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

\+ W.P.(C) 7397/2018 & C.M. Nos.28278-28279/2018

MS. KAVITA AND ORS. ..... Petitioners
Through Mr.Sushant Kumar, Adv. with Ms.Shikha Singh, Adv.

versus

DIRECTOR, ALL INDIA INSTITUTE OF MEDICAL SCIENCE AND ORS. ..... Respondents
Through Mr.V.S.R. Krishna, Adv. for AIIMS.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE REKHA PALLI

O R D E R

% **23.07.2018**

1. The petitioners are aggrieved by the judgment dated 16.07.2018 passed by the Principal Bench, Central Administrative Tribunal, New Delhi, whereby their Original Application being OA No.1904/2018 seeking a direction to the respondent/AIIMS to send them for training at ISTM as per the list circulated on 07.03.2016, was turned down.

2. By the impugned judgment, the Tribunal has rejected the Original Application filed by the petitioners by referring to the Recruitment Rules for the post of Junior Accounts Officer, whereunder it is prescribed that the Head Clerk/UDCs, who opt for the Accounts Cadre, will be imparted

Cash and Accounts training from ISTM as per their "*Seniority cum Suitability*", which is to be adjudged by the Financial Adviser. We may note that the aforesaid training is a pre-requisite for promotion to the post of Junior Accounts Officer.

3. Briefly stated, the facts of the case as set out by the petitioners are that the petitioners were working on the post of UDC in the respondent/AIIMS from the year 2002-2003 onwards.

4. In the year 2014, information regarding two vacancies in the post of Junior Accounts Officer were circulated vide memorandum dated 4.02.2014, relevant extract whereof is reproduced hereinbelow:-

> "MEMORANDUM
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> Subject:- To depute for the Accounts Training Programme for promotion to the post of Junior Accounts Officer at the AIIMS – inviting of options thereof.
>
> The Competent Authority has approved invitation of options from U.D.C. and Assistant (NS), for appearing in the screening test for deputing the suitable Assistant(NS/U.D.Cs, on the basis of their inter-se-seniority, for training in Accounts for promotion to the post of Junior Accounts Officer.
>
> Options are, therefore, invited along with recent passport size photo from Assistant (NS)/UDCs working at the Institute, who wish to opt for the Accounts Cadre, with the following eligibility criteria:-
>
> (a) **Grade**: Must have 5 years of regular service in the grade of UDC/Assistant (N.S.)

(b) **Age**: Must be below 50 years of age as on the date of commencement of the course.

Since the proposed module of training would be intensive and would entail a good amount of home work and professional aptitude in accounts and finance related matters, only those eligible employees who are diligent and have the aptitude for sustained work will be selected and nominated for training in Accounts.

The persons who fulfil the above eligibility criteria and are selected for the Accounts Training Programme will be considered for promotion as Junior Accounts Officer subject to availability of vacancies, after their passing the examination of Accounts Training Programme and, other academic requirements during the training period."

5. Pursuant to the issuance of the aforesaid memorandum, eighty six applications were received by the Screening Committee of the respondent, out of which seventy eight candidates appeared for the qualifying test for being deputed for Cash and Accounts Training at ISTM. On 20th September, 2016, the Screening Test was conducted by the respondents and the results thereof were declared, wherein sixty three candidates including the petitioner, qualified in the merit list prepared by the respondents. The petitioners were placed at serial nos.1, 5 & 7.

6. After the selection process was complete, those who had not succeeded in being included in the Merit List, approached the Tribunal by filing OA No.781/2016 entitled ***Arvind Kumar & Ors. Vs. Director, AIIMS & Anr***. Pertinently, the petitioners before us were also respondents before the Tribunal in the aforesaid OA. Vide order dated

24.02.2016, the Tribunal declined interim relief to the petitioners in the said O.A.. The said order was taken in appeal by the petitioners therein, by filing WP (C) No.2886/2016 in the High Court which challenge was rejected vide its order dated 04.04.2016. During the pendency of the captioned OA, the respondent passed an order dated 22.11.2017 cancelling the entire selection process alongwith the result as declared on 3.10.2016. As a result of the aforesaid cancellation order, OA No.781/2016 was withdrawn by the petitioners therein.

7. Pursuant to the cancellation of the selection process, the respondents issued another memorandum dated 09.05.2018 and while reverting back to the original selection process, they selected candidates for being sent for the training by applying the principle of "*seniority cum suitability*" according to which the petitioner's names were not included in the select list. Aggrieved thereby, the petitioners approached the Tribunal by filing OA No.1904/2018.

