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**(2023) 05 DEL CK 0202**

**In the Delhi High Court**

**Case No :** Civil Writ Petition No. 5960 Of 2020

Hemlata Mathur And Ors.

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

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**Date of Decision :** 29-05-2023

**Acts Referred:**

**Citation :** (2023) 05 DEL CK 0202

**Hon'ble Judges :** V. Kameswar Rao, J;Anoop Kumar Mendiratta, J

**Bench :** Division Bench

**Advocate :** Arun Bhardwaj, Nikhil Bhardwaj, Nishant Bahuguna, Abhishek Sharma, Gauraan, K.D. Sharma

**Final Decision :** Dismissed

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## Judgement

V. Kameswar Rao, J

1. The challenge in this petition is to an order dated September 5, 2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ("Tribunal", for short) in the Original Application being OA 3276/2013, whereby the Tribunal has adjourned proceedings sine die on the ground that similar issue is sub judice before this Court in W.P.(C) 1024/2014 which arises from OA No.3133/2012, titled Sunder Singh & Ors v. Union of India & Ors.

2. The facts as noted from the record are that, in the Indian Railways prior to the year 2003, the selection criteria for Office Superintendent Grade-II ("OS Grade-II", for short) was 100% promotion from the post of Head Clerk. With the cadre restructuring scheme issued by the Railway Board vide circular No. RBE No 177/2003, dated October 9, 2003, the selection criteria of OS Grade-II cadre was re-organised and 20% of the posts were made to be filled through Direct Recruitment quota and remaining 80% through promotional quota from the lower grade of Clerk. Later on, the element of 20% of Direct Recruitment quota was replaced by Limited Departmental Competitive Examination LDCE vide circular No. RBE No. 102/2005 dated June 17, 2005.

3. On July 15, 2007, Northern Railway issued a notification for selection to the post of OS Grade-II in the scale of Rs. 5,500 - Rs. 9,000/-under 20% LDCE quota in the Headquarter Office, New Delhi. However, the selection was not conducted. Subsequently, on March 17, 2011, another notification was issued for the selection of OS Grade-II under 20% LDCE quota for the serving graduates working in the post of Head Clerk, Sr. Clerk and Clerk, having requisite experience. The written test was held on August 6, 2011 and a provisional panel of successful candidates issued on December 7, 2011. All the candidates who were placed on the panel were informed and on successful completion of requisite training, they were posted in different departments as per the vacancy position and were also assigned seniority in their respective department from the date of joining as OS Grade-II.

4. The 38 empanelled candidates including the petitioners herein, approached the Tribunal by filing O.A. No. 3276/2013, seeking the benefits of promotion as OS Grade-II with effect from November 1, 2003, i.e., from the date of implementation of the cadre restructuring on the ground that the 20% posts were created because of restructuring, being an element of Direct Recruitment quota in OS Grade-II and later replaced with LDCE quota vide Board's letter dated June 17, 2005, against which their promotions were delayed. The Tribunal adjourned the matter sine die to await the outcome of the writ petition filed against the judgment of the Tribunal in *Sunder Singh v. Union of India*, OA 3133/2011.

5. The case of the petitioners as contended by Mr. Arun Bhardwaj, Senior Advocate and Mr. Nikhil Bhardwaj, Adv. is that, vide Circular No. RBE 177/2003, the Railway Board under paragraph 11.1 had introduced an element of Direct Recruitment to the extent of 20% posts, which was reviewed by the Railway Board in terms of the circular No. RBE 102/2005, wherein it decided to do away with the Direct Recruitment quota and introduce an element of LDCE.

6. His submission was that, Head Clerk, Sr. Clerk and Clerk in the feeder cadre who possessed Graduation Degree were eligible to be considered, but the department did not initiate the selection process till 2007. In the meantime, 80% of the posts in the grade of Rs. 5,500 - Rs. 9000/- continued to be filled by promotion from the lower grade of Rs. 5,000 - Rs. 8,000/-, as per the procedure in vague.

7. According to him, the delay caused in initiating the selection process under the LDCE quota, which got finalized only in December, 2011, is hostile discrimination qua the persons eligible under 20% quota, who were in the zone of consideration in 2003 / 2006, and were actually selected in the year 2011.

