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

% Judgment delivered on: 01.05.2024

+ W.P.(C) 14073/2023, CM APPL.55636/2023 (Stay), CM APPL. 4540/2024 (Directions), CM APPL. 8362/2024 (Directions)

MR. SUMAN KUMAR SINGH AND ORS Petitioners

versus

DEDICATED FREIGHT CORRIDOR
CORPORATION OF INDIA LTD AND ANR Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Amit Kumar, Senior Advocate
(through VC) with Mr. Vivek Singh,
Mr. M. Vishal Sundaramughan and
Mr. Ritik Dwivedi, Advocates.

For the Respondent : Mr. V.S.R. Krishna, Advocate for
R-1.
Mr. Vineet Dhanda, CGSC for UOI/
R-2 (through VC).

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. This is a writ petition under Article 226 of the Constitution of India, 1950 *inter alia*, seeking the following prayers:

i) *To issue Writ(s), Order(s) or Direction(s) in nature of*



Mandamus for quashing of the impugned Circular No. 846/2023 dated 06.10.2023 issued by the Respondent No. 1 to the extent it prohibits the petitioners to appear in the competitive exam for promotion and/or;

ii) To issue Writ(s), Order(s) or Direction(s) in nature of Mandamus to direct the respondents to include the name of the petitioners in the list of eligible candidates for appearing in the competitive exam to be held on 03.11.2023 for promotion from one cluster to another in the respondent no.1 organization; and/or

iii) To quash the list of candidates as notified by the Respondent No. 1 alongwith the Circular No. 846/2023 dated 06.10.2023

iv) Pass any other order/further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

2. The petitioners have challenged the impugned Circular No.846/2023 dated 06.10.2023 issued by the respondent no.1 whereby the circular inviting eligible candidates for appearing in the Limited Departmental Competitive Examination, 2023 for inter cluster promotions from Cluster C to Cluster D, in other words "List of eligible employees belonging to Grade E-0 and E-1 to the promotional post of E-2" was called.

3. It is the case of the petitioners that the petitioners had completed their three years of residency period as per the recruitment and promotion rules as on the date of the publication of the Circular i.e. 06.10.2023. The challenge in the present writ petition is to the cut off date i.e. 01.01.2023 fixed by the respondents for the purpose of eligibility as per Clause 2 of the impugned Circular dated 06.10.2023, which according to the petitioners is arbitrary, capricious and discriminatory in as much as, the petitioners would be



deemed to be ineligible to participate in such examination.

4. Mr. Kumar, learned Senior Counsel appearing for the petitioner submits that in the present case, the petitioners are seeking promotion by way of LDCE from Cluster C to Cluster D. He submits that all those eligible candidates belonging to Cluster C having residency period of three years as on the date of publication of the notice, would and should be taken to be eligible for the purpose of LDCE.

5. To buttress the contention of eligibility, learned counsel draws attention of this Court to page 98 of the Circular No.640/2020 dated 16.10.2020, which is the Revised Recruitment and Promotion Policy, which needs consideration by this Court.

6. Learned senior counsel draws attention of this Court to Rule 8.2, which is the 'Counting of Residency' particularly to Rule 8.2.1(a). According to the learned Senior Counsel, the residency period so far as the intra cluster promotion is concerned, the precise dates are already stipulated therein i.e. 1st of January and 1st of July every year. However, in respect of inter cluster promotion, it is stipulated that the residency period will be counted from the date of availability of vacancy. According to learned Senior Counsel, the said distinction has been clearly drawn by the Recruitment Rules themselves and brooks no ambiguity.

7. Learned senior counsel submits that so far as the present petitioners who are seeking inter cluster promotions are concerned, a cut off date is not mentioned in the Rule 8.2.1(a) i.e. 'Counting of Residency' as per the Recruitment and Promotion Policy. Thus, stipulating of cut off date of 01.01.2023 is arbitrary, capricious and contrary to the promotion policy itself.



8. Learned counsel also invites attention to Rule 8.3 regarding 'Assessment of Vacancy for Promotion' particularly to Clause (b), which is in respect of assessment of vacancy for promotion from one Cluster to another Cluster. In particular, learned Senior Counsel refers to sub-Clause (iv) of clause (b) of Rule 8.3. According to the learned Senior Counsel, the assessment of the vacancies for promotion from one Cluster to another Cluster in N5, E0, E2 grade shall be undertaken on 1st of January. He further submits that the said sub-Clause further stipulates that for assessing the vacancies, the existing and anticipated vacancies that will arise in the next six months/one year will be taken into consideration. Learned Senior Counsel submits that reading the said rule relating to assessment of vacancies harmoniously with Rule 8.2, the cut off dates, so far as the eligibility is concerned, cannot and ought not to be fixed. It is only the vacancies which have arisen before the said date, which have to be taken into consideration. Thus, according to the learned Senior Counsel, the residency period of the petitioners so far as the eligibility condition is concerned, should be counted as on the date of issuance of the notification and not from 01.01.2023.