8. By the impugned judgment dated 15.05.2018, the Tribunal rejected the OM filed by the petitioners by observing as follows:-

> "7. A careful examination of the RRs reveals that different principles were prescribed for selecting the Head Clerks/UDCs for sending for Cash & Accounts Training and for appointing them on promotion as

> Junior Accounts Officer. The principle of seniority-cum-suitability is prescribed for selecting them for sending for Cash & Accounts Training conducted by ISTM under Rule 5. Whereas for appointment on promotion after the completion of training, the principle prescribed under Rule 9 in the RRs in merit-cum-seniority. The respondents who earlier wrongly placed the applicants at particular places in the result list by wrongly following the principle of merit-cum-seniority now rectified their mistake by cancelling the said selection list by issuing the impugned order and now proceeding to follow the correct principle of seniority-cum-suitability for selecting candidates for sending for Cash & Accounts
> training at ISTM. Hence, we do not find any illegality or irregularity in the action of the respondents."

9. At this stage, it may be relevant to refer to the relevant extracts of the Recruitment Rules for the post of Junior Accounts Officer, which read as under:-

NAME OF THE POST	:	JUNIOR ACCOUNTS OFFICER
NO. OF POSTS	:	10 (1992)
CLASSIFICATION	:	Group `B'
SCALE OF PAY:		Rs.1640-60-2600-EB-75-2900
METHOD OF RECRUITMENT:		By Promotion from amongst the Head Clerks/UDCs who have

undergone Cash & Accounts training conducted by ISTM.

Note

(i)The Head Clerks/UDCs who opt for the Accounts Cadre will be imparted Cash & Accounts training from ISTM as per their seniority-cum-suitability to be adjudged by the Financial Adviser with the approval of the D.D.A /Director.

(ii)The Office Supdts. who have been deployed and already in-position against the posts of JAOs will be imparted the "Cash & Accounts "training prescribed above in the initial batches deputed for such training prior to other opting for training.

AGE LIMIT FOR DIRECT RECRUITS	:	Not applicable
EDUCATIONAL AND OTHER QUALIFICATION REQUIRED FOR DIRECT RECRUITS	:	Not applicable
WHETHER BENEFIT OF ADDED YEARS OF SERVICE ADMISSIBLE UNDER RULE 30 OF THE C.C.S. (PENSION) RULES, 1972.	:	Not applicable

In case of recruitment
By promotion-

(a)	WHETHER BY SENIORITY-CUM FITNESS I.E., 'NON SELECTION', OR BY 'MERIT-CUM-SENIORITY' I.E., 'SELECTION'	:	Head Clerks/UDCs who have successfully undergone "Cash & Accounts training course conducted by ISTM,
(b)	GRADES FROM WHICH PROMOTION IS TO BE MADE AND ELIGIBILITY	:	Head Clerks/UDCs who have successfully undergone "Cash & Accounts training course conducted by ISTM, New Delhi.
(c)	WHETHER AGE AND EDUCATIONAL QUALIFICATIONS PRESCRIBED FOR DIRECT RECRUITS WILL APPLY IN THE CASE OF PROMOTEES"	:	Not applicable

10. Thus it clearly emerges, that as per the Recruitment Rules applicable for the post of Junior Accounts Officer, the Head Clerk/UDCs who have undergone Cash and Accounts Training conducted by the ISTM, are eligible for promotion and selection for being sent for the aforesaid training, to be carried out as per their "*seniority-cum-suitability*". However, the memorandum dated 02.02.2014 initially issued by the respondent, did not adopt the said criteria for drawing up the Select List of candidates for being sent for training and had instead,

conducted the selection erroneously by applying the principle of "*merit-cum-seniority*". It was only to undo the said wrong that the respondents had cancelled the entire process and had thereafter, by following the principle of "*suitability-cum-seniority*" as prescribed in the Recruitment Rules, selected Head Clerks/UDCs for being sent for Cash and Accounts training at ISTM.

11. Given the rule position, the petitioners cannot take advantage of the wrong committed by the respondents in issuing the memorandum dated 04.02.2014. In our view, the respondents rightly rectified their error by issuing the memorandum dated 09.05.2018, cancelling the entire selection process initiated in the year 2014, which was based on *'merit cum seniority'* and thereafter following the Recruitment Rules, selected the candidates by following the criteria of *'seniority cum suitability*' while being imparted Cash & Accounts Training at ISTM.

12. For the aforesaid reasons, we do not find any justification for interfering with the impugned judgment passed by the Tribunal which is upheld.

13. The present petition is dismissed in limine as being meritless along with pending applications.

HIMA KOHLI, J

REKHA PALLI, J

JULY 23, 2018/aa