged by employees who were similarly placed as the applicants before this Court, which transferred the matter to the Tribunal. The Tribunal allowed the transferred applications on 18.11.09 while relying upon the terms and conditions of the transfer order, directing the petitioners to consider the claim of the applicants therein for enhancing the pay scale in ACP. This order was further challenged by the petitioners before this Court in the aforesaid two writ petitions- W.P. (C) No. 2621/10 & W.P. (C) No. 2671/10 which stood dismissed vide a common order dated

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1.03.2012. The SLP of the petitioners also stood dismissed on 02.07.2013.

4. Subsequent to the dismissal of the SLP, the applicants were granted the respective pay scale in the ACP at par with their counterparts in DDA. However, on 19.02.2016 the petitioners passed the impugned order directing not only reduction of pay of the respondents by granting them ACP benefits in lower pay scale, but also ordering recovery of excess payments made to them. The apparent reason for grant of the lower pay scale to the transferred employees/respondents was that they did not have the qualifications prescribed for the next higher promotional posts as per the Recruitment Rules of the DDA.

5. In this background, after making a representation, the respondents preferred the original applications seeking the following reliefs:-

“(A) Set aside the order dated 19.02.2016 (Impugned) passed by the Respondent No. 1;

(B) Direct the Respondents to grant ACP benefits to the Applicants as per scales mentioned in Para 4.8 above;

(C) Pass any other appropriate order or relief which this Hon’ble Tribunal deems fit and proper.”

6. The applicants assailed the order dated 19.02.2016, firstly, on the ground of violation of principles of natural justice as they were not noticed before issuance of the said order reducing their pay and directing recovery. The respondents also claimed that the Malis, Chowkidars and Pump Operators have been granted relaxation in educational qualifications for grant of ACP benefits in the DDA by the Lieutenant Governor and, therefore, the applicants were also deserving of the same treatment.

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7. On the other hand, the petitioners contended that the decision taken by them as communicated vide order dated 19.02.2016 was in accordance with the instructions of the DOP & T, which prescribe that the norms for granting ACP benefits would be the same as prescribed as per the Recruitment Rules. Thus, only those employees, who met all promotional norms, such as, eligible service, higher educational qualifications etc. and were eligible for promotion to the next higher grade, could be considered for grant of the benefit under the ACP Scheme, since the ACP is given in lieu of promotion. The petitioners relied upon the directions issued by the DOP & T that the employees who have been granted ACP benefits in violation of the said instructions be reviewed and recovery of excess amount be made from them.

8. The Tribunal observed that the petitioners herein were right in saying that the educational qualifications prescribed in the Recruitment Rules of the DDA were essential for grant of ACP benefits in the next promotional scale, unless relaxation is granted. The Tribunal placed reliance on the decision in W.P.(C) No. 2621/2010 and 2671/2010, wherein, it had been held that the employees who have been transferred to MCD from DDA continue to get benefits on the same terms and service conditions as were applicable to their counterparts of the DDA, and they would continue to get the same treatment in conditions of service as they would have, had they continued to serve in the DDA, until and unless there is an alternation made by the MCD. The Tribunal observed that, undisputedly, the MCD have not made any alternation in the Recruitment Rules. The respondents/applicants sought to place reliance on the relaxation in the educational qualification granted by the Lieutenant Governor in respect of the employees of the DDA for the

purpose of grant of ACP benefits. In this respect, the Tribunal takes notice of the Office Note dated 12.08.2004 by which the Lieutenant Governor had granted relaxation. The said note in its entirety reads as follows:-

"1. This is regarding relaxation in the laid down educational qualifications for the purpose of grant of ACP Scheme.

2. In the past, recruitments to various cadres in DDA was made without having structured personnel policy or recruitment regulations. Recruitment in several categories were made specifying education qualification requisites in ad hoc manner. Later on, when the RRs got framed, the educational qualifications specified were of higher level than the one's specified in several recruitments made in the past.

