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

% ***Date of decision: 04th October, 2023***

+ **W.P.(C) 12942/2006**

M.T.N.L.

..... Petitioner

Through: Mr. Arun Sanwal, Advocate.

versus

MAHINDRA SINGH & ANR.

..... Respondents

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**JUDGMENT (oral)**

1. *Vide* Order dated 23.05.2023, this Court observed that despite service effected upon the respondents as well as the counsel for the respondents, none appeared on their behalf on the said date. It was made clear that if the Written Submissions on behalf of the respondents are not filed, then this Court shall proceed with the present petition on the next date of hearing.
2. The petition was taken up at 01:10 P.M. Till date, neither the Written Submissions on behalf of the respondents have been filed, nor has anyone appeared on their behalf, even the respondents in person have not appeared. However, due to 'Lunch Break', the matter was finally taken up at 02:15 P.M. for adjudication.
3. The present petition under Articles 226 and 227 of the Constitution of India has been filed on behalf of the petitioner to set aside/quash the Order



dated 10.12.2004 passed in O.A. No. 3169/2003 and the Order dated 23.05.2006 passed in *Review Petition bearing No. 99/2005* passed by the Central Administrative Tribunal, Principal Bench, New Delhi (*hereinafter referred to as "CAT"*).

4. The facts of the case are that the respondent No. 1 was appointed as JTO in the year 1977 with the Department of Telecommunication, Government of India.

5. The respondent No. 1 was placed under suspension on 27.04.1979 which was followed by order of Termination of Service from 26.09.1979 under Rule 5 (1) of CCS (Temporary Service) Rules, 1965. The respondent No. 1 submitted a representation against the aforesaid Order which was considered and the Applicant was re-employed on 02.04.1983. A criminal complaint was registered under Sections 409/204/12 of the Indian Penal Code, 1860 for forgery and misappropriation and later on, the FIR No. 356/1983 was registered against the respondent No. 1.

6. *Vide* Order dated 26.06.2001 passed by the learned Metropolitan Magistrate, Delhi, the respondent No. 1 was acquitted of the above-mentioned charges. Pursuant thereto, the respondent No. 1 filed O.A. No. 3220/2001 before the Central Administrative Tribunal with the prayer that he be reinstated in service from the date of his termination. The O.A. was allowed *vide* Order dated 04.12.2001 which condoned the interruption of service between two appointments i.e., 22.06.1979 and 02.04.1983 with all consequential benefits.

7. The petitioner *vide* Order dated 24.05.2002 conveyed to the respondent No. 1, that the interruptions caused between two appointments i.e., between 22.06.1979 and 02.04.1983 with all consequential benefits



were condoned.

8. When the application was called for the promotion from the post of Junior Engineer to Telecom Engineering Service, Group B, the respondent No. 1 also applied for the same, but the application of the respondent No. 1 was rejected *vide* Order dated 12.12.1985 on the ground that he did not fulfil the eligibility criteria of five years of service as Junior Engineer.

9. Subsequent thereto, the respondent No. 1 again applied for the LDCE in the year 1989, 1990 and 1991 but his application was rejected on the ground that a criminal case was pending against him.

10. Ultimately, the respondent No. 1 was given promotion in the year 2000.

11. According to the respondent No. 1, he became eligible for promotion from the year 1986, when his juniors who had cleared the Limited Departmental Competitive Examination (*hereinafter referred to as "LDCE"*) were promoted, but he had been granted promotion w.e.f. 26.04.2000, while the juniors of the respondent No. 1 have reached the Senior Time Scale.

12. The grievance of the respondent No. 1 was that since he got reinstated w.e.f. 1977, therefore, he became eligible for promotion in 1986, whereas his juniors were promoted on clearing the LDCE and he had been wrongly denied the opportunity to appear in the LDCEs every time, for which he cannot be penalised. He has, therefore, made a prayer for grant of promotion w.e.f. 1986.

13. The CAT *vide* impugned Order dated 10.12.2004 in Paragraph-5 observed as under: -

*"5. On careful consideration of the rival contentions, we are of the view that once the interruption between two appointments*



*has been condoned and applicant has been accorded all consequential benefits this period should be reckoned towards qualifying service as **applicant has subsequently qualified the examination as earlier he had been prevented by an illegal action of the respondents to participate in the selection process. However, on his acquittal from the criminal case he has a right to be considered for promotion from the date he acquired eligibility.***"

14. Thus, the O.A. No. 3169/2003 filed by the respondent No. 1 was allowed *vide* Order dated 10.12.2004 and the respondents (The Secretary, Ministry of Communications and The Executive Director, MTNL) in O.A. No. 3169/2003 were directed to consider the respondent No. 1 herein for promotion w.e.f. 20.08.1986 as per the Rules and Instructions.

