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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 06th December, 2018

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W.P.(C) 41/2003

ALL INDIA CPWD (MRM) KARAM.

SANGATHAN & ORS.

..... Petitioners

Through : Mr. Naresh Kaushik and
Mr. Omung Gupta, Advs.

versus

THE DIRECTOR GENERAL OF WORKS Respondent

Through : Mr. A.S. Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

S. RAVINDRA BHAT, J. (ORAL)

1. The petitioner's grievance is that the impugned order of the Central Administrative Tribunal (hereafter as "CAT") disregarded the records. According to the petitioners, the documents placed on record in the proceedings initiated by them clearly showed that there were 12 vacancies as on 05.07.2000, in the cadre of Work Assistant for which they had to struggle and to which position they were appointed after the order dated 25.10.2000 of the CAT.

2. The brief facts of the case are that in the cadre of Work Assistant in the Central Public Works Department (hereafter as "CPWD"), there existed two channels of recruitment/appointment: direct recruitment (to the extent of 25%) and by transfer of serving

public employees from other cadres (to the extent of balance 75%). The record would reveal that pursuant to a public notice and upon selection procedure carried out under the aegis of the CPWD, the petitioners were declared successful in a select list published in March/July 1995. Originally, 19 candidates were declared successful. The CPWD did not issue appointment orders; as a result the petitioners had to approach the CAT which allowed their first application (O.A.No.808/1996) on 23.07.1996. The respondent/CPWD was directed to issue appointment letters subject to availability of vacancies within three months.

3. Complaining of non-implementation of the CAT's directions, the petitioners approached it yet again in a contempt proceeding (C.P.No.289/1996), which was disposed of on 25.02.1997. In this order, the CAT noticed as follows :

“The respondents have filed the reply stating that they have already passed appointment orders according to the availability of the vacancies and suitability of the candidates on the select list and appointments have been given to four such candidates. The remaining vacancies will be filled up, as and when it is available, from amongst the candidates in the select list. It is submitted on behalf of the respondents that the directions of this Court have been complied with by following the directions of the appropriate Government to follow 120 point roster. According to the said roster the respondent have filled up candidates at Serial Nos.1 to 4, according to their quota namely : 1 SC/Gen, 3 SC/ST and 4 General. The learned counsel appearing on behalf of the respondents states that the first point among the remaining vacancies will be filled by a candidate belonging to OBC as and when the next vacancy arises. The remaining part of the roster will be followed thereafter while the roster

appointments are made.

Learned counsel for the petitioner submits that one of the candidates in the select list is OBC and no appointment has been made from the category of OBC. Since the direction of the Hon'ble Court was to fill up the vacancy from the select list in accordance with the availability of vacancies and the candidates who are suitable for such appointments. It is understandable that the suitability will also have to be considered with reference to respective quota according to 120 Roster.

The second contention raised by the petitioners is that the Annexure P3 and 5 are in the nature of merit list and appointment should have been made in accordance with the merit list and the order of the Court on the face of it does not indicate that the appointment should be made according to order of candidates shown in Annexure P-3 & 5. But when a roster is to be followed, the inter se merit also will have to be considered and appointment could only be made from the respective categories against their own quota available.

Therefore, we see no infirmity in the compliance and since there is substantial compliance of the order, the present Contempt Petition is disposed of and notice discharged. It is clarified that since we are only disposing of this Contempt Petition on substantial compliance, the petitioners are given liberty, to approach this Court and when the cause of action arises.”

4. In spite of the orders of the CAT nothing happened: the petitioners were driven yet again to approach the CAT – this time through O.A.1841/1999 which was allowed on 25.10.2000. The CAT noted as follows:

“2. We have given careful consideration to the

contentions raised by the counsel on either side. As per the recruitment rules, the posts of Works Assistant have to be filled up 25% by way of direct recruitment and 75% by departmental candidates. The applicants seeks appointment against the direct recruitment quota. As per the OM dated 10.11.1995, 19 persons have been qualified/trade tested and interviewed for appointment to the post of work Assistant under direct recruitment quota during March/April, 1995. Out of the 19, the applicants' names (except one) are shown at Sl.No.9, 12, 13, 15 to 19. The Applicant, Uttam Chand, OBC was also empanelled during the same year along with others. Out of these 20, applicants No.1, 2, 8 and 10 have been appointed. The remaining empanelled candidates have not been appointed so far. The proceedings dated 13.09.1999 shows that 73 vacancies that were found available as on 28.9.1983 in all the regions whereas the applicant belong to Region 'A', Delhi. As regards the present position, there were 15 posts available against 25% quota as on 10.11.1995 since out of 19, four posts have already been filled up. The latest position is shown in the proceedings dated 5.7.2000 of the Superintending Engineer. As on that date there were 12 vacancies of Work Assistants under the quota. But it was stated therein that the posts could not be filled up because of 10% cut. The learned counsel for the applicant, however, submits that there are still several vacancies that are available and they are not accounted for. They are not filled up according to the recruitment rules. But it is seen from the proceedings dated 5.7.2000 that several posts have not been taken into account since long and unless they were revived the question of filling up of the vacancies does not arise. In view of the explanation filling up of the posts cannot be insisted upon unless they are revived. As regards the 12 vacancies the respondents are obligated to fill up from the empanelled candidates, subject to the lifting of the ban, if there is one. The alleged cut of 10% posts cannot be accepted as it is brought out clearly that the alleged cut cannot be insisted upon against 25% quota.

