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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WRIT PETITION (CIVIL) No. 2400/2017**

Date of decision: 17th March, 2017

RAJENDER PRASAD YADAV

..... Petitioner

Through Mr. Robin George, Advocate.

versus

NORTH DELHI MUNICIPAL CORPORATION AND ANR.

..... Respondents

Through Mr. Pratap Singh, Mr. Navneet Tripathi
& Mr. Sayad Sadiq Hussain, Advocates for
respondent No. 1.

Mr. Vikram Jetly, CGSC for respondent No. 2.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

Having heard learned counsel for the petitioner, we are not inclined to interfere with the impugned order dated 18th March, 2016 passed by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short) whereby TA No. 32/2012 filed by the petitioner-Rajender Prasad Yadav and one Dharam Pal Gupta has been dismissed.

2. The petitioner was appointed as Kendra Sahayak Centre Attendant on 2nd April, 1973 and was regularised with effect from 1st April, 1974. In 1982, the petitioner had appeared in the Limited Departmental Competitive Examination (LDCE) and was appointed as a Lower Division Clerk (LDC). However, the petitioner subsequently, on his request, was reverted to the post of Attendant, on 25th March, 1983.

3. The Assured Career Progression Scheme (ACP Scheme) was introduced with effect from 9th August, 1999 with an aim to deal with the problem of stagnation and lack of promotion. The ACP scheme stipulated grant of two financial upgradations on completion of 12 and 24 years of

service, provided the officer had not been promoted. The grievance of the petitioner pertains to grant of 1st financial upgradation under the ACP Scheme.

4. As the petitioner was granted promotion as LDC and on his own request was reverted to the post of Attendant, he was granted second financial upgradation on completing 24 years of regular service on 23rd July, 2004. Subsequently, the petitioner was promoted as Labour Welfare Organiser in the year 2009 and retired from the said post on 31st January, 2011.

5. In the year 2000, the petitioner had filed a civil suit seeking decree of mandatory injunction and also grant of first benefit under the ACP Scheme. This civil suit was transferred to the Tribunal and registered as TA No. 32/2012 which has been dismissed by the impugned order dated 18th March, 2016. The Tribunal in the impugned order has rejected the prayer of the petitioner for grant of 1st ACP for he was already granted promotion as an LDC.

6. The short question which arises for consideration is whether the petitioner's promotion as LDC should be taken into consideration for the purpose of ACP Scheme. If this promotion is taken into consideration, the petitioner would not be entitled to benefit of the first financial upgradation for the ACP scheme stipulates grant of the first financial upgradation after 12 years in service where no promotion has been granted.

7. The answer is luminescent and obvious. The petitioner had earned promotion as LDC, which post the petitioner had joined and later on his own request was reverted. The pay scale of the Attendant, even after reversion was lower than the pay scale of the LDC. Therefore, the petitioner would not be entitled to first financial upgradation under the ACP Scheme.

7. Learned counsel for the petitioner has relied upon judgment dated 6th May, 1995 passed in Civil Suit No. 742/1993, **Rajender Prasad Yadav**

versus Municipal Corporation of Delhi. The petitioner had filed the civil suit for declaration and mandatory injunction and the same was decreed stating that the petitioner was entitled to revised pay scale as applicable to the post of Centre Attendant with effect from 14th February, 1983 on his reversion to the post of Centre Attendant with effect from 25th March, 1983. The pay scale of Centre Attendant had been revised with effect from 22nd February, 1983, but the benefit of the said pay scale was not being given from the said date to the petitioner, for at that time he was working as an LDC and was reverted to the original post of Centre Attendant on 25th March, 1983. The said judgment observes that it was not the case of the authorities that the post of LDC was a promotional post from the post of Centre Attendant through proper channel in technical sense. We do not think the said observations can come to the aid and assistance of the petitioner. LDCE is only a method of promotion. This has clearly been the ratio of several decisions of the Division Benches of this Court. Reference can be made to *Man Singh Vs. Union of India* (2013) 196 DLT (CN) 48 (DB).

8. In view of the aforesaid legal position, the petitioner's appointment as LDC on his clearing the LDCE has to be treated as first promotion.

The writ petition has no merit and is dismissed. No costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

MARCH 17, 2017
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