15. Aggrieved by the Order dated 10.12.2004, the respondents (The Secretary, Ministry of Communications and The Executive Director, MTNL) in O.A. No. 3169/2003 filed a **Review Petition bearing No. 99/2005**, but the said petition was also dismissed *vide* Order dated 23.05.2006.

16. The present petition has been preferred by the petitioner/MTNL challenging the **Order dated 10.12.2004 passed in O.A. No. 3169/2003** and the Order dated 23.05.2006 passed *in Review Petition No. 99/2005* by the CAT.

17. We have heard learned counsel for the petitioner and perused the material available on record.

18. It is submitted that the respondent No. 1 was appointed in the year 1977 as JTO and his services were terminated in the year 1979. In the year 1983, he was re-employed as a fresh recruit *vide* Letter dated 02.04.1983 with all consequential benefits along with past service w.e.f. 02.04.1983.



Vide O.A. No. 3220/2001, interruption between two appointments i.e., 22.06.1979 and 02.04.1983 was condoned with all consequential benefits. Thereafter, the respondent No. 1 applied for appearing in LDCE, but he was not allowed and against which, no representation or legal remedy was taken by the respondent No. 1.

19. The Telecom Engineering Service (Group 'B') Recruitment Rules 1981 provides as under: -

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*Appendix I*

*Except as otherwise provided in Appendix II in respect of recruitment to the post reserved for Ex-company employees of the Telephone Districts of Bombay and Calcutta, recruitment to the Service shall be by promotion from the officials mentioned in paragraph 3 by the method of selection as indicated in paragraph 2.*

2. (i) 66-2/3 per cent by a duly constituted Departmental Promotion Committee from the officials who have qualified in the Departmental Qualifying Examination.

(ii) 33-1/3 per cent through Limited Departmental Competitive Examination on the basis of relative merit.

(iii) The inter-se-seniority of the officials who have qualified in the Departmental Qualifying Examination and those who have qualified in the Limited Departmental Competitive Examination shall be in the ratio 2:1 starting with the officers selected by the method of selection by the Departmental Promotion Committee on the basis of Departmental Qualifying Examination.

3. The following categories of officials shall be eligible for consideration for promotion to the services: -

(i) Junior Engineers

(ii) Ex-company officials with the following designation:

(a) Bombay Telephone District:

Engineering Supervisor (Power)

Engineering Supervisor (Cable)

Engineering Supervisor (Exchange)



*(b) Calcutta Telephone District:*

*Chief Exchange Inspectors  
Engineering Supervisors (Exchange)  
Chief Test Clerks  
Engineering Supervisor (Line)  
Engineering Supervisor (Installation)  
Engineering Supervisor (Cable)*

4. *There shall be normally one examination consisting of two parts called Qualifying-cum-Competitive Examination for promotion to the service and shall be held at least once in a calendar year in the manner and in accordance with the syllabus prescribed in Appendix III to these Rules.*

*Note: - After the commencement of these rules, the first two examinations shall only be competitive for which the eligibility shall be restricted to only those officers who have already qualified in the Departmental Qualifying Examination held before the commencement of these rules.*

5. *The eligibility for appearing in each part of the examination shall be as: -*

*(a) Departmental Qualifying Examination:*

*(i) Junior Engineers who have completed five years of regular service in the grade on the first of January of the year in which the examination is held.*

*(ii) Ex-company officials who have put in a minimum of five years of continuous service in their respective grades on the first of January of the year in which the examination is held.*

*(b) Limited Departmental Examination:*

*(i) Junior Engineers who have completed five years of regular service in the grade on the first of January of the year in which the examination is held.*

*(ii) Ex-company officials who have put in a minimum of five years of continuous service in their respective grades on the first of January of the year in which the examination is held.*



6. *The eligibility lists of the candidates who have passed the Departmental Qualifying Examination for consideration of the Departmental Promotion Committee, shall be prepared in accordance with the instructions, as may be issued by the Government from time to time.*

## *Appendix II*

*Appointment to the service in the Telephone Districts of Bombay and Calcutta, which have been reserved for ex-company employees of the Telephone Districts of Bombay and Calcutta shall be made in the manner indicated below: -*

2. *The officials belonging to the following cadres shall be eligible for consideration for appointment to the reserved posts in their respective Districts: -*

### *Bombay Telephone District:*

|                               |                   |
|-------------------------------|-------------------|
| <i>Engineering Supervisor</i> | <i>(Power)</i>    |
| <i>Engineering Supervisor</i> | <i>(Cable)</i>    |
| <i>Engineering Supervisor</i> | <i>(Exchange)</i> |

