

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

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Date of decision: 5th April, 2021.

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W.P.(C) 4172/2021

RAJENDER KUMAR.

..... Petitioner

Through: Mr. Shiv Shankar Banerjee and Ms.
Madhurima Ghosh, Advs.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Rajesh Kumar and Mr. Jitendra
Kumar Tripathi, Advs. for UOI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

RAJIV SAHAI ENDLAW, J.

C.M. Nos. 12693-94/2021 (both for exemption)

1. Allowed, subject to just exceptions and as per extant Rules.
2. The applications are disposed of.

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3. The petition impugns the order dated 30th January, 2020 of Central Administrative Tribunal (CAT), Principal Bench, New Delhi, of dismissal of O.A. No.4270/2014 preferred by the petitioner, an Assistant Director in the Ministry of Labour & Employment, Government of India, seeking the relief of promotion to the post of Deputy Director.

4. CAT, in the impugned order has reasoned (i) that the qualification prescribed for the post of Deputy Director was, either a degree in Engineering/Technology of a recognised University or equivalent; OR a

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Diploma in Engineering / Technology of a recognised Board of Technical Education or equivalent in fields/disciplines where Degree qualifications are not awarded; OR Post Graduate Degree or Post Graduate Diploma in Sociology/Social Work or Economics or Commerce; (ii) that the petitioner holds qualification of Bachelor of Arts (BA) and Industrial Training Institute (ITI) (cutting and tailoring); (iii) though at one stage, the petitioner was issued an order of ad-hoc promotion to the post of Deputy Director but it was withdrawn; (iv) upon the petitioner making representation ventilating his grievance, detailed order dated 11th July, 2014 was passed, informing the petitioner that he does not hold the qualification prescribed for the post of Deputy Director; (v) the contention of the petitioner was that the qualifications held by him are adequate for promotion and that several Assistant Directors who did not possess the prescribed qualifications were promoted but the petitioner had been unable to substantiate the same; (vi) per contra it was the categorical stand of the respondents, that all candidates named by the petitioner possessed one or the other stipulated qualifications; and, (vii) merely because at one stage, the order of ad-hoc promotion was issued, was not a reason to entitle the petitioner to promotion, especially when immediately upon realizing/noticing that the petitioner did not hold the requisite qualifications, that order was withdrawn.

5. The counsel for the petitioner, before us, has commenced his arguments contending that two others similarly placed as the petitioner were granted promotion, utilizing the power of relaxation contained in Rule 5 of the Directorate of Training (Vocational Training Programme for Women) Deputy Director of Training (Group 'A' Gazetted) Recruitment Rules, 1989

for the post of Deputy Director of Training (Women Training). He contends that one of the said candidates, though purported to have a qualification of Master of Arts (M.A.) Sociology, had in fact not done B.A. Sociology and as per the guidelines of the University Grants Commission (UGC), could not have done M.A in Sociology without holding a qualification of B.A in Sociology. It is contended that the petitioner did not have the necessary documents in this regard when the proceedings were pending before CAT, but has acquired the same now.

6. We have enquired from the counsel for the petitioner, whether the said candidate has been impleaded as a party inasmuch as any adjudication qua the qualification or promotion of a person, not a party to this proceeding, cannot be undertaken in this proceeding.

7. The counsel for the petitioner states that the said candidate is not a party.

8. We have next asked the counsel for the petitioner, to show us the order granting relaxation under Rule 5 aforesaid to the said candidate.

9. The counsel for the petitioner now states that there is no specific order granting relaxation but contends that from the very fact that a non-eligible candidate was appointed, it is evident that the rule prescribing qualification was relaxed.

10. With respect to the other candidate, it is stated that though the said candidate claimed to possess a Diploma but the said Diploma is of two years and not of three years and thus the said candidate was also not entitled to promotion but was granted relaxation under Rule 5 supra.

11. Again, no order showing grant of relaxation under Rule 5 supra is shown and it is again contended that the very fact that the person not qualified was granted promotion, implies that relaxation was given.

