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

Date of Decision: 25.04.2019

+ W.P.(C) No.8642/2015 & CM 18864/2015 & 5998/2019

UNION OF INDIA Petitioner
Through Mr.V.S.R. Krishna, Adv.

versus

SHRI OM PRAKASH & ORS. Respondents
Through Mr.A.K. Trivedi, Adv. with
Mr.Naveen Kumar Adv.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present writ petition filed by the Union of India, assails the order dated 27.02.2015 passed by the Principal Bench, Central Administrative Tribunal, New Delhi ("Tribunal") allowing OA No.2430/2014 filed by the respondents. The petitioner/Union of India also assails the order dated 03.07.2015, whereby the Tribunal has rejected its Review Application No.157/2015.

2. The aforesaid Original Application was filed by the respondents/applicants seeking *inter alia* a direction to the petitioner to only consider only them, along with other eligible Highly Skilled Grade-I (hereinafter referred to as "HS-I") employees, for promotion to the post of Chargeman Grade-II in accordance with the Recruitment Rules. The grievance of the respondents was that persons holding the post of Master Craftsman (MCM) were erroneously being considered for promotion to the

post of Chargeman, by virtue of executive instructions issued in contravention of the Recruitment Rules.

3. The respondents while working as HS-I employees in the Ordnance Factory, Muradnagar, District Ghaziabad, U.P., approached the Tribunal being aggrieved by two letters dated 5th May, 2014 and 22nd May, 2014, issued by the petitioner, whereby persons working on the post of MCM were also declared as eligible for promotion to the post of Chargeman. The case of the respondents was that as per the applicable Recruitment Rules, i.e., Indian Ordnance Factories (Recruitment and Conditions of Service) Group 'C' Supervisory and Non Gazetted Cadre Rules, 1989, employees working on the post of MCM were not eligible for promotion to the post of Chargeman and, therefore, the action of the petitioner in considering such employees for promotion to the said post, was not only dehors the said Rules, but was detrimental to their interest as it was only HS-I employees who formed the feeder cadre for Chargeman-II. While opposing the OA, the only stand taken by the petitioner before the Tribunal was that even though there was no provision for considering MCMs for promotion to the post of Chargeman in the Recruitment Rules, guidelines by way of letters dated 15th May, 2014 and 22nd May, 2014, had been issued to include MCMs in the feeder cadre for the post of Chargeman. It was contended that the guidelines were only supplementing the Recruitment Rules, and had been issued for the benefit of the employees themselves. Therefore, there was no infirmity in the petitioner's consideration of MCMs for promotion to the post of Chargeman.

4. The Tribunal, after noticing the fact that the only Recruitment Rules in force which govern the parties, did not

include the post of MCM in the feeder cadre for promotion to the post of Chargeman, allowed the respondents' OA vide its impugned order dated 27.02.2015, by observing as under:-

“6. Be that as it may, even if it is presumed that the impugned communications as Annexures A/1, A/2 & A/3 are issued for the benefit of employees themselves, it cannot be legally accepted that the benefit measures are taken in contravention of the Recruitment Rules, which have been framed by the respondents themselves under Article 309 of the Constitution. It would only be appropriate to amend the recruitment rules for non-functional cadre, if it is so required by the respondents.

7. In view of the fact that the present Recruitment Rules are in favour of the applicants, we see no reason why the respondents should deny the benefit of promotion to the applicants, as sought by them in this OA. Accordingly, we direct the respondents to consider the applicants for promotion in terms of Recruitment Rules, within a period of three months from the date of receipt of a copy of this order and to communicate the decision taken by them, along with reasons to the applicants. It may also be clarified in this very order that consequential benefits shall be regulated by the respondents expeditiously and not later than two months from the date of decision by the respondents regarding the aforesaid claim of the applicants for promotion.”

5. Against the order dated 27.02.2015, the petitioner filed a Review Petition before the Tribunal which was rejected. In these circumstances, the present petition has been filed impugning the order passed in the aforesaid OA as also in the Review Application.

Mr.V.S.R. Krishna, learned counsel for the petitioner, contends that the Tribunal has failed to appreciate that after the statutory rules were promulgated, a number of cadre re-structuring exercises had been carried out which had resulted in mergers and

demergers not only at the level of HS-I personnel, but also at the level of Chargeman. The Recruitment Rules had, therefore, become non-workable, as a consequence of which the petitioner was fully justified in issuing guidelines in May, 2014 to provide for promotional avenues for both HS-I employees as well as MCMs. He further submits that as a result of the cadre re-structuring, the posts of Chargeman Grade-I and Chargeman Grade-II have now been merged into the post of Chargeman (Technical) and the petitioner, therefore, was fully justified in including the post of MCM as one of the feeder cadres for promotion to the post of Chargeman.

6. On the other hand, Mr.Trivedi, learned counsel for the respondents while supporting the impugned orders, submits that in the light of the admitted position that the Recruitment Rules notified in 1994, continue to operate till date, the petitioner could not have in an arbitrary manner, included the post of MCM for promotion to the post of Chargeman. He states that even otherwise, as per the Recruitment Rules, a person working as an HS-I employee, has the option to seek promotion either to the post of Chargeman Grade II or to the post of MCM. Once an option is submitted, it becomes final and cannot be changed subsequently. His contention, thus, is that the inclusion of the post of MCM as a feeder cadre for the post of Chargeman, is contrary to Recruitment Rules and could not have been permitted. He, therefore, prays that the writ petition be dismissed.

