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

% **Decision delivered on: 10.09.2024**

+ **W.P.(C) 6665/2022, CM APPL. 20213/2022, CM APPL. 50345/2022 & CM APPL. 33460/2023**

DELHI DEVELOPMENT AUTHORITYPetitioner

Through: Mr. Arun Birbal and Mr. Sanjay Singh, Advocate

versus

VAIBHAV MALIK & ORSRespondents

Through: Mr. Raj Kumar Yadav and Ms. Divya Pawar, Advocate

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T (O R A L)

1. By way of the present writ petition filed under Article 226 of the Constitution of India, the petitioner has sought the following relief:

“(a) Issue a writ of certiorari or any other appropriate writ, order or direction for setting aside the order dated 28.02.2022 passed by the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 2857 / 2021 (Vaibhav Malik and others Vs. DDA) and dismiss the OA filed by the respondents herein before the Hon'ble Tribunal.”



2. The issue before the learned Tribunal was that as to what should be the relevant date for determining the eligibility of candidates for appearing in Limited Departmental Competitive Examination (LDCE) for promotion from the post of Senior Secretariat Assistants (Upper Division Clerks) ["SSA (UDC)" to Assistant Section Officer ("ASO")].

3. The case of the respondents before the learned Tribunal was that the Delhi Development Authority (DDA hereafter)/petitioner arbitrarily and wrongly fixed 01.01.2022 as the relevant date instead of 01.07.2022 for determining eligibility for appearing in the LDCE examination. There is a requirement of three years of experience as on the relevant date to be eligible for appearing in the examination. As a consequence, the respondents who would be eligible, in terms of having three years experience, if the relevant date is 01.07.2022, would lose the opportunity if the said date is 01.01.2022.

4. It was the further case of the respondents that the petitioner itself had in the reply to the query under Right to Information Act 2005 referred to the Notification of Department of Personnel and Training, (hereafter referred to as "DoPT") dated 24.03.2011 in which the relevant date was specified as the 1st of July. Accordingly, it was submitted that though it pertained to Central Secretariat Service Assistants' Grade (Limited Departmental Competitive Examination) Regulations, 2011 (hereinafter referred to as "CSS Regulations, 2011"), however, the clear inference from the reply was that the same would apply to DDA also.



5. It was further contended before the learned Tribunal that those regulations had not been replaced and still hold the field. It was emphasised that since in DDA their own RRs did not stipulate any cut-off date for determining the eligibility for the said examination, the abovementioned Rules which pertained to CSS Regulations, 2011, would apply for DDA also and the cut-off date as per those RRs was 1st July and not 1st January of the relevant year. The DoPT's OM dated 08.05.2017 followed by OM dated 12.08.2021 on which the petitioner was relying to justify fixing 01.01.2022, as the relevant date, pertained to promotions made on the recommendations of Departmental Promotion Committees (DPCs). The case before the Tribunal, however, pertained to promotions through LDCE, which was a distinct category altogether.

6. The case of the petitioner before the learned Tribunal was that in the relevant examination for the preceding year, the relevant date was fixed as day of July and there was no reason for the petitioner not to follow the same in the examination in question.

7. In view of the above, the petitioner relied upon certain judgments passed by the Hon'ble Supreme Court, the essence of which was that appointments made in violation of the Recruitment Rules would render them a nullity.

8. The petitioner, before the learned Tribunal, took objection by submitting that there were a number of candidates who would have



fulfilled the eligibility conditions prescribed by the impugned Circular dated 22.11.2021 (keeping 01.01.2022 as the relevant date), but they had not been impleaded.

9. It was submitted that the change of the crucial date of eligibility as of January had been made in conformity with the DoPT's OMs dated 08.05.2017 and 12.08.2021. The petitioner DDA had taken the same date for LDCE as for other promotions since the LDCE channel was like a fast track promotion. For the CSS, the exam was conducted in the year preceding the year of actual promotion, whereas in DDA the promotion was made immediately after the declaration of result. As such, they could be held on equal footing.

10. Moreover, it was submitted by the petitioner that in the previous years also, the relevant date was linked to the last date of submission of applications.

11. As mentioned above, the only question involved before the learned Tribunal was whether the fixation of the relevant date by DDA as 1st January instead of 1st July, in terms of having three years experience for being eligible to appear in the LDCE exam was legally tenable or not.

