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

+ W.P.(C) 2769/2019

RAJESH KUMAR AND ORS. Petitioner

Through Mr.Lalta Prasad, Adv.

versus

UNION OF INDIA AND ORS. Respondent

Through Mr.Arun Bhardwaj, CGSC with
Mr.Nikhil Bhardwaj, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% **20.03.2019**

C.M.No.12792 (to seek condonation of 2100 days) and
C.M.No.12793/2019 (to seek delay in re-filing)

Alongwith the application to seek condonation of delay the petitioner has placed on record the various SMSs exchanged between the petitioners with their earlier engaged counsel. The petitioner claims to have made payment of a fee of Rs.30,000 to the said counsel in the year 2012, which was eventually refunded by the counsel in the year 2018. The SMSs exchanged with the counsel shows that the counsel had apparently misplaced the case file of the petitioners in his office and the petition could not be therefore preferred in time.

In our view, the petitioners have disclosed sufficient reasons for condonation of delay. The delay is accordingly condoned, the delay in refiling is also condoned.

The applications are disposed of.

W.P.(C) 2769/2019

The petitioners assail the order dated 15.03.2012 passed by the Central Administrative Tribunal, New Delhi in O.A.No.69/2008. The grievance of the petitioners was that the respondents did not conduct the Departmental Promotion Committee (DPC) meetings in a proper manner, that the respondents were not legally right in abolishing the posts of S.A. (Senior Accountant) and J.A.(Junior Accountant) cadre that though 17 vacant posts of S.A. were available due to incumbents officers being sent on deputation between the years 2000-04 and 9 ST category vacancies being de-reserved, the respondents had not taken the same into account for promotion of regular J.A.

The petitioners also challenged the appointment of the two persons against deputationist vacancies and alleged discrimination. They also claimed that though 7 vacancies for the post of S.A. had arisen in the year 2000 no DPC was hold for promoting the LDC to J.A. grade during the year 2000 and 2001. The petitioners further sought promotion as J.A w.e.f. September, 2001 and S.A. from the date of their eligibility.

The original application was earlier rejected by the Tribunal and the petitioners had approached this Court by way of W.P.(C)No.8444/2009 and the same was disposed of on 23.04.2009. This Court remanded the case back to the Tribunal after setting aside the order passed by the Tribunal and the present order has been passed by the Tribunal in compliance of the order dated 23.04.2009.

The submission of the petitioner is that though the

petitioners/LDCs duly fulfilled the eligibility criteria and vacant posts were available in the promotional cadre of J.A., the respondents did not hold any DPC. It may be noted that though subsequently, the petitioners have been promoted, they are primarily seeking promotion to J.A from a retrospective date.

It is well settled that merely because candidates may become eligible and vacancies are available in the promotional cadre when they become eligible, the candidates do not have any vested right to claim promotion. The Tribunal held that the petitioners could not claim the benefit of promotion in the aforesaid circumstances.

The tribunal has cited a decision in ***Nirmal Chandra Sinha v. Union of India*** [2008-14-SCC-29], wherein the Supreme Court observed as under:-

"7. It has been held in a series of decisions of this Court that a promotion takes effect from the date of being granted and not from the date of occurrence of vacancy or creation of the post vide Union of India and others vs. K.K. Vadera and others 1989 Supp (2) SCC 625, State of Uttaranchal and another vs. Dinesh Kumar Sharma 2007 (1) SCC 683, K. V. Subba Rao vs. Government of Andhra Pradesh 1988(2) SCC 201, Sanjay K. Sinha & Others vs. State of Bihar and others 2004 (10) SCC 734 etc."

The Tribunal has also held that it is for the employer/government to re-structure the cadre by abolishing certain posts, as it may deem fit.

Having perused the impugned order and we do not find any merit in the present petition.

In view of the aforesaid, the petition is dismissed.

VIPIN SANGHI, J

REKHA PALLI, J

MARCH 20, 2019

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