9. He further urges this Court to consider that the stipulation contained in Rule 8.4 particularly sub rule (b) Clause (i) which is regarding promotion to N5, E0, E2 grades. He submits that the said sub clause stipulates that all the employees in the lower cluster with three years minimum service will be eligible to appear in the competitive examination. The thrust of learned Senior Counsel by seeking to interpret Rule 8.4(b)(i) is that even this Clause does not stipulate any cut off date and all employees pertaining or belonging to such categories would be eligible upon completion of three years service,



without reference to any cut off date and thus, the petitioners would automatically be eligible to appear for the said examination since it is not disputed that the petitioners as on the date of publication dated 06.10.2023, had minimum three years residency period. On that basis, learned Senior Counsel submits that the cut off date which has been artificially inserted in the Circular dated 06.10.2023 is unreasonable, unjust and ought to be set aside. He submits that reading the said Circular *de hors* the cut off date, the petitioners would automatically be eligible to participate in the LDC Examination.

10. *Per Contra*, Mr. V.S.R. Krishna, learned counsel for respondent no.1, submits that the petition is not maintainable in so far as all the petitioners are concerned, since the only challenge laid before this Court is to the Circular dated 06.10.2023, which is pertaining only and only to the promotion from Cluster C to Cluster D. So far as the petitioners other than those seeking promotion from Cluster C to cluster D as per the Circular dated 06.10.2023 is concerned, they would automatically be disentitled from raising the grievance that has been raised in the present petition.

11. That apart, learned counsel also refers to the fact that so far as the present writ petition is concerned, the only challenge is to the Circular as noted above and not to the Revised Recruitment and Promotion Policy dated 06.10.2020. He submits that as such, the rule position cannot be challenged or put to any interpretation other than plain and simple language which is available in the said Promotion Policy.

12. Learned counsel also draws attention of this Court to various clauses that Mr. Kumar, learned Senior Counsel had referred to, however, Mr. Krishna, learned counsel draws attention of this Court to the Rule 8.2.1 (a)



to submit that so far as inter Cluster promotion is concerned, it is made clear in the said clause that the residency period would be counted from the date of availability of the vacancy. He submits that the words “*date of availability of vacancy*” assumes importance and relevance in this regard. In that context, learned counsel refers to Rule 8.3 (b)(iv) in support of his aforesaid contention.

13. He submits that it has been made very clear that the assessment of vacancies for promotion from one Cluster to another Cluster i.e. the inter Cluster promotion in N5, E0 and E2 grades shall be undertaken on 1st of January every year. According to the learned counsel, the stipulation in Rule 8.3 (b)(iv) has to be read harmoniously with Rule 8.2.1 (a). Upon such harmonious reading for the inter Cluster promotion, the residency period would be counted from the date of availability of vacancy which would have to be undertaken as on 1st of January, 2023 as per Rule 8.3(b)(iv).

14. In that view of the matter, Mr. Krishna, learned counsel for respondent no.1, submits that the insertion of the cut off date of 01.01.2023 in the impugned Circular is in consonance with the rule position.

15. This Court has heard the arguments of learned Senior Counsel for the petitioners as also Mr. Krishna, learned counsel for the respondent.

16. The challenge before this Court lies in a very narrow scope in that the rule position in Rule 8.3 and 8.4 has to be constructed and the effect thereof on Clause (2) of the Circular dated 06.10.2023 regarding eligibility for promotion wherein the cut off date of 01.01.2023 has been stipulated. In case, this Court comes to the conclusion that the rule position does not stipulate any such condition, the petitioners would automatically fall within the zone of consideration for attempting the LDC Examination as per the



Circular dated 06.10.2023.

17. However, that would be only in respect of those of the petitioners, who are seeking promotion from Cluster C to Cluster D alone.

18. The relevant clauses of Revised Recruitment & Promotion Policy dated 16.10.2020, necessary for interpretation are as under:

8.2 Counting of Residency

8.2.1 Counting of residency period of employees on promotion

- a) The residency period will be counted from the prescribed dates, i.e 1st January and 1st July every year in case of promotions within the cluster. For inter cluster promotions, residency will be counted from the date of availability of vacancy.
- b) The actual financial benefits and the date of pay and increment fixation will be w.e.f the actual date of joining by the employee in the higher post.