12. It is not in dispute that the RRs of DDA did not provide for any such date and were silent on the subject. In the absence of any specific provision, the point of determination hinges on the supplemental aspects. The petitioner itself had in the reply to the query under RTI referred to the Notification of DoPT dated 24.03.2011 in which 1st of July of the



year had been clearly stipulated as the relevant date for the purposes of determining the eligibility for LDCE. The relevant portion is reproduced as below:

“G.S.R. 251(E)- In exercise of the powers conferred by the proviso to article 309 of the Constitution and in pursuance of clause (a) and (c) of sub-rule (2) of rule 12 of the Central Secretariat Service Rules, 2009, the President hereby makes the following regulations, namely:-

*1. **Short title and commencement-** (1) These regulations may be called the Central Secretariat Service Assistants' Grade (Limited Departmental Competitive Examination) Regulations, 2011.*

(2) They shall come into force on the date of their publication in the Official Gazette.

*2. **Definitions-**(1) In these regulations, unless the context otherwise requires-*

(a) "relevant date" means the first day of July of the year for the vacancies of which such examination is held;

(b) "examination" means the Limited Departmental-Competitive Examination held by the Staff Selection Commission for making additions to the Select List for the Assistants' Grade;”

13. The learned Tribunal observed that the aforesaid regulations *per se* were not for DDA and were for CSS. They, however, acquired significance in view of the fact that the petitioner itself had referred to them in its reply to a query which was about DDA. Further, in service matters, DoPT was the nodal department and the regulations made by them could justifiably be followed by Governmental organisations unless there were specific provisions to the contrary. Whereas for DDA, the rules were silent on the point of relevant date for determining eligibility



hence it would be a fair assumption that the regulations made for CSS were followed. Especially so, when the information had been given by the petitioner itself. For the same reasons, Learned Tribunal observed that any argument attempting to justify making a distinction between CSS and DDA, on the issue of fixation of the relevant date, on a nebulous assertion connecting the timing of promotions with the conduct of LDCE lacked strength.

14. Learned Tribunal recorded the contentions on behalf of the petitioner that the fixing the date had been done in conformity with the directions of DoPT's OMs dated 08.05.2017 and 12.08.2021 were misconceived. The said directions not relating to promotions through LDCE but apparent from a plain reading of the said OMs, which is reproduced as under:

OM Dated 08.05.2017

"Subject: Procedure to be observed by the Departmental Promotion Committees (DPCs) — Model Calendar for DPCs — Relevant year up to which APARs are to be considered and Model Calendar for conducting DPCs—regarding.

The undersigned is directed to invite reference to the Department of Personnel and Training OM of even number dated 8th September, 1998 prescribing a 'Model Calendar' for DPCs in order to ensure that DPCs are convened in advance and approved select panels are ready on the date of commencement of the relevant vacancy year and that the last date for sending complete proposal to the UPSC is 15 July (in ACC cases) and 31 July (in non-ACC cases) of the year preceding the vacancy year.

2. Reference is further invited to the Department of Personnel and Training OM of even number dated 16th June, 2000



wherein it was prescribed /clarified that only such ACRs (now APARs) should be considered which became available during the year immediately preceding the vacancy/panel year irrespective of the date of convening of the DPC. In other words, for the vacancy/panel year 2000-01, it was prescribed that ACRs (now APARs) up to the year 1998-99 (five years preceding T—1st year) are required to be considered. Accordingly, for the vacancy year 2017-18, APARs up to the year 2015-16 are required to be considered.

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(ii) The crucial date of eligibility will be 1st of January of the Vacancy year w.e.f 2019.

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6. Ministries/Departments are requested to give wide circulation to these instructions for guidance in the matter and also to ensure strict adherence to the time-schedule prescribed as per the 'Model Calendar' for DPCs."

OM dated: 12.08.2021

"Subject :- Relaxation in the eligibility service — change in the crucial date i.e. 1st January — regarding

As per instructions contained in DoPT's OM No.22011/4/2013-Estt.(D) dated 8.5.2017, Ministries/Departments, which were mostly following Financial Year (April - March) based vacancy year system till 2017-18 for promotion to various grades, were required to shift to Calendar Year (January to December) based vacancy year from the year 2018 onwards. Consequently, the crucial date for determining eligibility also changed from 1st April to 1st January.