### *Calcutta Telephone District:*

|                                  |                       |
|----------------------------------|-----------------------|
| <i>Chief Exchange Inspectors</i> |                       |
| <i>Engineering Supervisors</i>   | <i>(Exchange)</i>     |
| <i>Chief Test Clerks</i>         |                       |
| <i>Engineering Supervisor</i>    | <i>(Line)</i>         |
| <i>Engineering Supervisor</i>    | <i>(Installation)</i> |
| <i>Engineering Supervisor</i>    | <i>(Cable)</i>        |

3. *Appointment to the 66-2/3 per cent of the promotion quota shall be made by selection on the recommendations of a duly constituted Departmental Promotion Committee from amongst the employees belonging to the cadres mentioned in the paragraph 2 who qualify in a Departmental Qualifying Examination.*

4. *Appointment to the remaining 33-1/3 per cent quota shall be made in order of merit as indicated in the Selection List issued in respect of successful candidates from Limited Departmental Competitive Examination.*



5. *The rules for conducting the examination, and the syllabus therefor shall be such as in Appendix III to these rules.*

6. *Such of the officials who have put in a minimum of five years continuous service in their respective grades on the first of January of the year in which the examination is held shall be eligible to appear in the examination.*

7. *The eligibility lists of the candidates who have passed the Departmental Qualifying Examination for consideration of the Departmental Promotion Committee shall be prepared in accordance with the instructions, as may be issued by the Government from time to time."*

20. Therefore, according to Rules, 66-2/3 percent promotion quota shall be done by selection on the basis of recommendations of a duly constituted Department Promotion Committee (hereinafter referred to as "DPC") from amongst the employees belonging to the cadres mentioned in Paragraph 2 who qualify in a Departmental Qualifying Examination conducted in accordance with the provisions laid down in Appendix I, II and III of these Rules.

21. The remaining 33-1/3 percent promotion quota shall be done on the basis of merit or clearing the LDCE as indicated in the Selection List issued in respect of successful candidates from LDCE.

22. The qualifying service for taking the LDCE was a minimum continuous service of five years in their respective Grades on the 01<sup>st</sup> January of that year in which the LDCE is held.

23. The qualifying service prescribed for taking LDCE was five years of regular service in the given cadre.

24. The Re-employment Letter dated 02.04.1983 clearly stated that the respondent No. 1 was given a fresh recruitment w.e.f. 02.04.1983. This appointment was never challenged by the respondent No. 1 till 2001, *vide*



O.A. No. 3220/2001. Consequently, the respondent No. 1 was denied permission every year for participating in the LDCE, for the first time in 1985 for not having the qualifying service of five years and subsequently on account of pending criminal case. The respondent No. 1 could have availed the benefit of promotion in 33-1/3 percent quota only if he had qualified the LDCE. Without qualifying the said LDCE, the respondent No. 1 was not eligible to make a claim of promotion w.e.f. 1986, when his juniors/batchmates got promoted on account of clearing LDCE.

25. The respondent No. 1 had been given his promotion when the same became due on the principle of 66-2/3 percent quota to be filled on the basis of recommendations of a duly constituted DPC from amongst the employees belonging to the cadres mentioned in Paragraph 2 who qualify in a Departmental Qualifying Examination w.e.f. 26.04.2000.

26. The CAT has observed that since the respondent No. 1 had subsequently qualified the examination and was earlier prevented due to the illegal action of the respondent No. 1 to participate in the selection process, he be considered for promotion w.e.f. 20.08.1986. However, the respondent No. 1 herein has admittedly never taken the LDCE and, therefore, did not ever meet the criteria for his promotion in 33-1/3 percent quota. Once, he had not cleared the LDCE, he cannot claim promotion as a matter of right. However, he became due for promotion w.e.f. 26.04.2000 as per the Rules and has been rightly granted his promotion.

27. Accordingly, the CAT fell in error observing that the respondent No. 1 had qualified the requisite LDCE, in fact, he never qualified this exam.

28. Therefore, we set aside the impugned Order dated 10.12.2004 passed in O.A. No. 3169/2003 and the Order dated 23.05.2006 passed in Review



Petition bearing No. 99/2005 by observing that the respondent No. 1 has been granted the promotion correctly w.e.f. 26.04.2000.

29. Accordingly, the present petition is disposed of.

**(SURESH KUMAR KAIT)**  
**JUDGE**

**(NEENA BANSAL KRISHNA)**  
**JUDGE**

**OCTOBER 04, 2023**  
*S.Sharma*