In some other cases, appointments were made relaxing the education criterion. The above has resulted in a situation where many of the employees do not meet the education qualification criterion specified in the RRs and hence cannot get even a single promotion."

Further, ordinarily, the education qualification requisite for direct recruitment for a post are not made applicable in regard to filling up the post by promotion. This is done with a view to facilitate promotion to employees who have been recruited at the lower level and would ordinarily not possess the educational qualification for direct recruitment to higher level position. However, in DDA there exists several posts where RRs stipulate same educational qualification requisite for promotion also as has been provided for direct recruitment. Since this qualification requisite happens to be higher than the qualification requisite for the feeder level post, a large number of employees have been deprived of their normal promotion.

3. In the light of the above position, a proposal was earlier processed for seeking relaxation in the education qualification for the purpose of grant of ACP benefit, which were considered and approved by L.G. (notings at page 5-10/N).

In the above proposal, it was indicated that vide this relaxation approximately 1200 employees were to be benefited. It was also indicated that similar relaxation may be warranted in regard to Work-charge employees also as and when the ACP benefit in favour of Work-charge employees is extended by the Ministry.

4. *Inadvertently, certain other categories involving approximately 275 more employees were left out from consideration as indicated at page 77/C.*

Besides, similar relaxation would be required to be considered in favour of work charged (Regular) employees also since the circumstances are similar in their cases also. Approval of Ministry for extending ACP Scheme to work charged (Regular) employees of DDA has already been received.

5. *Power to relax the provisions regarding the educational qualification criteria is vested in the Lt. Governor, Delhi/Chairman, DDA as provided in the RRs for the respective posts, except for the post of Field Investigator in which case, the RRs are silent about such powers. To this extent, the relaxation in the provisions of the RRs for the post of F.I. in reference to the cadre of F.I. will require approval of Authority.*

6. *In view of above, it is proposed to grant ACP benefit to aforesaid employees in regular and work charged (Regular) cadres relaxing the education qualification criterion.*

It is, however, mentioned that the above relaxation may be confined to grant of ACP benefits only, which does not involve shouldering of higher responsibilities. The normal promotions under the RRs may continue to be governed by the provisions in the RRs without affecting any relaxation in education qualification."

9. The note was approved by the Hon'ble Lieutenant Governor on 12.08.2004. The Tribunal rejected the petitioner's contention that the said

proposal for grant of relaxation of the educational qualification pertained only to the named employees, namely 1200 employees + 275 employees and that it did not pertain to the employees who had since been transferred to the MCD. The Tribunal has rejected the submission of the Municipal Corporations.

10. Ms. Pushkarna submits that the relaxation granted to the employees of the DDA ipso facto would not apply to the transferred employees who are now serving with the MCD. She submits that the relaxation was granted only in respect of the named employees of the DDA.

11. We do not find any merit in either of these submissions. Firstly, a perusal of the Note, which has been extracted above, clearly shows that the Note was not intended to apply only to the identified DDA employees. The Note pertains to grant of relaxation to all the employees in respect of their educational qualifications for consideration of their claims for grant of ACP benefits. Even otherwise, there can be no justification for discriminating one set of employees from the others. It is not the petitioner's case that the DDA communicated any specific reason for creating a class of employees, who would be entitled to grant of relaxation in educational qualification for grant of ACP benefits and the others would not be entitled to the same treatment. Since it was specifically provided in respect to the transferred employees of the DDA, who were transferred to the MCD that their terms and service conditions would continue to be the same by which they were governed while serving the DDA, the relaxation granted in respect of the employees of the DDA would inure for the benefit of the DDA transferred employees to the MCD. As observed by the Tribunal, the said position stands squarely

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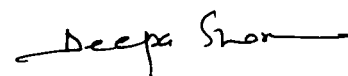
settled by decisions of this Court in W.P.(C) No. 2621/2010 and 2671/2010.

12. For the aforesaid reasons, we find no error in the impugned order calling for interference by us.

13. Dismissed.



VIPIN SANGHI, J



DEEPA SHARMA, J

MAY 03, 2017

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