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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 26.11.2024

+ LPA 323/2017

N.N.KABIRAJ

.....Appellant

Through: Ms. Nidhi Mohan Parashr with
Mr. Amar Bajpayee, Advs.

versus

UNIVERSITY OF DELHI & ANR.

.....Respondents

Through: Appearance not given.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

YASHWANT VARMA, J. (Oral)

1. This Letters Patent Appeal calls in question the judgment dated 14 March 2017 rendered by the learned Single Judge dismissing a writ petition preferred by the appellant seeking promotion to the post of Senior Technical Assistant. The principal submission appears to have revolved around three posts forming part of the cadre of Senior Technical Assistants and which carried a separate qualification. It appears to have been contended that since those three posts in the cadre of Senior Technical Assistants required special qualifications, they were liable to be treated as “ex cadre” posts.

2. According to the appellant, the earmarking of the posts to be filled in the cadre of Senior Technical Assistant by way of promotion

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or direct recruitment as well as the implementation of the roster system would have thus been liable to be implemented after excluding these three posts. Another submission which was addressed before us was based on what according to the appellant was the vacillating position which the University of Delhi took and stood reflected in a series of communications addressed by it. According to learned counsel for the appellant, those communications would indicate that the respondent-University had itself understood and recognized these three posts carrying special qualifications as being ex-cadre.

3. Reliance was then placed on the **Office Memorandum**¹ dated 02 July 1997 and which enunciates the procedure liable to be followed for the purposes of implementation of the roster system. Learned counsel had laid special emphasis on paras 1 to 5 which are reproduced hereinbelow: -

“1. As hitherto, these rosters are only an aid to determine the entitlement of different categories with regard to the quota reserved for them. They are not to determine seniority.

2. The model rosters have been drawn up keeping in mind two fundamental principles – the reservation for the entitled categories is to be kept within the prescribed percentage of reservation and the total reservation should in no case exceed 50% of the cadre.

3. There should be separate rosters for direct recruitment and for promotions where reservation in promotion applies.

4. The number of points in each roster shall be equal to the number of posts in a cadre.

5. While cadre is generally to be construed as the number of posts in a particular grade, for the purpose of preparation of roster, it shall comprise posts required to be filled by a particular mode of recruitment in terms of the applicable recruitment rules. To illustrate, in a cadre: comprising 200 posts, where the recruitment rules prescribe a ratio of 50:50 for direct recruitment and promotions, the roster for direct recruitment shall have 100 points

¹ OM



and that for promotion shall have 100 points – thus making a total of 200.”

4. Our attention was also drawn to Clause 4(C) of that OM which too is extracted hereunder:

“4. The principles for preparing the rosters elaborated upon in the Explanatory Notes are briefly recapitulated below:

c) Cadre, for the purpose of a roster, shall mean a particular grade and shall comprise the number of posts to be filled by a particular mode of recruitment in terms of the applicable recruitment rules. Thus, in a cadre of, say, 200 posts, where the recruitment rules prescribe a ratio of 50:50 for direct recruitment and promotion, two rosters - one for direct recruitment and one for promotion (when reservation in promotion applies) -- each comprising 100 points shall be drawn up on the lines of the respective model rosters;”

5. Taking us through the manner in which the said OM defines the word ‘cadre’, learned counsel submitted that for the purposes of implementing the roster, a cadre would have to be viewed as comprising of posts in a particular grade to be filled by a particular mode of recruitment in accordance with the rules that may apply. The appellant would thus contend that the fact that separate qualifications are prescribed for the three posts falling in the cadre of Senior Technical Assistants would be sufficient to render them ex cadre and thus liable to be excluded for the purposes of implementing the roster.

6. The second submission which was addressed was in relation to the filling up of a vacancy which had occurred in 2001 as well as the promotion of the second respondent on 04 April 2003. It was contended that despite a vacancy having arisen in 2001, the case of the appellant was overlooked, and he was ultimately granted promotion only on 25 March 2005.

7. It was further submitted that although the vacancy against



which the second respondent came to be promoted stood earmarked for a Scheduled Tribe candidate, the respondent despite belonging to the Scheduled Castes was accorded promotion against that seat.