12. We are unable to accept the aforesaid contention. The petitioner also admits that both the said candidates purportedly had the qualification prescribed for the post of Deputy Director. The contention however is that the qualification is ill-gotten. On the contrary, the petitioner does not even possess any of the prescribed qualification. Moreover, even if any candidate not having the requisite qualification has been appointed in violation of the Rules, Article 14 of the Constitution of India does not permit of any negative equality and any promotion in violation of Rules cannot be ordered by the Court. Reference in this regard may be made to *State of Haryana Vs. Ram Kumar Mann* (1997) 3 SCC 321, *Secretary, Jaipur Development Authority, Jaipur Vs. Aulat Mal Jain* (1997) 1 SCC 35, *State of Punjab Vs. Dr. Rajeev Sarwal* (1999) 9 SCC 240, *Financial Commissioner (Revenue) Vs. Gulab Chand* (2000) 10 SCC 656, *Union of India Vs. Rakesh Kumar* (2001) 4 SCC 309, *Union of India Vs. International Trading Co.* (2003) 5 SCC 437, *Anand Buttons Ltd. Vs. State of Haryana* (2005) 9 SCC 164, *Vishal Properties (P) Ltd. Vs. State of Uttar Pradesh* (2007) 11 SCC 172, *State of Bihar Vs. Upendra Narayan Singh* (2009) 5 SCC 65, *Fuljit Kaur Vs. State of Punjab* (2010) 11 SCC 455, *Union of India Vs. M. K. Sarkar* (2010) 2 SCC 59, *Basawaraj Vs. Special Land Acquisition Officer* (2013) 14 SCC 81, *Dalip Singh Vs. State of Haryana* (2019) 11 SCC 422 and *Goa State Cooperative Bank Ltd. Vs. Krishna Nath A.* MANU/SC/1123/2019. The petitioner, though on the basis of such appointment, is not entitled to

claim mandamus to the authorities to act in violation of Rules but is certainly entitled to seek the relief of challenging the said appointments contrary to the Rules. However no such relief was claimed, though the second of the said candidates is stated to have been a party before CAT.

13. As far as the argument of the counsel for the petitioner, of the petitioner being entitled to relaxation in qualification, under Rule 5 supra is concerned, the grant of relaxation under the Rules is in the sole discretion of the concerned authority and relaxation of Rules cannot be claimed as a matter of right.

14. As far as the argument of, at one stage, order of ad-hoc promotion of petitioner having been issued is concerned, it is well settled in law that an ad-hoc appointment or promotion does not create any right in favour of person concerned. Reference if any required can be made to ***Delhi Urban Shelter Improvement Board Vs. G.S. Mehra*** (2011) 182 DLT 409 (DB) and ***Municipal Corporation of Delhi Vs. Dhan Singh*** (2007) 138 DLT 425 and order dated 10th May, 2007 in LPA No.272/2007 titled ***Dhan Singh Vs. MCD*** preferred thereagainst.

15. The counsel for the petitioner has lastly contended that the petitioner belongs to the Scheduled Caste Category and was entitled to relaxation under Rule 6 of the Rules aforesaid.

16. However again, a bare perusal of Rule 6 aforesaid shows that the same does not permit any such relaxation in prescribed qualifications for those belonging to Scheduled Caste Category and the said argument is again without any basis.

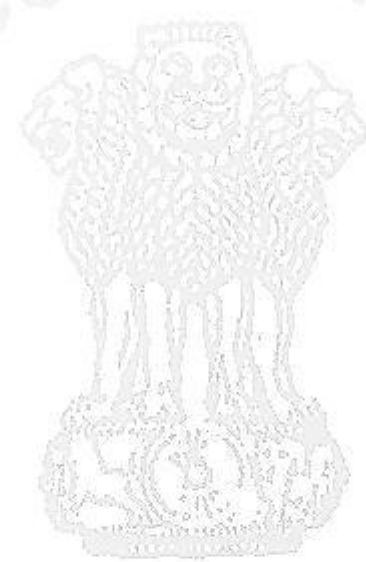
17. The petition is thoroughly misconceived and dismissed.

18. We may also record that the petitioner has already superannuated on 30th September, 2017.

RAJIV SAHAI ENDLAW, J.

AMIT BANSAL, J.

APRIL 05, 2021
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