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

+ **W.P.(C) 14939/2024**

VIJAY KUMAR & ANR.

.....Petitioners

Through: Mr. K.K.L. Gautam and Ms. Vaishali
Nariyala, Advocates.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Ms. Subhra Parashar, SPC and
Ms.Archana Kumari, GP for Respondents No.1
and 2/UOI.

Mr. Arun Sanwal, Advocate for Respondent
No.3/MTNL.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

24.10.2024

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CM APPL. 62654/2024

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

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3. This writ petition has been preferred on behalf of the Petitioners seeking a direction to the Respondents to comply with the recommendations of the National Commission for Scheduled Castes ('the Commission') dated 21.12.2017 and 21.08.2021.
4. Issue notice.
5. Ms. Subhra Parashar, learned SPC accepts notice on behalf of Respondents No.1 and 2 and Mr. Arun Sanwal, learned counsel accepts notice on behalf of Respondent No.3.



6. Petitioner No.1 joined Mahanagar Telephone Nigam Limited ('MTNL')/Respondent No.3 on the post of TOA(G) on 10.07.1992. Petitioner No.2 joined MTNL on the post of TOA(G) on 21.05.2001. Ministry of Communications, Government of India vide letter dated 30.11.1992 directed all Heads of Circles/Administrative Officers for review of results of SC/ST candidates failed in Departmental Competitive Examination. Petitioner avers that DOPT vide O.M. dated 03.10.2000 reinforced that relaxations/concessions in matters of promotion for candidates belonging to SC/ST categories by way of lower qualifying marks and lesser standards of evaluation will be made applicable and the earlier O.M. dated 22.07.1997, withdrawing these concessions will become inoperative.

7. Petitioners applied and appeared in Limited Departmental Competitive Examination ('LDCE')-2008 for appointment to the post of Junior Accounts Officer in SC category but their names did not figure in both the lists of selected candidates. Pursuant to representation made by Petitioner No.1, he was informed by MTNL vide letter dated 23.08.2016 that no further relaxation of qualifying limits or grace marks could be granted as the Competent Authority had already relaxed the minimum passing percentage for qualifying the examination. By letter dated 28.08.2017, BSNL directed all Heads of Telecom Circles that in the 35th Meeting of National Council held on 11.05.2017, it was agreed to review the result of failed SC/ST candidates in light of the DOPT O.M. dated 30.11.1992.

8. Petitioners state that they approached the Commission for redressal and vide order dated 21.12.2017, the Commission recommended that relaxation in qualifying marks be given to the Petitioners in light of DOPT



O.M. dated 03.10.2000 and DOT order dated 08.04.1981 and instructions dated 01.02.1992/30.11.1992 and after providing relaxation, the result of the Petitioners be reviewed so that they come at par with other candidates who appeared in the JAO, LDCE. By a further order dated 21.08.2021, the Commission recommended that a special dispensation be explored to promote the Petitioners as Section Officers, out-of-turn, either through qualifying screening examination or any other method keeping in view their seniority and the fact that they have not earned a single promotion in the last 20 years and if necessary, create two supernumerary posts. Action Taken Report was also called for by the Commission.

9. Petitioners aver and argue that they gave representations dated 29.11.2023 to MTNL for implementation of the directions of the Commission but the same were illegally rejected by order dated 18.12.2023 with the observations that all possibilities for granting promotion had been explored but there was no provision in the MTNL Rules for promoting the Petitioners as Section Officers and also that Petitioners had failed to appear in the Departmental Examination conducted by MTNL for out-of-turn promotion of the Petitioners ahead of other SC officials who were senior to the Petitioners.

10. This writ petition has been filed by the Petitioners with a limited grievance that orders of the Commission have not been implemented and directions be issued to the Respondents to comply with orders dated 21.12.2017 and 21.08.2021 as Petitioners have been stagnating for over two decades.