8. For the purposes of considering the challenge which stands mounted, we deem it apposite to take note of the following pertinent disclosures which were made by the University of Delhi in an additional affidavit which was filed before the learned Single Judge. From the disclosures made therein, we find that initially and as of 02 July 1997, there were twelve Senior Technical Assistants working in the Department of Zoology. According to the said respondent, the total number of posts of Senior Technical Assistants in the Department of Zoology at the relevant time was fifteen. This included the three posts which were earmarked to be filled by persons possessing certain additional qualifications. It was further averred by the University of Delhi that the persons who are appointed against the aforementioned three posts are all drawn from the regular feeder cadre of eligible employees and who may be entitled to be considered for promotion to the next higher grade. It was thus contended that the cadre of Senior Technical Assistants and all employees forming part thereof are treated as a homogenous whole for the purposes of promotion to the next higher post of Technical Officer.

9. It had been further averred that although originally the number of posts in the cadre of Senior Technical Assistants was fifteen, consequent to the upgradation of two posts, the cadre strength became thirteen. It was the specific stand of the respondent-University, and one which stands reflected in Paragraph 15 of the additional affidavit,



that two vacancies arose on 26 December 2001 on account of the promotion of Shri. Gambir and Shri. Sharma as Technical Officer. The said paragraph is reproduced hereunder:

“15. Two vacancies arose thereafter on 26.12.2001 on account of the promotion of Shri Gambir and Shri Sharma as Technical Officers. Roster point No. 15 was earmarked for a Scheduled Caste. Out of the two posts in terms of the Executive Council Resolution No. 39 dated 30.4.1999, the earlier vacancy having been filled up by direct recruitment and the next by way of promotion. As such against roster point 15 both on account of the fact that it was meant for a Scheduled Caste candidate and that it was to be filled up by way of direct recruitment, the petitioner would not have any claim against the same. In the DPC held on 21.3.2005 the petitioner Kabiraj was recommended for promotion against the said vacancy which would be roster point 16.”

10. It is submitted that roster point no. 15 was earmarked for a Scheduled Caste candidate. According to the respondents out of the aforementioned two posts, the first out of those was required to be filled up by way of direct recruitment and the next vacancy by way of promotion. Taking into consideration the fact that roster point 15 had been earmarked for a Scheduled Caste candidate and was to be filled by way of direct recruitment, the University would assert that the appellant could not have laid any claim for promotion prior to 21 March 2005.

11. We also take note of the following pertinent disclosures which are made in Paragraph 16 in this respect:

“16. It would be seen from the above that even if the total posts were regarded as 15 the petitioner could not have claimed promotion earlier to respondent no.2 for want of a vacancy in the general category. The vacancy against which Rajpal Singh was promoted arose on 6.5.1999 earlier in point of time as compared to the vacancy in the general category which arose on 26.12.2001, against which the petitioner Kabiraj was promoted. In so far as the entitlement of a person for promotion is covered, a pre-condition is



that a post should be available. After a post becomes available, a person who fulfils the eligibility requirements could be considered for promotion and promoted and not earlier. Applying the said twin requirements in so far as respondent no.2 Rajpal Singh is concerned, a vacancy became available on 6.5.1999 and he became eligible on 7.1.2000 and as such could have been promoted on or with effect from 7.1.2000 whereas in so far as the petitioner is concerned a post became available only on 26.12.2001.”

It is in the aforesaid backdrop of the facts which obtained that the writ petition appears to have been taken up for consideration by the learned Single Judge.

12. From the conclusions that have ultimately come to be rendered, we find that the learned Judge has upon taking into consideration the disclosures which were made in the additional affidavit essentially come to hold that in the absence of the recruitment rules designating any separate or distinct procedure for the filling up of the three posts of Senior Technical Assistants and which carried additional and special qualifications, there would exist no justification to treat those posts as ex cadre.

13. Undisputedly and till such time as those three posts were to be excluded, the appellant would neither be able to sustain the challenge which was laid to the implementation of the roster nor for that matter the identification of a particular post amongst various categories of employees forming part of that cadre. It was bearing the aforesaid facts in mind that the learned Single Judge has ultimately, and in our considered opinion correctly, concluded that the mere prescription of additional qualifications would not render the three posts ex-cadre.

14. The concept of cadre is fairly well settled in service



jurisprudence. The Supreme Court in **Union of India v Pushpa Rani**² had in this context observed:

“23. In the service jurisprudence which has developed in our country, no fixed meaning has been ascribed to the term “cadre”. In different service rules framed under proviso to Article 309 of the Constitution as also rules framed in exercise of the powers of delegated legislation, the word “cadre” has been given different meaning.