8. It was his submission that, not holding selection under LDCE quota and continuing the promotion under the 80% Promotion quota in the same cadre seriously affects the seniority and promotional chances of the petitioners to higher grades. He has also submitted that, effectively respondents have taken

away eight years of petitioners' service by not undertaking the selection under LDCE quota for Graduates which was introduced in the year 2005. The respondents have also not made any endeavor to fill up the quota made for LDCE, immediately in 2005 or thereafter, which is unfair and arbitrary.

9. During the course of his submissions, Mr. Bhardwaj did concede to the fact that, out of 38 petitioners, 8 petitioners did not possess the relevant experience / qualification for being considered to the post of OS Grade-II, as on November 2, 2003. In any case, it is his submission that, when 30 petitioners are eligible, there was no reason for the respondents not to undertake the process of selection under the LDCE quota immediately on restructuring. In support of his submission, he has relied upon the judgment of the Supreme Court in the case of Union of India and Anr. v. Manpreet Singh Poonam, Civil Appeal No. 517-518/2017, to contend that the vacancies which were created, should have been filled.

10. He stated that the issue is no more *res integra*, having been decided by the Jaipur Bench of the Tribunal in favour of the applicants therein. The applicants therein were promoted under the LDCE quota and the judgment has been upheld by the High Court of Rajasthan at Jaipur Bench in DB Civil Writ Petition No.209/2019. He stated that the benefit thereof must be given to the petitioners herein.

11. On the other hand, Mr. K.D. Sharma, learned counsel appearing for the respondents, does not dispute the facts as narrated above. According to him, as per the result of the written test held for promotion under the LDCE quota on August 6, 2011, a provisional panel was prepared on the basis of the merit, which was issued on December 7, 2011, wherein, 43 candidates were placed on the panel and 8 candidates were considered for the panel under "Best Amongst Failure Scheme". He submitted that, all those persons who formed part of the panel were posted in different vacancy position.

12. He would contest the submissions made by Mr. Bhardwaj, that the petitioners are entitled to promotion to the post of OS Grade-II under the LDCE quota w.e.f., November 2, 2003, by drawing our attention to Circular No. RBE-102/2005 to contend that the prayer as sought for by the petitioners cannot be granted as no such condition has been prescribed for the promotion under the LDCE quota that it necessarily has to be made from November 2, 2003.

13. According to him, many of the petitioners were not eligible for being considered to the post of OS Grade-II on November 2, 2003, as they did not have the required experience for the said post. He submitted that, it is pursuant to the selection process undertaken under the LDCE quota, the petitioners were granted promotion in the year 2011 and as such the same cannot relate back to 2003, as is the prayer of the petitioners. He seeks the dismissal of the writ petition.

14. Having heard the learned counsel for the parties, at the outset, we may state

that this writ petition was disposed of by this court on October 26, 2021 by relying upon the judgment of the Rajasthan High Court dated February 22, 2021 in W.P.(C) 20910/2019 which has been implemented qua persons, who were parties in the said case. The order passed by this Court is the following:

"1. On the previous date i.e., 04.10.2021, the following had been recorded by us:-

"1. Counsel for the respondents seek accommodation in the matter to obtain instructions as to, whether the issue raised in the instant writ petition is covered by the judgment dated 22.02.2021, passed by the Rajasthan High Court, in W.P. (C.) No.20910/2019; an aspect, which is, also referred to, in our order dated 27.08.2021.

2.We may also point out that, Mr. Nikhil Bhardwaj, learned counsel for the petitioners, seeks to place reliance on paragraph 12 of the counter-affidavit filed by respondents, to demonstrate that, even according to the respondents, the issue raised in the instant petition was identical to the one, which was raised before the Division Bench of the Rajasthan High court.

2.1. It is also contended by Mr. Bhardwaj that, the aforementioned decision of the Rajasthan High Court, has already been implemented by the respondents.

2.2. The aforesaid aspects will be examined on the next date of hearing.

3. List the matter on 26.10.2021".

2. Mr. Jagjit Singh, who appears on behalf of the respondents, has reverted with instructions.

2.1 Mr. Singh confirms, in no uncertain terms, that the judgment dated 22.02.2021, passed by the Rajasthan High Court in W.P.(C.) No.20910/2019 has been implemented qua persons, who are parties to the said case.

2.2 Mr. Singh, on being queried, also confirms that the petitioners' case is no different from those, who were involved in the matter which was decided by the Rajasthan High Court.

2.3 Although, Mr. Singh says that, the instant matter should be remitted to the Central Administrative Tribunal [in short "the Tribunal"], in our view, no purpose would be served in remitting the matter, at this stage, to the Tribunal, in view of the stand taken before us, by Mr. Singh, albeit, on instructions.

