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Ct. No. 04

Akd

WP.CT. 120 of 2022

**Union of India & Ors.
Vs.
Shri Shankar Kumar Das**

**Mr. Sukumar Bhattacharya,
Ms. Osiani Mukherjee.
... for the petitioners.
Mr. Phatick Chandra Das.
... for the respondent.**

The Union of India has filed the instant writ petition challenging the order of the Central Administrative Tribunal, Kolkata Bench dated 29th Marchy, 2022 in OA 1063 of 2017 solely on the ground that the Tribunal grossly erred in relying upon the earlier decision of the Tribunal in relation to the persons, who do not stand on the same pedestal that of the present applicant, and, therefore, the parity should not have been created with them.

There has been a slew of litigations before the Tribunal pertaining to grant of benefits under the ACP scheme and in all such cases by virtue of a departmental examination the persons were appointed to the post of Lower Division Clerk. It is not in dispute that the total post of Lower Division Clerk has been segregated in two parts; firstly 90% of the total vacancy shall be filled up by transfer and the remaining 10% through limited departmental examinations. In all such litigation it was a consistent stand of the Union of India that the aforesaid 10% quota is required to be filled up by way of promotion and not through direct recruitment.

The Tribunal in cases of *Ratan Kumar Nandy & Ors. vs. Union of India* (OA 686 of 2009), *Kajal Chakraborty vs. Union of India & Ors.* (OA 1627 of 2009) and other tribunal applications uniformly held

that the appointment under the aforesaid 10% departmental quota is regarded as a direct recruitment and not through promotion. In case of Kajal Chakraborty (supra) the Bench noticed the dissenting views expressed by different Benches of the Central Administrative Tribunal and referred the matter to a Larger Bench, wherein it has been held that such appointment under 10% departmental quota cannot be regarded as a promotional appointment but direct recruitment.

By the impugned order the parity was made to the aforesaid cases and it is sought to be contended by the writ petitioner that the appointment letter would reveal that such appointment was made through direct recruitment and, therefore, the parity should not have been the safest course. It is thus contended that such expression is conspicuously absent in the appointment letter of the present applicant which signifies distinction of facts and, therefore, the parity or the doctrine of equality should not have been adopted by the Tribunal. A further plea appears to have been taken at the behest of the writ petitioner that the judgement rendered in the aforesaid cases cannot be universally applied in all situations but a specific situation, which was eminent therein and, therefore, the said decision is a judgement in personem and not in rem.

The Tribunal dispelled all the contentions of the writ petitioner and allowed the tribunal application directing the authorities to treat the respondent herein at par with the applicants of the earlier litigation.

Taking the second plea first after noticing the judgement rendered in several litigation which stood affirmed up to the stage of Supreme Court, we find

that the pivotal issue raised therein relates to the nature of appointment covered under the 10% departmental quota. The moment the judicial pronouncement exposes such nature to be a direct recruitment and not the promotion, such decision cannot be in personem or restricted to the litigant therein, but assumes the character of declaration of law and, therefore, the judgement operates in rem.

It is immaterial whether the person who was initially appointed as peon and later on appointed as Lower Division Clerk or the person who was appointed as majdoor later on appointed as Lower Division Clerk, as in both the cases the persons have been appointed under the 10% departmental quota and, therefore, we do not subscribe the contentions of the petitioner that such appointment is by way of promotion and not to be regarded as a direct recruitment.

So far as the first point is concerned, we have found that there is no distinction having made except what the officer conceptualized the said aspect and treated the same as a promotional recruitment and not a direct recruitment, which appears to be contrary to the judicial pronouncement and, therefore, such decision does not expect to receive the judicial sanction or recognition. The declaration of law through a judicial fiat is binding on the administrative authorities and it is beyond conceivable doubt that they cannot depart nor travel beyond the circumference thereof.

Admittedly the applicants were appointed as Lower Division Clerk having rendered services as mazdoor under the 10% departmental quota and, therefore, the stand of the authorities that such appointment shall be regarded as first promotion is

unacceptable and contrary to law as declared in this regard. Admittedly the applicants were subsequently promoted to the post of Upper Division Clerk but were granted the second incentive under the said scheme without considering that such appointment to the Upper Division Clerk is by way of a first promotion.

We, therefore, do not find any infirmity in the judgement of the Tribunal.

The writ petition is thus dismissed.

There will be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)