11. Learned counsel for MTNL, at the outset, submits that recommendations made by the Commission have been considered and an



order has been passed on 18.12.2023 after examining the recommendations of the Commission and the grievances of the Petitioners and therefore, the writ petition is rendered infructuous. In case the Petitioners are aggrieved by the said order, they may challenge the same, if so advised. It is also submitted that in compliance of the order of the Commission, Action Taken Report has been furnished before the Commission.

12. Without prejudice to the aforesaid contention, learned counsel for MTNL submits that recommendations of the Commission are only advisory in nature and not binding and thus, MTNL was not bound to promote the Petitioners but was only required to consider the recommendations, which it has done. It is not open to the Petitioners to contend that the directions/recommendations must necessarily be implemented as the recommendations were only advisory. In support of the plea that Commission's recommendations are not binding, learned counsel relies on the judgment of the Coordinate Bench of this Court in ***Union of India and Anr. v. National Commission for Scheduled Castes and Anr., 2014 SCC OnLine Del 3324***, more particularly paragraph 16, wherein the Court has held that the Commission under Article 338 of the Constitution of India is not an adjudicatory body which can issue binding directions or injunction orders.

13. Heard learned counsels for the parties.

14. The limited grievance ventilated by the Petitioners in the present writ petition is that two orders passed by the Commission issuing certain directions to MTNL have not been implemented and in this view, direction is sought to MTNL to comply with the recommendations of the Commission rendered vide orders dated 21.12.2017 and 21.08.2021. MTNL *per contra*



takes a stand that the recommendations of the Commission were examined and an order dated 18.12.2023 has already been passed, which the Petitioners have themselves appended as Annexure P-13 to the writ petition *albeit* MTNL has not agreed with the recommendations, which it was entitled to do.

15. There is substance in the submission of MTNL to the extent that pursuant to directions/recommendations of the Commission, MTNL has taken a decision vide order dated 18.12.2023 and this is evident not only from the subject of the order but also from paragraph 2(i) and 2(ii) thereof and it is noted in the order itself that Action Taken Reports have been furnished to the Commission vide letters dated 15.01.2018 and 25.10.2021, respectively. MTNL has, however, rejected the claims of the Petitioners on the ground that as per Non-Executive Promotion Policy, eligibility criteria for promotion from Non-Executive to Executive Cadre on seniority-cum-fitness basis is 31 years of service in Non-Executive grade and there are 13 officials senior to the Petitioners and they will thus have to await their turns for consideration as per seniority. It is further stated in the order that the only channel open to the Petitioners for promotion is through Departmental Examination and as and when the same is conducted in future and Petitioners are eligible, they will be considered. As regards promotion to the post of Section Officer, it is noted in the order that Petitioners did not appear in the LDCE conducted by MTNL as per directions of the Commission and thus, out-of-turn promotions cannot be granted to them ahead of other officials who are senior to the Petitioners in the SC category.

16. In my view, MTNL has examined the recommendations of the Commission and after examining the same as also looking into the



grievances of the Petitioners, taken a decision. Pertinently, there is no challenge to this decision in the present writ petition. There is merit in the submission of MTNL that Commission's recommendations are not binding though, no doubt, if any recommendations are given, they are to be considered as per law. This law is no longer *res integra* and I may only allude to the judgment of the Supreme Court in *All India Indian Overseas Bank SC and ST Employees' Welfare Association and Others v. Union of India and Others*, (1996) 6 SCC 606 and of the Coordinate Bench of this Court in *National Small Industries Corporation Ltd. v. National Commission for Scheduled Castes and Others*, 2022 SCC OnLine Del 2217. Therefore, Petitioners cannot assert that MTNL is bound to implement the recommendations of the Commission and is entitled to take a different view in accordance with law. It is another matter that Petitioners may challenge the decision on merit, if they are aggrieved, which as noted above, they have chosen not to do in the present writ petition.

17. This writ petition is, accordingly, dismissed with liberty to the Petitioners to take recourse to legal remedies to challenge the order dated 18.12.2023 passed by MTNL, if so advised, making it clear that this Court has not expressed any opinion on the merits of the case.

JYOTI SINGH, J

OCTOBER 24, 2024

B.S. Rohella