

18.11.2021
Ct. no.04
rpan / 05

WPCT 511 of 2013
Union of India & Others
– Versus –
Sri Kajal Chakraborty

Mr. Alope Banerjee,
Mr. Amal Kumar Datta
... for the petitioners.

The present writ petition has been preferred by the Union of India and its functionaries praying for the following relief:

“A) a Rule do issue calling upon the respondent herein to show cause as to why the judgment and order dated 21.06.2012 passed by the Learned Full Bench and also the judgment and order dated 10.07.2012 passed by the Learned Division Bench respectively in the mater being O.A. No.1627 of 2009 (Kajal chakraborty vs Union of India & Others) of the Learned Central Administrative Tribunal, Calcutta Bench, should not be set aside and/or quashed and call for records of the case and after pursuing the records and cause shown, if any, make the rules absolute by settling aside and/or quashing the said judgments and orders dated 21.06.2012 and 10.07.2012 passed in O.A. No.1627 of 2009 (Kajal Chakraborty –Vs- Union of India & Others) by the Learned Central Administrative Tribunal, Calcutta Bench be stayed.”

Shorn of unnecessary details the facts are that the respondent herein was initially appointed as peon

(Group – ‘D’) in the office of the National Sample Survey Organization, Kolkata with effect from 1st June, 1972. Thereafter, he was appointed as Lower Division Clerk (in short, LDC) with effect from 16th March, 1978 *vide* memo dated 5th June, 1977 and 14th March, 1978 against direct recruitment quota through Limited Departmental Competitive Examination (in short, LDC Examination). Subsequent thereto, he was promoted as Upper Division Clerk (in short, UDC) with effect from 12th July, 1995. Upon completion of 24 years of service on 16th March, 2002, the respondent approached the department for grant of second financial upgradation under Assured Career Progression Scheme (in short, ACP Scheme) inasmuch as he was not eligible to get the first financial upgradation benefit with effect 9th August, 1999 since he was promoted as UDC with effect from 12th July, 1995. Such prayer of the respondent was refused by an order dated 24th January, 2005, issued by the Deputy Direction (Administration). Challenging the said order the respondent preferred O.A. 1627 of 2009 primarily placing reliance upon a judgment delivered by the Hon’ble High Court, Delhi in the case of *Bhim Singh & Others - Vs. – High Court of Delhi & Others* [Writ Petition (Civil) No. 17332-34/06]. In the said case arguments were advanced on behalf of the petitioners herein placing reliance upon a judgment dated 7th May, 2010 passed by the learned Principal Bench of the learned Tribunal in

the case of *Shambhu Prasad vs. Secretary, Ministry of Statistics & Programme Implementation*. The said petition was disposed of by an order dated 10th February, 2011 referring two legal issues to a larger Bench.

Pursuant to such direction, the issues were considered by the larger Bench and an order was passed on 21st June, 2012 observing that the respondent's appointment dated 14th March, 1978 to the post of LDC cannot be termed as promotion and the order passed by the learned Principal Bench in the case of *Shambhu Prasad* (supra) does not reflect the correct proposition of law. The matter was thereafter directed to be placed before the learned Division Bench for appropriate orders. Pursuant thereto, the matter was considered by the learned Division Bench and an order was passed on 10th July, 2012 observing that the respondent is entitled to the benefits of the ACP Scheme and the application was disposed of directing that the respondent would be entitled to all consequential benefits.

Mr. Banerjee, learned senior advocate appearing for the petitioners argues that the impugned orders have been passed misconstruing the provisions of paragraph 8 of the ACP Scheme, as clarified *vide* DOPT O.M. dated 10th February, 2000 wherein it has been specifically stated that Group- 'D' employees, who become LDCs on the basis of departmental examination, stand on a

different footing and their appointment shall be counted as promotion for the purpose of ACP Scheme.

He contends that the judgment delivered in the case of *Bhim Singh* (supra) is clearly distinguishable on facts inasmuch as the petitioners therein, who were initially appointed in Class - IV post, were subsequently appointed to their respective post of Chauffeur, Dispatch Van Driver and Dispatch Rider through open selection. In the present case there was no such open selection. The learned Tribunal failed to appreciate that there are two types of selection in the concerned department and the appointment to the post of LDC, reserved for 10% vacancies through LDC Examination, cannot by the farthest of imagination be construed to be a direct recruitment.

Drawing the attention of this Court to the order dated 10th July, 2012, Mr. Banerjee submits that the same does not stand fortified with appropriate reasons and is, thus, not sustainable in law.

The matter was last heard on 11th November, 2021 when Mr. Ghosh, learned advocate appeared on behalf of the respondent and submitted that the appointment of LDC under 10% quota of LDC Examination is in the nature of direct recruitment and it does not partake the character of 'promotion'. The language employed in the orders dated 5th December, 1977 and 14th March, 1978 is unambiguous and specifically conveys that the

respondent was 'appointed' on 'direct recruitment basis' and there was no element of seniority involved.

He further submitted that the ratio of the judgment delivered in the case *Bhim Singh (supra)* is clearly applicable to the facts of the present case. The respondent has competed with others in the selection process and such appointment is to be treated as direct recruitment for the purpose of financial upgradation under the ACP Scheme. The examination conducted was also a common examination and was not confined to any particular seniority unit.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

The learned tribunal in its order dated 21st June, 2012 rightly discounted the argument, as advanced by the petitioners herein placing reliance on the clarification in paragraph 8 of the DOPT O.M. dated 10th February, 2000 since such clarification was made, keeping in view the model recruitment rules, which came into existence in the year 2007 and not earlier and the same has no relevance as its birth is posterior to that of the respondent's appointment. The contents of the memo dated 5th December, 2017 and 14th March, 1978 had been rightly construed by the learned tribunal to come to the conclusion that the respondent's appointment to the post of LDC cannot be counted as promotion for the

purpose of financial upgradation under ACP Scheme. As the reference was answered by the larger Bench in favour of the respondent, the learned tribunal rightly directed the petitioners to extend all consequential benefits to the respondent by the order dated 10th July, 2012.

Upon dealing with the factual issues, the learned tribunal arrived at specific findings and we do not find any error in the same. There is no wrong in the approach of the learned tribunal and the decisions stand fortified with appropriate reasons. The scope of judicial review is very narrow and limited and such jurisdiction should be exercised sparingly and only in appropriate cases where the judicial conscience of the court dictates. The orders also do not suffer from any jurisdictional error warranting interference of this Court.

Accordingly, the writ petition, being WPCT 511 of 2013 is dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Sugato Majumdar, J.) (Tapabrata Chakraborty, J.)