24. In *A.K. Subraman v. Union of India* [(1975) 1 SCC 319 : 1975 SCC (L&S) 36] a three-Judge Bench of this Court while interpreting the provisions contained in Central Engineering Service, Class I, Recruitment Rules, 1954, observed as under: (SCC p. 328, para 20)

“20. ... The word ‘grade’ has various shades of meaning in the service jurisprudence. It is sometimes used to denote a pay scale and sometimes a cadre. Here it is obviously used in the sense of cadre. A cadre may consist only of permanent posts or sometimes, as is quite common these days, also of temporary posts.”

25. In *Chakradhar Paswan (Dr.) v. State of Bihar* [(1988) 2 SCC 214 : 1988 SCC (L&S) 516 : (1988) 7 ATC 104] it was observed as under: (SCC pp. 215-16)

“In service jurisprudence, the term ‘cadre’ has a definite legal connotation. It is not synonymous with ‘service’. It is open to the Government to constitute as many cadres in any particular service as it may choose according to the administrative convenience and expediency and it cannot be said that the establishment of the Directorate constituted the formation of a joint cadre of the Director and the Deputy Directors because the posts are not interchangeable and the incumbents do not perform the same duties, carry the same responsibilities or draw the same pay. The posts of the Director and those of the Deputy Directors constitute different cadres of the service. The first vacancy in the cadre of Deputy Directors was that of the Deputy Director (Homeopathic) and it had to be treated as unreserved, the second reserved and the third unreserved. Therefore, for the first vacancy of the Deputy Director (Homeopathic), a candidate belonging to the Scheduled Caste had therefore to compete with others.”

² (2008) 9 SCC 242



26. In *State of Maharashtra v. Purshottam* [(1996) 9 SCC 266: 1996 SCC (L&S) 1225] it was held that “cadre” means unit of strength of a service or a part of it as determined by the employer.”

15. The meaning liable to be ascribed to the word “cadre” came to be reiterated by the Supreme Court in **State of Maharashtra Vs. Purshottam**³ in the following terms: -

“6. At the outset, it may be stated that a work-charged establishment means an establishment of which the expenses, including the wages and allowances of the staff, are chargeable to ‘works’. The pay and allowances of employees who are borne on a work-charged establishment are generally shown as a separate sub-head of the estimated cost of the work. The work-charged establishment employees are engaged on a temporary basis and their appointments are made for the execution of a specified work. From the very nature of their employment, their services automatically come to an end on the completion of the works for the sole purpose of which they are employed. The character and nature of their tenure has been fully discussed by this Court in the case of *Jaswant Singh v. Union of India* [(1979) 4 SCC 440 : 1980 SCC (L&S) 36] . In the service jurisprudence the expression ‘cadre’ means the unit of strength of a service or a part of it as determined by the employer. And it is too well settled that services rendered by an employee in one cadre cannot be taken into account for determining the seniority in another cadre unless by any rules of seniority this privilege is conferred. This being the position, ordinarily the services rendered by an employee in a work-charged establishment is not to be taken into account for his seniority in the regular establishment particularly when the tenure in the work-charged establishment is of a precarious nature and it automatically ceases after the project is over.

16. In **O.P Singla v. Union of India**⁴ the Supreme Court pertinently observed:

“19. At this stage, it is necessary to call attention to the definition of “Cadre Post” in Rule 2(b) and to clear the misunderstanding which is likely to arise on account of that definition. Rule 2(b) provides that “Cadre Post” means any post specified in the Schedule and includes a temporary post carrying the same

³ (1996) 9 SCC 266

⁴ (1984) 4 SCC 450.



designation as that of any of the posts specified in the Schedule. This definition may, at first sight, create an impression that every temporary post of an Additional District and Sessions Judge is a Cadre Post, whether or not that post is included in the Service. That is not so. The first part of the definition says that “Cadre Post” means a post specified in the Schedule. Posts which are specified in the Schedule are posts in the Service. Therefore, by reason of the first part of the definition, posts in the Service are Cadre Posts. It is the second part of the definition which is likely to create a misunderstanding of the true position. That part of the definition says that Cadre Post includes a temporary post carrying the same designation as that of any of the posts specified in the Schedule. This provision is consequential to and in consonance with Rule 16. Since it is permissible under that Rule to create temporary posts in the Service, such posts are also regarded as Cadre Posts. It would have been anomalous to treat a post in the Service as an ex-cadre post merely for the reason that the post is temporary. Normally, an ex-cadre post means a post outside the cadre of posts comprised in a Service. Therefore, all posts in the Service, whether permanent or temporary, are generally regarded as Cadre Posts. But, regardless of the normal pattern of service rules, what is necessary to appreciate is that Rule 2(b) has the limited effect of making every post in the Service a Cadre Post, whether the post is permanent or temporary. The inclusive clause contained in the second part of Rule 2(6) has to be read in the context of the first part of that Rule and must take its meaning from what precedes it. Therefore, every promotee who holds the post of an Additional District and Sessions Judge in the Service is the holder of a Cadre Post, whether the post is permanent or temporary. Direct recruits hold Cadre Posts in all events because, they can only be appointed to substantive posts in the Service on a permanent basis. Rules 16 and 17 forbid their appointments to temporary posts in the Service or to substantive vacancies in the Service on a temporary basis.”

