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

+ **W.P.(C) 5549/2019**

UNION OF INDIA & ANR

..... Petitioners

Through: Mr. T.P. Singh, Sr. Central Govt.
Counsel.

versus

MS. S. RADHA & ANR

..... Respondents

Through: Mr. Padma Kumar S. Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

21.05.2019

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CM APPL. 24328 & 24329/2019

Exemptions allowed, subject to all just exceptions.

The applications stand disposed of.

CAV 554/2019

Learned counsel for the caveator has put in appearance. Accordingly,
the caveat stands discharged.

W.P.(C) 5549/2019 CM APPL. 24327/2019

The petitioner Union of India assails the order dated 06.03.2019 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 972/2016. The Tribunal by the impugned order has allowed the said Original Application and directed the petitioners to

consider the respondents for promotion to the post of Additional Director General (ADG). The Tribunal directed that since the respondents were due to retire on 30.04.2019, the exercise of holding the DPC be completed within six weeks from the date of receipt of copy of the order and that the petitioner would not be allowed to raise the plea that the respondent could not be promoted since she retired from service.

The respondent was holding the post of Principal Scientist which is in the Junior Administrative Grade in the establishment of Director General of Quality Assurance. The next promotional post was that of Director Grade-I which stands re-designated as Additional Director General (ADG). The recruitment rules for the post of ADG, insofar as it is relevant provides the following eligibility criteria: -

“Officers of the Junior Administrative Grade, (Principal Scientific Officer) with eight years’ regular service in the grade including Non Functional Selection Grade or with seventeen years’ regular service in Group ‘A’ posts out of which at least 4 years regular services should be in the Junior Administrative Grade.”

The grievance of the respondents was that she became eligible for consideration for promotion to the post of ADG in the year 2006 onwards, since she had completed 17 years’ regular service in Group-A post out of which she had 4 years’ regular service in the Junior Administrative Grade. We may observe that there is no dispute about the fact that the respondents fulfilled the alternate eligibility criteria set out in the aforesaid rule for promotion to the post of ADG.

The petitioner, however, did not consider the candidature of the respondents for promotion to the post of ADG from 2006 onwards. On their interpretation of the aforesaid rule, if sufficient number of candidates were eligible and available for consideration as officers belonging to Junior Administrative Grade (Principal Scientific Officer) with 8 years' regular service in the Grade including non-functional selection grade, there was no need to consider those who become eligible upon application of the second criteria. The petitioners claimed that there was no need to consider others, who may be eligible for consideration on application of the alternate criteria, namely, Officers of Junior Administrative Grade (Principal Scientific Officer) with 17 years' regular service in the group A posts out of which at least 4 years regular service should be in the Junior Administrative Grade. The petitioners claimed that only if promotions could be made by applying the first criteria, the alternate criteria had to be applied for making promotions. The Tribunal has rejected the stand of the petitioner herein by observing that the said rule uses the word "*OR*" and not "*failing which*" or "*if not available*" as a conjunctive. Thus, the petitioner was not justified in excluding eligible candidates, who fulfilled the alternate criteria for consideration for promotion to the post of ADG. On that premise the Tribunal has allowed the Original Application.

The submission of learned counsel for the petitioner is that the consideration of Officers of Junior Administrative Grade with 17 years' regular service in Group-A post out of which at least 4 years regular service should have been rendered in the Junior Administrative Grade would create anomalies, since, Officers who were juniors in the seniority list of Junior

Administrative Grade (Principal Scientific Officer) would steal a march over other officers of the JAG (Principal Scientific Officer) who had completed 8 years' regular service in the Grade.

Learned counsel for the petitioner also relies upon the clarification given by the DOP&T in the year 2009 which is to the effect that:

“When eligible person with 8 years of regular service in the grade of JAG are available, there seems to be no need to consider the other qualifying criteria of seventeen years after the word “OR” in the above referred Sl.No.2 of Schedule 1 of DQAS Rules, 2000.”

Learned counsel has also sought to place reliance on the notification dated 15.11.2000, whereby the Defence Quality Assurance Service Rules, 2000 were framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. Rule 6 deals with the aspect of future maintenance of service, and Sub-rule 3(b) thereof provides as follows:

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“The posts in the grade of Director Grade-I shall be distributed to distinct groups of disciplines, as may be decided by the Government from time to time and promotion to these posts shall accordingly be made from amongst eligible officers of the concerned group.

Note : The eligibility list for promotion shall be prepared with reference to the date of completion by the officers of the prescribed qualifying service and with due regard to the inter-se seniority in the respective disciplines.”

Learned counsel submits that the *inter se* seniority in the respective disciplines would be breached if the alternate clause in the aforesaid

eligibility criteria rule were to be operated simultaneously with the first part of the said Rule.

Learned counsel also seeks to advance submissions with regard to the manner in which the *inter se* seniority of the eligible officers would need to be fixed in the feeder grade. We may, however, at this stage observe that we are not concerned with the fixation of the *inter se* seniority of the eligible officers in these proceedings, and the limited issue that arises for consideration is with regard to the interpretation of the eligibility criteria rule quoted above.

