

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
&
HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.17181 OF 2018

ORAL ORDER: (per Hon'ble Sri Justice Suresh Kumar Kait)

1. Vide the present petition, the petitioners have challenged the order dated 22.09.2017 passed by the Central Administrative Tribunal, Hyderabad Bench in O.A.No.762 of 2012, whereby the application filed by the respondent, has been allowed.

2. Brief facts of the case are that the respondent was initially appointed as Cleaner in Group 'D' cadre on a temporary basis with effect from 15.4.1974 and confirmed in the said post vide order dated 24.02.1978. Subsequently, he applied for the post of time scale Driver at Vijayawada MMS unit and was appointed as such on 19.05.1980. On 31.01.1981, he was given change of cadre as Mechanic, P & T MMS unit, Vijayawada and was thereafter promoted to the cadre of Highly Skilled Artisan Grade II with effect from 01.08.1994. After introduction of MACP scheme, he was granted MACP-II Financial Upgradation with effect from 01.09.2008.

3. Further, the case of the respondent is that on completion of 30 years of service, he became due for MACP-III upgradation with effect from 19.5.2010. He submitted several representations to the petitioners. But, there was no response from them.

4. After considering the rival contentions of the parties, the learned Tribunal framed two issues as below:

(i) Whether the applicant's appointment as MMS Driver on 19.05.1980 after selection by the DPC is by way of promotion or by way of direct recruitment.

(ii) Consequently, whether his date of entry into Government service has to be treated as 15.04.1974 or 19.05.1980 for the purpose of Financial Upgradation under MACP-III.

Finally, the learned Tribunal opined that the respondent's date of entry into service in the petitioner-department has to be treated as 19.05.1980 and he would therefore become eligible for the purpose of financial upgradation under MACP-III on completion of 30 years of regular service as after 19.05.1980 he has earned only one promotion as MMS Mechanic Grade II and a further financial upgradation under MACP-II. Consequently, the Tribunal directed the petitioners herein to grant the Financial Upgradation under MACP-III with effect from 19.05.2010, within a period of three months from the date of receipt of the copy of the order.

5. The present petition is filed on the ground that the learned Tribunal ought to have seen that the normal promotional channel for Mail Motor Service Cleaners is Motor Vehicle Driver/MMS Mechanic Grade-III and then, to MMS Driver Grade-II/Mechanic Highly Skilled Artisan (HSA) Grade-II and then to MMS Driver Grade-I/Mechanic Highly Skilled Artisan (HSA) Grade-I. But in the present case, the learned Tribunal has erred in law in not considering the fact that the respondent has already earned three promotions/financial upgradations during his service as under:

Post Held	Pay Scale Rs.	Pay Drawn Rs.	Date from which drawn	Remarks
MMS Cleaner	196-3-220	196	15.04.1974	--
MMS Driver	260-400	260	19.05.1980	1 st Promotion
Grade-III Mechanic	260-400	260	31.01.1981	No pay fixation. Hence not treated as promotion
Grade-II Mechanic	1200-1800	1260	01.08.1994	2 nd Promotion

Financial upgradation under MACP Scheme	5200-20200+2800 GP	11220+Grade Pay of Rs.2800	01.09.2008	3rd Promotion
Grade-I Mechanic	5200-20200+2800 GP	11220+ Grade Pay of Rs.2800	27.7.2010	No pay fixation. Hence not treated as promotion

6. The learned Assistant Solicitor General on behalf of the petitioners submits that if it is assumed that the respondent got selection as an outsider under Direct Recruitment Quota, it is not possible for him to get promotion to Grade III Mechanic on 31.01.1981 i.e., within one year from the date of his promotion as MMS Driver, and the said Grade-III Mechanic Promotion is possible only because of getting promotion under DP quota only and as such, the learned Tribunal has erred in law in not considering the submissions made by the petitioners, and has allowed the O.A. and hence, the impugned order is not sustainable under the eyes of law.