7. We have considered the submissions of the learned counsel for the parties and perused the records. Before dealing with the rival contentions of the parties, we may refer to the relevant

extracts of the Recruitment Rules, which are reproduced hereinbelow:-

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Name of posts	In case of recruitment by promotion/deputation/transfer grades from which promotion/deputation/transfer to be made	If DPC exists what is its composition	Circumstance is which UPSC is to be consulted to making recruitments.
1	12	13	14
Chargeman Grade.I (Tech)	By Promotion from charge man Gd. II or equivalent with 3 years of regular service in the grade in respective category. By Transfer. On passing trade test.	DPC consists of Addl. GM/Jt. GM as Chairman and two officers of level of Dy. GM level or equivalent, one of whom representing SC/ST	Not applicable
Chargeman Grade.I (Non-Tech/Store)	By promotion Promotion from chargeman Gd. II or equivalent with 3 years of regular service in the grade of Personal Assistant with 3 years regular service in the grade. By transfer. On passing trade test.	--do--	Not applicable

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Name of posts	In case of recruitment by promotion/deputation/transfer grades from which promotion/deputation/transfer to be made	If DPC exists what is its composition	Circumstance is which UPSC is to be consulted to making
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			recruitments.
1	12	13	14
Chargeman Grade II (Tech)	By Promotion Promotion from Draughtsman or equivalent in scale of Rs.1200-20140 with 3 years service and promotion. HS Gd. I with 3 years of regular service failing which from HS Gd.II with 6 years regular service in respectively category. By Transfer. On passing trade test By transfer Inter-se of Draughtsman in scale of Rs. 1400-2300 and Supervisor (Tech) or equivalent in scale of Rs. 1400-2300 in respective category	DPC consists of Addl. GM/Jt. GM as Chairman and two officers of Dy. GM or equivalent level, one of whom representing SC/ST Group.	Not applicable

(emphasis supplied)"

8. The undisputed position that emerges from the record is that the Recruitment Rules, which were promulgated in 1989, amended in 1994 and which continue to operate as on date, clearly specify that only HS Grade-I employees with three years of regular service are eligible for promotion to the post of Chargeman Grade-II. In the absence of HS Grade-I employees with three years of regular service, only HS Grade-II employees with six years of regular service are eligible for promotion to the said post. Furthermore, it is only a Chargeman Grade-II employee who is eligible for promotion to the post of Chargeman Grade-I. A person holding the post of MCM is not at all eligible for promotion to the post of either Chargeman Grade-II, or to the post of Chargeman Grade-I. In our view, merely because the petitioner has carried out some re-structuring and merged the posts of both Chargeman Grade II and

Chargeman Grade-I, it cannot make an MCM eligible for promotion to the post of Chargeman (Technical). The merger of the posts of Chargeman Grade I and Chargeman Grade-II in the post of Chargeman (Technical), cannot make an MCM eligible for promotion to the post of Chargeman (Technical), when the post of MCM is neither in the feeder cadre of Chargeman Grade-II nor that of Chargeman Grade I.

9. It is trite law that once statutory recruitment rules occupy the field, all recruitments and promotions have to be carried out strictly in accordance therewith. The Statutory Rules cannot be supplanted or amended by mere executive orders or circulars. In this regard, reference may be made to the decision in ***Ajaya Kumar Das v. State of Orissa & Ors. [(2011) 11 SCC 136]***, wherein the Supreme Court observed as under:

“10. Neither the Circular dated June 18, 1982 nor the subsequent Circular dated March 19, 1983 modifying the earlier Circular dated June 18, 1982 can override the statutory provision contained in Rule 74(b) of the Code if it results in reduction of pay of the employee on promotion. That Orissa Service Code has been framed under Article 309 of the Constitution of India is not in dispute. It is well settled that Statutory Rules framed under Article 309 of the Constitution can be amended only by a Rule or Notification duly made under Article 309 and not otherwise. Whatever be the efficacy of the Executive Orders or Circulars or Instructions, Statutory Rules cannot be altered or amended by such Executive Orders or Circulars or Instructions nor can they replace the Statutory Rules. The Rules made under Article 309 of the Constitution cannot be tinkered by the administrative Instructions or Circulars.”

10. It is, thus, evident that the petitioner could not have acted contrary to the Recruitment Rules while issuing the letters dated 15th May, 2014 and 22nd May, 2014, which have been rightly

quashed by the Tribunal. In case the petitioner deemed it necessary or proper to include the post of MCM as a feeder cadre for promotion to the post of Chargeman (Technical), it was open to them to amend the Recruitment Rules and then consider the MCMs for promotion to the said post of Chargeman.

11. For the aforesaid reason, we find no infirmity in the orders passed by the Tribunal.

12. The writ petition being meritless, is dismissed along with the pending application.

(REKHA PALLI)
JUDGE

(VIPIN SANGHI)
JUDGE

APRIL 25, 2019/aa