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

% Judgment delivered on: 10<sup>th</sup> November, 2022

+ **W.P.(C) 14253/2022 and C.M. No. 43516/2022**

UMAR DARAZ

..... Petitioner

Versus

UNION OF INDIA & ORS.

..... Respondents

**Advocates who appeared in this case:**

For the Petitioner: Mr. Mohammad Ali, Mr. R.K. Rajwanshi,  
Mr. Mutiur Rehman and Ms. Prachi Gupta,  
Advocates.

For the Respondents: Ms. Aakanksha Kaul, Mr. Manek Singh, Mr.  
Aman Sahni, Mr. Pranav Gupta and Mr.  
Simran Gill, Advocates.

**CORAM:-**

**HON'BLE MR. JUSTICE SANJEEV SACHDEVA**

**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**

**JUDGMENT**

**SANJEEV SACHDEVA, J (Oral)**

1. Petitioner impugns judgment dated 25.09.2019, whereby the Original Application filed by the petitioner seeking a direction to the

respondents to grant third financial upgradation under the Modified Career Progression Scheme (MACP), has been dismissed.

2. Learned counsel for petitioner submits that when the petitioner was appointed to the class-III post, the same was to be treated as a direct recruitment and not a promotion and as such he was entitled to the benefit of the third MACP. He submits that respondents have incorrectly denied him the benefit assuming the said appointment to class-III post as a promotional appointment.

3. Petitioner on 17.04.1974 was appointed as a Call Man in the Northern Railway, Delhi Division, which is a class-IV post. He was moved from class-IV to class-III (Clerical) after undertaking a test in 1982 and subsequently promoted to the post of Senior Clerk on 27.05.1987 and Head Clerk on 22.02.1996.

4. Benefit of financial upgradation under the MACP was granted to several employees by order dated 21.04.2010. Petitioner was denied the said benefit. Accordingly, petitioner filed the subject Original Application contending that he had only received two promotions, one to the post of Senior Clerk and second to the post of Head Clerk in 1987 and 1996, respectively and his moving from class-IV to class-III was after undergoing a test and as such was not a promotion and was a direct recruitment.

5. The Tribunal by the impugned order has held that moving of

petitioner from class-IV to class-III was a promotion though after a test and the same could not be compared to Limited Departmental Competitive Examination (LDCE) as the same was strictly by seniority, subject to the employee satisfying certain basic requirements attached to the said promotional post.

6. Reference may be had to the order of promotion dated 12.02.1982 in respect of the petitioner, which reads as under:-

**“NOTICE**

*As a result of selection from Class IV staff to Class III staff @ 33. 1/3 % against departmental quota the following candidates placed on the provisional panel for the post of clerk Gr. 260-400 (Rs.) are appointed to officiate as such and posted on the stations shown against each;.....”*

7. It may be noticed that petitioner figures at Sr. No.12 in the said list of employees, who were placed on the panel for the post of Clerk by notice dated 12.02.1982. Further, the notice dated 12.02.1982 shows that the selection process was in respect of 33.1/3 % departmental quota.

8. Reference may be had to the relevant Recruitment Rules in respect of the subject post i.e., Train Clerks, which read as under:-

“(v) **TRAINS CLERKS**

126. (1) *The posts in the category of Train Clerks in the pay scale Rs.3050-4590 will be filled as under:*

(i) *50% by direct recruitment through Railway Recruitment Board;*

(ii) *33. 1/3 % by promotion by a process of selection from eligible categories of staff in level-1 as specified by the Zonal Railways as per procedure prescribed in para 189; and Points men ‘A’ in Level-2.*

*{Authority: Railways Board’s Letter No. E(NG)/I/2010/PM 2/6 dated 09.05.2019}*

(iii) *16. 2/3 % by promotion entirely on merit of Matriculate Group ‘D’ employees from eligible categories, as specified by the Zonal Railways for (ii) above, with a minimum of 2 years regular service in the concerned seniority unit on the basis of a competitive examination consisting of Written Test and Record of Service of 85 and 15 marks respectively. ”*

9. There are three categories of feeder posts to the post of Train Clerk, one is 50% by direct recruitment through Railway Recruitment Board, second is 33. 1/3 % by promotion by a process of selection and thirdly of 16. 2/3 % by promotion entirely on merit based on competitive examination.

10. Admittedly, petitioner falls in category (ii) i.e., 33. 1/3 % by

promotion. In respect of promotion also, a process of selection has been specified which in the present case was by way of an examination. It is not in dispute that consideration for the post said 33. 1/3 % seats were purely on the basis of seniority. All employees who were senior and eligible had to undergo the selection process prescribed for promotion under the said category including the petitioner. Merely because the petitioner was subjected to examination to test his suitability for the promotional post would not imply that it was not a promotion and was a direct recruitment or an appointment through a competitive examination.

11. It is the admitted case of the petitioner that he does not fall in category (i) i.e., 50% of direct recruitment or category (iii) i.e. 16. 2/3 % by competitive examination and falls in the category of 33. 1/3 % , which, as we have noticed hereinabove, is a promotional post.

