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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 30.04.2019

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W.P.(C) 11325/2016

SURESH KUMAR & ORS

..... Petitioner

Through Mr.Jasmeet Singh with Mr.Srivats
Kaushal, Advs.

versus

GOVT. OF NCT OF DELHI THROUGH ITS CHIEF SECRETARY
& ANR

..... Respondent

Through Ms.Latika Choudhary, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J (ORAL)

1. The petitioners have preferred the present petition to assail the order dated 12.01.2016 passed by the Principal Bench, Central Administrative Tribunal, New Delhi in O.A.No.3589/2013. The petitioners had preferred the said original application primarily to seek a declaration that the posts of Store Staff, i.e., Assistant Store Keeper, Store Keeper and Store Superintendent, in the Industrial Training Institute (ITI) in Delhi are “technical” posts as per the norms and guidelines of the Directorate General of Employment and Training (DGE&T). Vide the impugned order, the Tribunal has rejected the said original application and, consequently, this petition has been preferred.

2. The submission of Mr.Singh, learned counsel for the petitioners

is that in the year 2006, and again in the year 2010—vide memorandum dated 13.01.2010 the respondents had themselves classified the aforesaid posts as “technical” and, in this regard, reference is made to the response given by the Ministry of Labour and Employment to a query raised under the Right to Information Act. In its response, the aforesaid Ministry had stated that the nature of duties and responsibilities of an Assistant Store Keeper are as follows:-

- “ 1. The Asstt. Storekeeper arranges to keep store in a neat and orderly manner and ensures that; all stores are properly labeled.*
- 2. The Asstt. Storekeeper receives the stores as per delivery challans and make necessary entry in Inward Register.*
- 3. The Asstt. Storekeeper will examine, count, measure or weigh as the case may be as per challan before the stores are received.*
- 4. The Asstt. Storekeeper issues the store as per indent counter signed by indenter and Dy. Director-in-charge.*
- 5. The Asstt. Storekeeper helps Storekeeper to make necessary entries in different types of registers maintained in the store.*
- 6. Handling of all engineering/Scientific Stores. ”*

It was further mentioned that the status of the post of Assistant Store Keeper was “Technical”.

3. Similarly, for the post of Store Keeper, the Ministry had stated as follows:-

- “ The Store Keeper receives all materials relating to the Engineering and Non-Engineering trades as well as machineries, Equipments, Tools etc. and issues them on Store Indent basis to the concerned staff members, with proper authority. He maintains GIR and bin cards for*

issue of store items. The handling over and taking over of stores by the staff, Technical staff members are also done by the Store Keeper. Apart from this, he also maintains the account of General items like engineering stores. He further maintains the account of furniture, sports items and finished Goods, if any, and as well as consumable store like stationary raw material for the requirement of the entire Institute.”

The status of the post of Store Keeper was also stated to be “Technical”.

This was followed by a memorandum dated 13.01.2010 issued by the Department of Training and Technical Education, Government of NCT of Delhi (GNCTD), wherein the GNCTD declared the posts of Assistant Store Keeper, Store Keeper and Store Superintendent as “Technical” after gathering data from Dadra and Nagar Haveli, Daman and Diu (Union Territories), DGE&T and the State of Gujarat (Gandhi Nagar). The said memorandum *inter alia* states as follows:-

“ The posts of Assistant Storekeeper, Storekeeper and Store Supdt. as per the data gathered from the Dadra & Nagar Haveli, Daman & Diu (Union Territories), Directorate General of Employment & Training (DGE&T) and the State of Gujarat (Gandhinagar) are technical.

In view of the above facts, it is ordered to declare the posts of Assistant Storekeeper, Storekeeper and Store Supdt. as "Technical" and subsequently other related actions will be initiated.”

4. Mr.Singh submits that, without any basis, the respondents have sought to recall the memorandum dated 13.01.2010 by issuing memorandum dated 19.06.2012. The said memorandum *inter alia*

states as follows:-

“ It is regretted that the department did not adopt the proper procedure while changing the nomenclature of the post of Asstt. Store Keeper, Store Keeper and Store Superintendent to Technical Asstt. Store Keeper, Technical Store Keeper and Technical Store Supdt. As this involves the approval of services department, GNCTD and Finance Department, GNCTD and then finally the approval of Hon'ble LG of Delhi and Ministry of Finance, GOI.

As per the observations of Service Department, GNCTD that there is no provisions for ex post facto approval/concurrence of the action taken by the administrative department.

Now regretting and keeping in view of the above, the department is withdrawing the order dated 13/01/2010 vide which the nomenclature of the post of Asstt. Store Keeper, Store Keeper and Store superintendent to Technical Asstt. Store Keeper, Technical Store Keeper and Technical Store Superintendent were changed.

It is also assured that the department shall re-examine the relief sought in OA No. 3243/2009 and put up the case for approval of competent authority as per the DoPT guidelines/rules/orders issued from time to time.”

