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

+ **W.P.(C) 6612/2017**

**UNION OF INDIA AND ORS** ..... Petitioners  
Through Mr. Amit Anand, Advocate

versus

**JAI PRAKASH** ..... Respondent  
Through None

**CORAM:**  
**HON'BLE MR. JUSTICE VIPIN SANGHI**  
**HON'BLE MS. JUSTICE REKHA PALLI**

% **ORDER**  
**03.08.2017**

**C.M. No. 27402/2017 (Exemption)**

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

**W.P. (C) No.6612/2017 & C.M. No. 27401/2017 (Stay)**

The petitioner Union of India has preferred the writ petition to assail the order dated 03.01.2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('the Tribunal'), in O.A. No.3020 of 2010 whereby the Tribunal has allowed the said Original Application after remand by this Court, and directed the petitioner to be regularised against MTS post in relaxation of the Rules.

The respondent applicant had preferred the said Original Application assailing the order dated 12.08.2010 issued by the respondent rejecting his claim for appointment to a Group 'D' post. The respondent was engaged as a

Part Time Waterman under sports quota in the petitioner department in the year 1997 after following due procedure. He represented the petitioner department in various Sports Events at National levels and his achievements were recognised and rewarded by the petitioner. He had been pursuing his case for regularisation in Group 'D' post. His claim was, however, not entertained. Vide letter dated 17.11.1983 the petitioner herein had directed to consider all such cases as that of the applicant, in accordance with the relevant rules and instructions. Since the respondent's case was not processed, he preferred O.A. No.1368/2005 which was disposed of by the Tribunal on 19.04.2006. The Tribunal directed that the respondent's case needs to be put up before the Directorate, who may look into the matter and after examining all aspects of the matter pass a reasoned and detailed order within a period of three months, considering the background of the respondent/applicant. The claim of the respondent was rejected on 27.11.2006 on the ground that he had neither represented the petitioner in any All India P&T Competition for more than three consecutive years, nor had he ever represented All India P&T Team in a National Championship every year from 1998 to 2002. It was also claimed that the respondent had not been sponsored by the Employment Exchange. It was also stated that he was neither Gramin Dak Sewak (GDS), nor a Daily Rated Mazdoor (DRM).

The respondent then preferred O.A. No.258 of 2007 which was dismissed *in limine* by the Tribunal vide its order dated 13.02.2007. The respondent approached this Court by way of W.P.(C) 2310/2007 which was dismissed as withdrawn on 02.09.2008, with liberty to file a representation before the petitioner herein. Accordingly, the respondent made a representation on 24.09.2008 enclosing documents to establish his

participation in Senior National Wrestling Championship held during the period 29.12.1999 to 02.01.2000 for the P&T Board. Eventually, the petitioner again rejected the respondent's representation on 18.05.2009. The respondent then preferred O.A. 2018/2009, which was disposed of on 15.01.2010 with a direction to the petitioner to have a re-look at the matter and to consider him for regular appointment subject to availability of Group 'D' vacancies. His representation was again rejected on 12.08.2010. Consequently, the respondent preferred O.A. No.3020/2010, i.e. the subject O.A., to assail the rejection of his representation vide order dated 12.08.2010. The Tribunal, after calling for the reply of the petitioner herein allowed the Original Application on 11.08.2011 directing the petitioner herein to offer a Group 'D' post to the respondent with all consequential benefits except back wages. Consequently, the petitioner preferred W.P.(C) 8218/2011.

Before this Court the stand taken by the petitioner was that after the 6<sup>th</sup> Pay Commission report, all Group 'D' posts multi-tasking staff had been upgraded to Group 'C' posts, and the Tribunal could not have directed the petitioner to appoint the respondent to Group 'C' post and that too by relaxing the Recruitment Rules.

The Division Bench, while disposing of this writ petition and remanding the case back for examination by the Tribunal, *inter alia*, observed as follows:-

“18. Before we deal with the rival contentions, we must record our displeasure at the litigious approach adopted by the petitioners. The Government is expected to fight an honest battle with its citizens and not take false stands. If the respondent, which as a matter of fact he did, represented the Post & Telegraph Department at the National Level and represented the Northern Region in the All India Post & Telegraph sporting events, these had

to be with the permission and hence the knowledge of the authority concerned and we are pained to note that having made the respondent litigate thrice, only at the fourth round the department conceded to the respondent's claim of having represented the Post & Telegraph Department at the National Level and having participated in the Post & Telegraph sporting events where different regions sent sportsperson. Had the petitioners litigated honestly, the respondent would certainly have got the benefit of the policy circular in the year 2002 itself. 19. But, if litigation enures till a point of time when a supervening event takes place, it being settled law that the Court is bound to take into consideration the facts and events which have come into being and then decide the matter, it would be difficult to sustain the impugned decision because the policy circular envisages grant of regular appointment only against Group D posts and not against Group C posts."

The submission of learned counsel for the petitioner is that in view of the categorical stand taken by the petitioner that no Group 'D' post existed consequent upon upgradation of all such posts as Group 'C' in pursuance of the 6<sup>th</sup> Pay Commission report w.e.f. 01.01.2006, the Tribunal could not have directed the regularisation of the respondent by appointing him as a Multi-Tasking Staff in Group 'C' by relaxation in the Recruitment Rules. Learned counsel submits that the Division Bench, while passing the order in W.P.(C) 8281/2011, had observed that when a supervening event takes place i.e. the Recruitment Rules are changed, the said change would have to be considered while examining the prayer for regular appointment against Group 'D' Post. Learned counsel submits that since there were no Group 'D' posts available, the respondent could not be regularised.

Having perused the order dated 14.08.2013 passed in W.P.(C) 8281/2011, and the impugned order passed by the Tribunal, we are of the view that the impugned order is just and reasonable and does not call for interference by us in the exercise of our discretionary jurisdiction. The Tribunal has correctly observed that the petitioner has not stated in the affidavit that there are no Group 'D' posts surviving in the petitioner

department. No material was placed on record to indicate that all such daily wagers and Extra Departmental Agents (EDAs) appointed have been disengaged. The Tribunal has also observed, and in our view rightly so, that the respondent-who was entitled to be appointed to Group 'D' post much earlier, could not be denied his claim on account of the stubborn attitude displayed by the petitioner. So far as the attitude and conduct of the petitioner is concerned, this Court had pointed out the same even while dealing with W.P.(C) 8281/2011, as would be evident from the extract quoted hereinabove. In these circumstances, we are not inclined to interfere with the impugned order since, in our view, it does complete justice between the parties.

The petition is accordingly dismissed. All the pending applications also stand disposed of.

At this stage, learned counsel for the petitioner seeks one month's time to comply with the directions passed vide order dated 03.06.2016 of the Tribunal. The time, as prayed for, is granted.

**VIPIN SANGHI, J**

**REKHA PALLI, J**

**AUGUST 03, 2017**

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