12. Clearly, petitioner was moved from class-IV to class-III by way of promotion on 12.02.1982 and as such, the stand of the petitioner that he has not availed of three promotions cannot be sustained. Learned counsel for petitioner relies on Rule 189 of the Recruitment Rules to contend that since the Rule prescribes that promotion shall be made on the basis of selection, the same should be treated as direct recruitment.

13. We are unable to accept the contention, for the reason that the

Rules cannot be read in the manner in which learned counsel for petitioner is seeking to read the same. For the purpose of ready reference, Rule 189 may be referred to, which reads as under:-

*“189. Promotion to higher grades in Group 'C':- Railway servants in Group 'D' categories for whom no regular avenue of promotion exists 33<sup>1</sup>/<sub>3</sub>% of the posts in the lowest grade of Commercial Clerks, Ticket Collectors, Trains Clerks, Office Clerks, Stores Clerks, etc. should be earmarked for promotion. The quota for promotion of Group 'D' staff in the Accounts Deptts. to Group 'C' post of Accounts Clerks will be 25%. Promotion to Group 'C' will be subject to the following conditions: -*

*(i) All promotions should be made on the basis of selection. There should be written tests to assess the educational attainments of candidates. Group 'C' categories referred to above should be suitably linked with specified categories in the lower grades on broad affinity of work to form groups for promotion but it should be ensured that the prospects are made equal in the different groups. The test should be correlated to the standards of proficiency that can reasonably be expected from railway servants who are generally non-matriculantes. The aim of the examiners should be to assess the general suitability of the Group 'D' railway servants offering themselves for promotion to Group 'C' posts from the point of view of their knowledge of English and their general standard of intelligence. The factors of selection and their relative weight will be as indicated below:-*

|                   | <b><i>Factor/Headings</i></b>   | <b><i>Maximum Marks</i></b> |
|-------------------|---------------------------------|-----------------------------|
| <b><i>(a)</i></b> | <b><i>Written Test</i></b>      | <b><i>85</i></b>            |
| <b><i>(b)</i></b> | <b><i>Record of Service</i></b> | <b><i>15</i></b>            |
|                   | <b><i>Total</i></b>             | <b><i>100</i></b>           |

***Note: 1. Written test should consist of one paper of 3 hours duration divided into two parts - Part 'A' to test the working knowledge of the Railway servant of the English language and Part 'B' his general standard of intelligence and proficiency through questions in Arithmetic, General Knowledge mainly pertaining to Railway matters and matters immediately pertaining to the work he has been acquainted with during his Railway service. In drawing up the questions it must be ensured that they are not set as such a standard as to make it impracticable for a Group 'D' railway servant of average intelligence and normal standards of efficiency to qualify in the test.***

***(2) Assessment under the heading Record of Service will be based on entries in the Service Book/personal file regarding academic/ technical qualifications, awards/ punishments, etc.***

***(3) Selections should not be restricted to three times the number of posts to be filled but kept open to all eligible candidates who would like to be considered for such selections.***

***(4) All those who qualify on the basis of written test and Record of Service, the qualifying percentage of marks being prescribed by the General Manager, should be included in the panel***

***in the order of their seniority for promotion against the yearly vacancies available for them in Group 'C' categories.***

***(ii) All Railway servants in Level-1, to be eligible for promotion to Level-2 posts in all Departments should have put in a minimum of 2 years regular service and have successfully completed their probation period in the recruitment grade.***

***(vii) However, in cases where incumbency of more than 3 years is prescribed, the same shall continue.”***

14. Reading of Rule 189 clearly shows that Rule 189 merely stipulates that all promotions shall be made on the basis of selection, which will entail a written test to assess the educational attainments of candidates and is to assess the general suitability of the employee for the promotional post. This rule, when read in conjunction with Rule 126, shows that the process of selection as entailed in Rule 126, would include a written test and merely because an employee undergoes the written test as a process of selection for promotion, the said written test cannot be equated with a competitive examination for the 16.2/3% posts.

15. We find no infirmity in the view taken by the Tribunal in holding that the examination for the promotion as well as the LDCE cannot be equated or compared.

16. Further, reliance placed by the learned counsel for petitioner on

the judgment of the High Court of Judicature at Madras dated 04.02.2015 in W.P. (C) 30629/2014 titled *Union of India Vs. D. Sivakumar*, is misplaced, for the reasons that in the said case, the employee had appeared for a selection test and had been selected for the post and the admitted position was that he had got appointed to the said post after a selection process as distinct from the case of the petitioner, who was moved from class-IV to class-III by way of promotion based on his seniority-cum-fitness/selection.

17. We accordingly find no merit in the petition and the petition is consequently dismissed.

**SANJEEV SACHDEVA, J.**

**TUSHAR RAO GEDELA, J.**

**NOVEMBER 10, 2022**

**NA**