8.2.2 Counting of residency period of employees on permanent absorption

For the purpose of counting residency period for promotion in the case of employees joining on deputation followed by permanent absorption in DFCCIL, they will be governed by the following: -

- a) In the cases where the employees are considered for absorption in higher grade, their date of residency would be the date of absorption.
- b) In cases where they are absorbed in the same grade in which they are working on the date of absorption, their date of residency would be the date of entry to the grade in which absorption is being made but not before the date of joining on deputation.
- c) It is further clarified that the employee on deputation, if absorbed in the same grade in which he joined DFCCIL originally, will get the benefit of residency period. The employee, who was on deputation and later on given higher designation and later on, absorbed in higher designation, will not be entitled for the benefit of residency period.

8.3 Assessment of vacancy for promotion

[a] Within the cluster

- i. The number of posts in each grade/level within one cluster will be on floating basis.
- ii. Promotion within the cluster will be considered on completion of requisite residency period in the present grade, irrespective of vacancy, as per the selection procedure contained in Para 8.7.
- iii. Assessment for promotions shall be undertaken twice in a year. For this purpose, eligibility lists of employees completing the minimum required residency for promotion to the next grade shall be prepared as on 1st July and as on 1st January.



(b) From one cluster to another cluster

- i. Promotion from one cluster to another cluster shall be subject to availability of vacancy. Promotion from lower cluster to the lowest grade/level of next cluster as well to the post of GM (E8) and ED (E9) shall be subject to availability of vacancy, as per the selection procedure contained in Para 8.7.
- ii. Reservation will be applicable for promotions from Cluster A to B, Cluster B to C and Cluster C to D.
- iii. Post based rosters will be maintained for each cluster where reservation is applicable as mentioned above.
- iv. Assessment of vacancies for promotion from one cluster to another (inter cluster promotion) in N5, E0, E2 grade shall be undertaken on 1st January. Assessment of vacancy for E5, E8, E9 grade will be undertaken on 1st January and 1st July of every year. For assessing the vacancy, the existing and anticipated vacancies that will arise in the next six months/ one year will be taken into consideration.
- v. The anticipated vacancies will cover the following-
 - a) Vacancies on account of normal wastage, viz retirement on superannuation
 - b) Vacancies likely to be caused as a result of resignation provided the same are likely to be accepted.
 - c) Vacancies in higher clusters in the channel, the filling of which will result in the need to make consequent appointments from the proposed panel.
 - d) Vacancies likely to be caused due to staff approved to go on deputation to other units.
 - e) Number of staff already empanelled for ex-cadre posts.
 - f) Vacancies likely to arise due to creation of additional posts in higher clusters and in the same cluster, with approval of Competent Authority.

8.4 Zone of Consideration (ZOC) for Promotion

a) Within the cluster

All eligible employees who have completed the minimum residency period as on 1st January or 1st July will be called for selection.

b) From one cluster to another Cluster

(i) For promotion to N5, E0, E2 grades.

All the employees in lower cluster with 3 years minimum service will be eligible to appear in the competitive examination.



(iii) **For promotion to E5, E8, E9 grades**

The Zone of Consideration (ZOC) for E5, E8 and E9 grades, i.e. number of employees to be called for selection process out of the employees who have completed minimum residency period as on 1st January or 1st July shall be as under -

Number of Vacancies[X]	Normal ZOC
Up to 10	2X+4
More than 10	1.5X+3 but not less than 24.

This has to be read in conjunction with the eligibility condition as stipulated in Clause 2 of the Circular no.846/2023 dated 06.10.2023 which is as under:

“2. ELIGIBILITY.

For inter cluster promotion to E2 grade, all the working employees in the lower cluster (Le. C) with 3 years of minimum service (as on 01.01.2023) have to appear in the Competitive Examination (Computer Based Test) CBT for consideration. The list of eligible candidates has been enclosed herewith at Annexure - I.”

19. It is not disputed that the impugned Circular is only in relation to the promotion from Cluster C to Cluster D and as to the eligibility of any employee having three years minimum service as the residency period. The minimum residency is stipulated by Rule 8.1 so far as promotion from Cluster C to Cluster D is concerned, which stipulates that an incumbent needs to have total three years of service in Grade E0/E1, to be eligible to sit in the LDCE for promotion to Grade E2. Rule 8.2 relates to the counting of residency and stipulates the manner in which such residency of those employees will be reckoned. In the Rule 8.2.1, so far as the inter Cluster promotion is concerned, though no cut off date is fixed, however, it has been



stipulated that the residency period would be counted from the date of availability of vacancy. The words “*date of availability of vacancies*” gathers great significance for interpreting this particular Clause.

20. The assessment of vacancy is stipulated in Rule 8.3, in particular, Rule 8.3 (b)(iv). The assessment of vacancies for promotion from one Cluster to another Cluster in the N5, E0 and E2 grades is stipulated to be undertaken as on 1st of January of each year. For such purposes of assessing the vacancies, the existing and the anticipated vacancies were also to be considered. The assessment of vacancies are directly relatable to the counting of the residency period for the eligible candidates for the reason that it is only those employees who have completed their residency period as on the date of assessment of vacancy who alone would be entitled for being considered eligible for sitting in the LDC Examination for the promotional post.