On the other hand, learned counsel for respondent submits that this Court has considered the aforesaid eligibility criteria in its decision rendered in W.P.(C) No.727/2012 ***Union of India & Anr. vs. Sanjeev Kapoor and Ors.***, decided on 01.04.2013. The dispute in the said case related to promotion to the post of Director Grade-I i.e. re-designated post of ADG. Though, the issue raised in the said decision was somewhat different, on interpretation of the eligibility criteria Rule, this Court observed as follows:

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“20. Accordingly, we dispose of the writ petition holding that the view taken by the Tribunal is correct. Promotions to the post of Director Grade-I have to be from amongst the integrated list of Principal Scientific Officer from all the disciplines and for which the common seniority list would have to be prepared in a manner where the fortuitous circumstance of a person in a particular discipline earning a promotion on the fortuitous circumstance of the DPC pertaining to his discipline being held earlier and that of the other discipline a little later does not become determinative of the inter-se seniority, likewise the fortuitous circumstance of somebody

being promoted and posted in the same office and hence being relieved and joining the same date but somebody else on being promoted and posted in a different office and not being relieved by the parent office to join the office where he was promoted and thereby date of joining being determinative of the seniority does not become determinative of the inter-se seniority. Alternatively, if the department reads the Rules as entitling them to allocate the post of Director Grade-I in different disciplines, we see no cause to integrate the seniority list of Principal Scientific Officers in the different disciplines.”

Learned counsel submits that the aforesaid extract clearly shows that all the eligible officers who satisfy either of the eligibility criteria are required to be considered for promotion simultaneously, by either preparing a comprehensive seniority list or allocating different quotas for the promotional post of Director Grade-I (re-designated as ADG) in different disciplines – in which case, there would be no need to issue an integrated seniority list of the JAG (Principal Scientific Officer) in different disciplines.

Having heard learned counsel for both the parties and perused the record as well as the impugned order, we see no reason to interfere with the impugned order passed by the Tribunal. The Tribunal has correctly interpreted the recruitment rule relating to the eligibility criteria for consideration for promotion to the post of ADG.

The said rule lays down an alternate eligibility criteria for consideration for promotion to the post of ADG. Clearly, there are two channels for promotion to the post of ADG. The first channel is of officers of Junior Administrative Grade (Principal Scientific Officer) with 8 years’ regular service in the Grade, including non-functional selection Grade. The

second channel is of officers of the Junior Administrative (Principal Scientific Officer) with 17 years' regular service in Group-A post out of which at least 4 years' regular service should be in the Junior Administrative Grade. The two criterion are connected with the word "OR", which clearly means that all officers who satisfy either of the two eligibility criteria are entitled to be considered for promotion, provided they fall in the zone of consideration. The interpretation adopted by the petitioner to read the said rule as providing for only a fall - back on the second criteria, in the eventuality of sufficient candidates not being available as satisfying the first criteria, is clearly not made out. The first rule of interpretation is to read the statute literally and give it the meaning which emerges from the grammatical reading of the rule. This rule may not to be adopted, where the application of the said principle in interpretation would lead to an absurdity or anomaly. Though, the petitioner claims that to read "OR" as "OR" would result in an anomaly, the said plea is not substantiated. The petitioner has not been able to point out what is the anomaly that it seeks to avoid by reading "OR" as "failing which".

Pertinently, the post of ADG is a selection post. Thus, merit and not seniority in the feeder grade is the primary consideration.

It is not uncommon where officers with lesser service in the feeder cadre are also considered as eligible for promotion on the strength of their longer tenure of overall services. We may take cognizance of service rules relating to promotion of degree and diploma holders in the engineering services. It is often seen that degree holders need lesser qualifying service

as compared to diploma holders, yet officers falling in both streams are considered as eligible for promotion to the next higher Grade.

Therefore, merely because an officer may be serving in the Junior Administrative Grade (Principal Scientific Officer) only for 4 years on regular basis but with 17 years regular service in Group-A post, he cannot be denied consideration for promotion in terms of the Rule, because there are other officers of the Junior Administrative Grade (Principal Scientific Officer) with 8 years of regular service in the said Grade including non-functional selection Grade.

Reliance placed by learned counsel for the petitioner on the clarification issued by the DOP&T, in our view, is misplaced. The said clarification cannot have the effect of turning the recruitment rule on its head, which is a statutory recruitment rule. The DOP&T cannot undo the said rule by adopting a patently erroneous interpretation. Thus, in our view, no reliance can be placed on the said interpretation adopted by the DOP&T.

Reliance placed on Rule 6(3)(b) of the Defence Quality Assurance Service Rules, 2000, in our view, is also of no avail to the petitioner. This rule, in fact, very clearly states that the posts in Grade of Director Grade-I “*shall be distributed in two distinct Groups of disciplines, as may be decided by the Government from time to time...*”. Therefore, this rule recognises the position that the vacancies of Director Grade-I (i.e. ADG) would be filled by distinct Groups of disciplines. The Government cannot take a decision to completely omit one or more of the distinct groups of disciplines, and that too without amendment of the recruitment rules. The Rules goes on to state that “*promotion to these posts shall accordingly be made from amongst*

eligible officers for the concerned groups”. This also shows that all eligible officers of distinct groups of disciplines are entitled to be considered for promotion to the Grade of Director Grade-I (ADG).

Learned counsel for the petitioner has heavily relied upon “Note” to the said rule, which provides that the eligibility list for promotion shall be prepared with reference to the date of completion by the officers of the prescribed qualifying service and with due regard to the *inter se* seniority “*in the respective disciplines*”. We do not see as to how the said “Note” quoted above can be interpreted to mean that one or more of the distinct group of disciplines can be excluded in the application of the aforesaid rule. All that is required is that officers having the prescribed qualifying service would be arranged, having regard to their *inter se* seniority in the respective disciplines.

The decision rendered by this Court in the case of *Sanjeev Kapoor* (supra) also supports the interpretation adopted by the Tribunal in respect of the recruitment Rule, with which we also agree.

For the aforesaid reasons, we find no merit in this petition and dismiss the same.

VIPIN SANGHI, J

REKHA PALLI, J

MAY 21, 2019

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