3. *In view of the foregoing, we direct the respondents to fill up the 12 vacancies of Work Assistants under the 25% direct recruitment quota in accordance with the merit of the empanelled candidates, subject to lifting of the ban, if there is one, within three months from the date of receipt of a copy of this order. The OA is accordingly disposed of. No costs."*

5. It is, therefore, evident that at the relevant time i.e. sometime in 1995, in fact there were 19 vacancies for the post of Work Assistant. Repeated orders of the CAT ultimately resulted in the issuance of appointment letters to the petitioners, after the presence of the Director General (Works) was directed. The petitioners were eventually appointed thereafter. In these circumstances, complaining that the consequent fixation of seniority and other appended benefits were denied to them on account of the inordinate delay in the appointment, they had to approach the CAT a third time. However, this time the application (O.A.No.115/2002) was unsuccessful and the CAT *inter alia* held as follows:

"6. The Hon'ble Supreme Court in a catena of judgments have held that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of appointment. In this proposition we are supported by the judgment of the apex court in the case of the Direct Recruit Class II Engineering Officers Association Vs. State of Maharashtra JT 1990 (2) SC 264. Even according to Government of India instructions as laid down in Establishment & Administration Manual Chapter 39-Seniority, page 523, para 1, seniority of the applicants is to be considered from their actual date of joining the post of Work Assistant. Applicants have not been able to establish under that rule or law they are entitled to count their seniority from the date of occurrence of vacancies."

6. It is urged by the petitioners that the record clearly shows that the vacancies existed all along and that the respondent/CPWD did not furnish any cogent, much less reasonable explanation, for the delay in filling those vacancies, for which they were legitimately entitled. This was recognized not once by the CAT but on three occasions, including contempt proceedings and it was only after the concerned Departmental Heads were summoned to the court through personal appearance that the appointment letters were issued. It was contended that the observations of the CAT in the impugned order that no one can claim entitlement to a retrospective appointment, while generally applicable, cannot relate to exceptional circumstances like in this case where clearly vacancies existed – even on the date of initiation of recruitment procedure – with respect to 25% quota. Even as on 25.02.1997, the CAT recognized that 4 out of 19 vacancies had been filled. Now, therefore, in the absence of any reasonable explanation for the delay, the petitioners' claim was rightful and could not be denied.

7. The respondents, on the other hand, relied upon the findings of the CAT in the impugned order and stated that the general principle, that an individual appointed to a public office can claim seniority only from the date when he entered into the cadre, should and was applied in the facts and circumstances of the case correctly. It is submitted that the mere fact that the vacancies existed at any given time in respect of which public recruitment was ordered did not confer any vested or enforceable right on the petitioners or even anyone whose name was eventually included in the select list. Given this position, the CAT

correctly desisted from directing retrospective appointment and consequent seniority.

8. The extracts of CAT's decision – especially of 25.02.1997 and 25.10.2000 clearly establish that the vacancies existed all along right from the date of advertisement, in the 25% quota for direct recruitment available for Work Assistant in the CPWD; it could not have been otherwise. It was not the CPWD's case ever that the selection was conducted in anticipation of any vacancy or that the vacancies were not contemplated or visualized in any foreseeable future within the reasonable proximity of the initiation of the recruitment process. The petitioners are right when they contend that they undertook a herculean task in ensuring that the appointment letters were issued. The utter absence of any explanation by the respondents as to what was the impediment which prevented the petitioners' appointment, in this case, in the opinion of the court, is decisive; it bespeaks of whimsicality and arbitrariness.

9. At the same time, this court is cognizant of the fact that considerable period has elapsed – almost 15 years. In the absence of the intervening appointees (i.e. from 1995 to 2000) in the balance quota (75% transfer quota), it is not possible to visualize the likely impact that could occur and the adversity that may be felt by those whose seniority position was settled during those years.

10. In these circumstances, it would be appropriate that the CAT reconsiders this aspect and after giving due notice having regard to the available records, makes appropriate orders including suitable equitable order with respect to what would be the impact if others are

likely to be affected i.e. such as the direction to create supernumerary posts for temporary period or periods, as the case may be.

11. The CAT is also directed to consider the feasibility of impleading some others, if necessary, in a representative capacity to participate in the remand proceedings.

12. In view of the above findings and directions, the impugned order is set aside, and O.A. No.115 of 2002 is remitted for fresh consideration by the CAT, which is required to dispose it of within six months, after hearing the concerned parties and also after taking into account all records.

13. The writ petition is allowed in the aforesaid terms.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

DECEMBER 06, 2018

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