21. No doubt, that the Rule 8.2.1 (a) does not stipulate a particular date as to from when the residency period will be counted. However, it does indicate that the said residency period would be counted from the “*date of availability of vacancy*”. The said date is stipulated in Rule 8.3 (b)(iv) very clearly. It is trite that the various stipulations in a particular document have to be read harmoniously and unless there is any repugnancy, the same have to be construed to further the objective behind such stipulation. The cut off date of 01.01.2023 appears to be directly relatable to Rule 8.3 (b)(iv) and is found within the four corners of the Rules and Regulations itself. The said Regulations not having been challenged by the petitioners, the argument that there is no date available or that such cut off date cannot be fixed or that a date which has been fixed is arbitrary and capricious is not available to the



petitioners to be raised before this Court.

22. Moreover, the issue in respect of a similar situation requiring interpretation was also considered by this Court in **Anil Kumar Bharti vs. Indian Railways Catering and Tourism Corporation Ltd.** in **W.P.(C)15768/2023** dated 15.01.2024. The relevant paragraphs are as under:

“18. In the present case, the petitioner relies upon clause 4.6 of the ‘Revised IRCTC Promotion Policy and Rules-2014’ dated 21.04.2014, which is extracted hereunder:-

“4.6 The assessment of vacancies shall be done on 1st July of every year. The vacancies shall be assessed as follows:- (a) Existing as on 1st July of the year. (b) Existing vacancies in the higher grade of the same group. (c) Anticipated vacancies in the grade and higher grades of the same group in the next one year. (d) 20% of the post in the grade to cater for unforeseen circumstances. The cutoff date of eligibility would be 1st July of the year.”

A perusal of the aforesaid clause of the promotion policy makes it clear that the authorities are to assess the vacancies which would arise as on 1st July of every year and that the cutoff date of eligibility would be the 1st of July of the said year. That apart, there is nothing even remotely indicating, in the aforesaid clause which could be construed to mean that the promotions or DPC if held on a date subsequent to 1st July of that year, would relate back either to the date when the vacancy arose or to 1st of July of that year. The argument that the combined reading of clause 4.6 would indicate that the rule position required the department/respondents to grant promotion retrospectively from either the date when the vacancy arose or from 1st July of that year, is noted to be rejected since no other rule or regulation, etc. in respect of the aforesaid promotion policy rules, 2014 was shown to support



the said contention.

19. There is no doubt that when clause 4.6 indicate the cutoff date of eligibility would 1st July of that year, it would take within its ambit only those persons who were eligible to be considered for promotion to the next higher grade and were eligible as on 1st July of that year irrespective of when the vacancy arose before that date.

20. Though, the petitioner had primarily challenged the notification/circular dated 13.11.2023 calling for eligible employees for participating in the LDCE, however, had not laid a proper challenge to the promotion order dated 24.02.2023 from E-1 to E-2 Grade Officer. Though, Mr. Mittal did refer to grounds C and D as also clause (b) of the prayer to submit that the challenge was laid also to the promotion order, however, the promotion order in view of the aforesaid law laid down by the Supreme Court would pale into insignificance.

21. It is the case of the respondent that the notification for vacancies was issued on 29.11.2022, the written examination thereof was conducted 23.12.2022 and the results were declared on 30.12.2022. The petitioner was successful in the written examination for promotion from Senior Executive (E-1) to Assistant Manager (E-2) Grade and the petitioner alongwith two other candidates were subsequently promoted by the respondent vide the order dated 20.02.2023. Applying the aforesaid ratio of the judgments of the Supreme Court, it is clear that the petitioner was promoted on 20.02.2023 and no retrospectivity could be granted to the petitioner.

22. Having concluded as aforesaid, it is clear that the eligibility condition of one year service in the minimum eligible category/grade, as stipulated in the circular dated 13.11.2023, could not have been fulfilled by the petitioner and hence would not be eligible to apply for or appear for the LDC Examination covered under the aforesaid circular.”



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23. Having regard to the aforesaid analysis as also the judgment of this Court in *Anil Kumar Bharti (supra)*, this Court is of the considered opinion that the challenge in the present petition to the impugned Circular dated 06.10.2023, ought to fail.

24. Accordingly, the Writ Petition along with the pending applications is dismissed without any order as to costs.

25. On the request of Mr. Kumar, learned Senior Counsel, the challenge, if any, so far as the petitioners seeking promotion from Cluster A to Cluster B and Cluster B to Cluster C are concerned, may be raised in a fresh writ petition, in case so permissible.

TUSHAR RAO GEDELA, J

MAY 1, 2024/kct