17. It is thus manifest that a cadre means the unit of strength of a particular category of posts in an establishment. It constitutes an identified and delineated number of positions falling in a particular category identified by title or nomenclature. It is that homogenous or composite unit of posts which constitutes a cadre of an undertaking. The three posts of Senior Technical Assistants, although envisaged to be manned by persons holding an additional qualification, continued to remain a part of that cadre and clearly did not constitute a separate



category or unit of posts in the establishment of the respondents.

18. The second reason which we weigh in consideration is the mode of recruitment. It is common ground that it would be the OM dated 02 July 1997 which would apply. As is evident from a reading of paragraph 4(C) thereof, a cadre, for purposes of implementation of the roster, is defined to mean a “particular grade” and to comprise of such number of posts which had to be filled by a “particular mode of recruitment”. Before us, it could not be established that the three posts that carried special qualifications were to follow a mode of recruitment that was distinct or different from the other posts of Senior Technical Assistants which formed part of that cadre. Tested on the anvil of Para 4(C) as well as Paragraph 5 forming from the part of the explanatory rules, we thus find no justification to hold that the cadre was wrongly identified by the University.

19. While our attention was drawn to certain communications in which the University of Delhi does appear to allude to certain ex cadre posts existing in the group of Senior Technical Assistants, in our considered opinion, the same would clearly have no bearing in light of the prescriptive terms contained in the OM dated 02 July 1997 and which would clearly be mandatory and would in any case prevail.

20. Although learned counsel had also sought to draw sustenance from a decision handed down by a learned Judge of the Court in **Ved Bhushan Sharma v University of Delhi**⁵ to buttress her contention that the three posts were ex-cadre, having gone through that decision, we find that the Court therein does not refer to or base its observation

⁵ [2001 SCC OnLine Del 1194]



of certain ex cadre posts existing in the concerned cadre on any cogent material.

21. We also bear in mind the indubitable fact that even if one were to accept the challenge of the appellant raised in respect of the promotion granted to the private respondent against a seat reserved for a Scheduled Tribe candidate, no relief would flow to the appellant even if that promotion were to be set aside. The petitioner, undisputedly, does not belong to the Scheduled Tribes. There would, therefore, be no justification to interfere with the promotion granted to the said respondent since no effective relief would flow to the appellant.

22. The Supreme Court in **Dr. N.C. Singhal v Union of India**⁶ while considering a similar issue had pertinently observed as under:

“21. Having examined the challenge to the promotion of respondents 4 to 24 on merits, it must be made clear that the appellant is least qualified to question their promotions. Each one of them was promoted to a post in supertime grade II in a speciality other than ophthalmology and appellant admittedly was not qualified for any of these posts. Even if their promotions are struck down appellant will not get any post vacated by them. Incidentally High Court also upheld their promotions observing that by the time the petition was heard each one of them had requisite service qualification and, therefore, the promotions could not be struck down. Once the challenge on merits fails the second string to the bow need not be examined. Having said all this, appellant is least competent to challenge their promotions. In a slightly comparable situation this Court in **Chitra Ghosh and Anr. v. Union of India and Ors.** observed as under:

“The other question which was canvassed before the High Court, and which has been pressed before us relates to the merits of the nominations made to the reserved seats. It seems to us that the appellants do not have any right to challenge the nominations made by the Central Government. They do not compete for the reserved seats

⁶ [(1980) 3 SCC 29]



and have no locus standi in the matter of nomination to such seats. The assumption that if nominations to reserved seats are not in accordance with the rules all such seats as have not been properly filled up would be thrown open to the general pool is wholly unfounded.”

23. The appeal for all the aforesaid reasons fails and shall stand dismissed.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

NOVEMBER 26, 2024/DR