7. The respondent was admittedly in P & T Motor Service, Hyderabad while applying for the vacancy in Vijayawada MMS Unit. Annexure.R-1 Posts & Telegraphs (Motor & Lorry Drivers) Recruitment Rules, 1975 establishes that the method of recruitment to the post of Driver is 50% by Direct Recruitment from out of candidates sponsored by the Employment Exchange and 50% by recruitment from among the departmental candidates, failing which by transfer, failing both, by Direct Recruitment. In Note.2 below, the said rule defines as to who is to be treated as a departmental candidate:

“Note.2: The term ‘departmental candidates’ means officials working in the unit of recruitment concerned with scale of pay lower than that of Motor, Jeep and Lorry Driver. Provided that (i) Dispatch Riders of Telegraph Office located within the jurisdiction of the unit of Mail Motor Service of Engineering Division, Telephone District, will also be eligible for consideration

as departmental candidates of that unit or division or district or Civil or Electrical Circle.

(ii) Staff Car Drivers attached to Circle Offices will be treated as departmental candidates in the Mail Motor Service Unit or Engineering Division under the control of the Circle Office and located at the headquarters of that circle.”

8. From the above note, it is clear that the departmental candidate is defined as an official who is working in the unit of the recruitment concerned. The respondent, who was a Cleaner Group-D in P & T Motor Service, Hyderabad, would not come within the definition of the departmental candidate as the vacancy of Driver was in Vijayawada MMS. Moreover, the respondent while working in P & T Motor Service, Hyderabad, has requested the 4th petitioner for permission to appear for the post of T/S Driver at Vijayawada MMS Unit as an outside candidate as he belonged to Hyderabad Unit. Therefore, he would not be eligible for promotion under the departmental quota in Vijayawada unit. Obviously, it would not have been necessary for him to apply as an outsider candidate if he would have been eligible as a departmental candidate in Vijayawada Unit.

9. The learned Tribunal has observed that from Annexure.A-IV- order of the 4th petitioner, it is established that the respondent was selected by the DPC held on 19.04.1980 and appointed as Driver in P & T MMS Unit and also kept for probation for a period of one year. Further observed, the proceedings of the aforesaid D.P.C. are at page No.62 of the present writ petition. In the first paragraph of the said proceedings, it is stated that the respondent, who is Class IV cleaner of Hyderabad MMS Unit, has been selected by the D.P.C. held on 19.04.1980 for the post of driver in P & T MMS Unit, Vijayawada.

10. It is pertinent to mention here that on the last date of hearing i.e., on 4.6.2018, the petitioners herein were orally directed to produce the minutes of D.P.C. held on 19.04.1980 to establish that promotion was given to the respondent from cleaner but he was not appointed by direct recruitment in the post of Driver. However, failed to produce the same. In the said proceedings dated 19.05.1980, the terms of the appointment are mentioned as under:

“(1) The appointment is purely temporary and will not confer any title to permanent employment.

(2) The appointment may be terminated any time by one month's notice given by the appointing authority. However, the appointing authority reserves the right of terminating the service of the appointee forthwith without any notice on or before the expiry of the stipulated period of notice or unexpired portion thereof.

(3) The appointment carries with it the liability to service in any part of the MMS unit and in special circumstances in any part of the circle. The appointee shall be liable for field service within India in time of war or National Emergency.

(4) The appointee should exchange mails from the post offices to the RMS office in Vijayawada vice versa as per the time schedule. He is also responsible for maintenance of vehicle topping up of the vehicle's radiator, Engine Oil, Battery inflating tyres and keep the vehicle tidy etc.,

(5) Other conditions of service will be governed by the relevant rules and orders in force from time to time.

(6) The period of probation is one year.”

11. From the above, it is established that it was not a promotion from cleaner to driver, but the respondent was appointed directly as driver. Even otherwise as per the rules of the recruitment, there is 50% quota for the departmental candidates and another 50% is by direct recruitment. The said rules are applicable to the candidates located within the unit but not outside the unit. The respondent while working as cleaner in the unit

at Hyderabad was selected as driver in P & T MMS unit at Vijayawada by direct recruitment only and kept on probation for a period of one year as mentioned above.

12. In view of the above, we find no illegality and perversity in the order passed by the learned Tribunal. Finding no merit, the Writ Petition is dismissed. No costs. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

JUSTICE SURESH KUMAR KAIT

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 14th June, 2018.
Nn.



HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
&
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WRIT PETITION No.17181 of 2018

(Oral order delivered by the Hon'ble Sri Justice Suresh Kumar Kait)

14/06/2018

Nn.