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4. With a view to enable timely holding of DPCs, where the recruitment has been shifted from financial year-wise to calendar year-wise, in the light of DoPT's OM dated 8.5.2017, it has been decided in consultation with the Union



Public Service Commission and approval of the competent authority, to delegate powers to the Administrative Ministries and Departments (Cadre Controlling Authorities) to relax the eligibility service prescribed in the Recruitment Rules/Service Rules (RRs/SRs) for these posts/cadre, as on the crucial date viz. 1st January, 2021, for upto a maximum period of 3 months. Relaxation in eligibility service is to be accorded in such cases where the employees would have been eligible for being considered for promotion as on 1st April, 2021, but due to change in the crucial date to 1st January, 2021, they become ineligible for being considered for promotion during 2021. Similar relaxation is permitted for vacancy years 2022 and 2023, as indicated in the table below:

(Table not extracted as is not relevant to the issue)

5. No delegation of relaxation of eligibility service so granted to Administrative Ministries/Departments shall be available for vacancy year 2024. Further, the relaxation is subject to the condition that actual promotions are effected only after completion of the eligibility service prescribed in the Recruitment Rules/Service Rules.

15. The learned Tribunal further recorded that the second OM was in continuation of the first and the two clearly were about promotions through the DPC method. If the intention was to include LDCEs also in the ambit of those Circulars, there could have been no difficulty in stating so.

16. According to the learned tribunal, the relevant date for eligibility for promotions through LDCE that had been made 01.01.2022 to align it with other promotions was rather specious. The dynamics, methodology and the underlying philosophy in the two cases were totally different. Induction in DDA at the level of ASO was through direct recruitment,



LDCE and through promotions by the DPC method. Apparently they were all distinct and required to follow the methodology prescribed for them.

17. Accordingly, the learned Tribunal opined that it could be logically stated that if there was any need felt to align the LDCE and DPC methods, such instructions could have been issued or the same could have been incorporated in the rules. No such fact had been presented before the learned Tribunal as observed in the impugned order.

18. As for the instructions dated 02.02.2022, it was a case of afterthought, they being issued much after the impugned circular of 22.11.2021 and the filing of the OA before the learned Tribunal and when learned counsel for the petitioner had sought and was allowed time during course of final hearing to take fresh instructions. It was an attempt to justify a decision already taken and hence it added no value to the contention of the petitioner as observed by the Tribunal.

19. As regarded the issue of non-joinder of necessary parties, the learned Tribunal did not find any merit in the case as the prayer in the OA was only relating to the fixation of the relevant date and did not in any specific way impinge upon the right of any other employee.

20. The learned Tribunal noted and rightly so, in the preceding year the crucial date was fixed as 1st day of July as mentioned in the counter reply filed on behalf of the petitioner. However, it had been changed to



01.01.2022 without issuance of any conscious policy decision and/or amendments of relevant rules/regulation, thus such action of the petitioner clearly indicated arbitrariness.

21. The learned Tribunal also took into consideration the counter reply filed by the petitioner whereby it was apparent that for many years the relevant date was proximate to the last date of submission of applications. However, it could not be ignored that for relevant examination in the year 2020, the cut-off date for the eligibility was stipulated as 1st July 2020.

22. The learned Tribunal viewed the same with the fact that the reply furnished by the petitioner under the Right to Information Act, 2005 also mentioned that the relevant cut-off date meant the 1st day of July of the year for the vacancies of which such examination was held.

23. The learned Tribunal, accordingly, was of the view that the fixation of the relevant cut-off dates normally fell in the domain of the petitioner and different bodies might have their own relevant cut-off dates. However, such decisions must be founded on specific rules or conscious policy decisions and should not be taken in an arbitrary and whimsical way.

24. It is not in dispute that in the previous year's exam, the petitioner had stipulated 1st July, 2020 as the relevant cut-off date to determine the eligibility. In reply under RTI Act, they have informed that the relevant date means the 1st day of July of the year for the vacancies of which such



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examination is to be held. In this regard, they have referred to and supplied a copy of the aforesaid regulation of 2011 which provide the relevant cut-off date to be 1st of July. Moreover, the existing rule of the petitioner is silent on the subject and no policy decision in support of its contention has been brought on record by the petitioner either before the Tribunal or before this Court.

25. In view of the above, we do not find any error or perversity in the order passed by the learned Tribunal. Therefore, we find no merit in the present petition and accordingly, the present petition and the pending applications stand dismissed.

26. The petitioner is directed to comply with the directions passed by the learned Tribunal within six weeks' from today.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

SEPTEMBER 10, 2024/as