5. Mr.Singh submits that a perusal of the memorandum dated 19.06.2012 would show that the same was withdrawn only on procedural grounds, and that the purport of the said memorandum was not to change the classification of the said posts, upon examination of the nature of duties and responsibilities of Assistant Store Keeper, Store Keeper and Store Superintendent. He further submits that the said memorandum, in fact, states that the Department shall re-examine the situation and put up the case for approval of the Competent

Authority as per the guidelines of the Department of Personnel and Training.

6. Mr.Singh has also drawn the attention of this Court to the educational qualifications prescribed for the post in question. For the post of Assistant Store Keeper, the educational qualifications prescribed are Matriculation/Higher Secondary with Science subjects (Physics and Chemistry) preferably ITI trained in Mechanical and Electrical trades. He submits that all the petitioners are ITI trained in Mechanical and Electrical trades. He further submits that the nature of responsibilities and duties of the petitioners as Assistant Store Keeper, Store Keeper and Store Superintendent is to deal with the technical equipments of the ITI and, therefore, the said posts are entitled to be classified as technical.

7. Lastly, Mr.Singh submits that apart from Delhi, in all other locations, such as Dadra and Nagar Haveli, the said posts are classified as “Technical” and the petitioners cannot be discriminated against.

8. On the other hand, Ms.Latika Choudhary, learned counsel for the respondents submits that there is nothing to show that the earlier classification of the said posts as “Technical” was premised on a study of the nature of responsibilities and duties that the holders of such posts were required to discharge. Even the response to queries under the RTI Act do not show that the store staff discharges any technical responsibilities or duties. She further submits that the DGE&T has issued a communication on 22.02.2013 clearly stating that Store Keeper Staff working in ITIs do not come under the category of

technical staff. The said communication reads as follows:-

“To

*Director
Directorate of Training and Technical Education
Government of NCT of Delhi,
Muni Maya Ram Marg,
Pitampura, Delhi*

Subject – O.A.No.1866/2011 in case of Suresh Kumar and Others versus Shri Sharda Prasad, DG, Ministry of Labour and Others.

Sir,

With reference to the court case OA.No.1866/2011 in case of Suresh Kumar and Others versus Shri Sharda Prasad, DG, Ministry of Labour and Others, it is informed that as per the ‘Training Manual’ published by this Directorate General the ‘Store Keeping Staff’ working in Industrial Training Institutes (ITIs) does not come under the category of ‘Technical Staff’. A copy of the relevant pages (page no.36 and 38 to 42) of the training manual is enclosed.”

9. Having heard the learned counsel for the parties and perused the impugned order and documents relied upon, we are of the view that there is no merit in this petition. There is nothing to show that the initial classification of the said posts as “Technical” was founded upon a study of the nature of responsibilities and duties that the incumbents of the said posts have to discharge. In fact, the response of the Ministry of Labour and Employment shows that though the said Ministry stated that the posts of Assistant Store Keeper and Store Keeper were “Technical”, the job description did not support that conclusion. In the matter of classification of the said posts, it is the view of the DGE&T, which has to be given primacy. Having

considered the factors noted hereinabove, the DGE&T clearly stated in its communication dated 22.02.2014 that the Store Keeping Staff cannot be classified as “Technical”. The said communication is premised upon the training manual, the relevant extract whereof is also annexed to the communication dated 22.02.2013.

10. Though the earlier memorandum dated 13.01.2010 refers to the data gathered from Dadra and Nagar Haveli, Daman and Diu (Union Territories), DGE&T and the State of Gujarat (Gandhinagar), it is not clear as to what materials and data, were relied upon while issuing the memorandum dated 13.01.2010.

11. Merely because at some other locations like Dadra and Nagar Haveli, Daman and Diu (Union Territories) and the State of Gujarat the post of Store Keeping Staff was categorised as “Technical”, would not be a reason good enough to accept the contention that the said posts are indeed “Technical”. There is nothing to show that the Recruitment Rules for the said Store Keeping Staff prevalent in GNCTD are the same as those prevailing at other locations. The submission that at those locations the Store Keeping Staff continues to be classified as “Technical” is also of no avail. The respondents were entitled to correct their earlier decision, and since the petitioners were aggrieved thereby, it was for them to establish as to how the said posts are “Technical”. It is well settled that negative equality cannot be claimed by any person and, even if there was an error committed earlier in relation to the classification of similar posts at other locations, that is no reason for the GNCTD to continue with the said wrong classification. The respondents have not acknowledged in the

memorandum dated 19.06.2012 that the said posts are “Technical” or that there was only a technical error in the issuance of the earlier memorandum dated 13.01.2010. That interpretation of the petitioner is plainly erroneous and is rejected.

12. For all the aforesaid reasons, we do not find any merit in the present petition and the same is dismissed.

VIPIN SANGHI, J

REKHA PALLI, J

APRIL 30, 2019/sr