3. Accordingly, the impugned order dated 05.09.2016 is set aside.

3.1 The respondents are directed to implement the aforementioned judgment of the Rajasthan High Court qua the petitioners in the instant matter, as well.

3.2. Needless to add, the respondents will act due expedition, though not later than six weeks from the date of receipt of the copy of the order passed today.

4. The writ petition is disposed of in the aforesaid terms.

5. The parties will act based on the digitally signed copy of the order.”

15. The said order became a subject matter of Civil Appeal being 8565/2022 before the Supreme Court which was filed by the Union of India (& Ors.), the respondents herein. The same was decided on November 18, 2022 wherein the Supreme Court has stated as under:

“Delay condoned.

Leave granted.

We have heard Ms. Madhavi Divan, learned ASG appearing on behalf of the appellants and Shri Arun Bhardwaj, learned Senior Advocate appearing on behalf of respondent No.27, who is on caveat.

Feeling aggrieved and dissatisfied with the impugned judgment and order dated 26-10-2021 passed by the High Court of Delhi at New Delhi in Writ Petition No.5960/2020, by which the High Court has disposed of the said writ petition preferred by the respondents herein / original writ petitioners solely relying upon the decision of the Rajasthan High Court rendered in Writ Petition (C) No.20910/2019, the Union of India and others have preferred the present appeal.

Having heard learned counsel appearing on behalf of the respective parties and considering the issue involved, which can be said to be a pure question of law, namely, from which date an employee is entitled, viz., from the date of eligibility or from the date of actual promotion, the High Court ought to have decided the said issue on merits. May be, for whatever reasons one division of the Department might not have challenged the order passed by another High Court, as the question is pure question of law, the same ought to have been decided by the High Court.

In that view of the matter and without expressing anything further on merits in favour of either of the parties, we remand the matter to the High Court to decide and dispose of the writ petition afresh in accordance with law and on its own merits. However, without in any way being influenced by the decision of Rajasthan High Court in Writ Petition (C) No.20910/2019. The aforesaid exercise be completed by the High Court within a period of six months from the date of receipt of present order.

It goes without saying that it will be open for the parties to file additional pleadings.

The present Appeal is allowed accordingly. No costs.”

16. From the order of the Supreme Court, it is clear that the Supreme Court has remanded the matter back to this Court to decide the same within a period of six months from of receipt of the order. The order has been received by the Registry of this court on November 30, 2022. From the perusal of the order, it is also

noted that, this writ petition has to be decided afresh in accordance with law and on its own merit without being influenced by the decision of the Rajasthan High Court in W.P.(C) 20910/2019.

17. The case set up by the petitioners is that, they are required to be granted promotion to the post of OS Grade-II under the LDCE quota w.e.f., November 2, 2003. Such a plea is not appealing for the reason, w.e.f November 2, 2003, the respondent, vide the circular RBE 177/2003 had included 20% quota for direct recruitment. In other words, the circular of 2003 was never meant for making promotion under the LDCE w.e.f from that date. The RBE No. 102/2005 issued on June 17, 2005, was by reviewing the earlier RBE circular and substituting the direct recruitment quota with LDCE quota, and it does not contemplate that the 20% of LDCE quota need to be filled from November 2, 2003.

18. In fact, the circular dated June 17, 2005, i.e., RBE No.102/2005, contemplate the following procedure to be followed for holding LDCE:

"II. The Procedure for holding LDCE

(i) The examination should be held combined for all departments for a Zonal Railway/PU by Railway Recruitment Boards catering to zonal Rlys./PUs as nominated for conducting GDCE vide this Ministry's letter No. E(RRB)2001/25/31 dated 8.8.2003. For this purpose the Zonal Railway/PU should club vacancies of all Deptts./units against this quota and forward applications of eligible employees to RRB concerned as per procedure already being followed by them for GDCE.

(ii) The selection shall consist of a written examination and assessment of service record. While 85% weightage will be given to the performance in the written examination, 15% weightage will be given to service records.

(iii) There will be one question paper each for OS-II examination and PI examination. It should be of a standard as for direct recruitment to equivalent level of posts. The syllabus for examinations for these posts is also enclosed as Annexure I (for OS II) and Annexure II (for PI).

(iv) The selection shall be based entirely on merit with reference to marks obtained by the candidates in the written examination and service records. Subject to usual relaxation for SC/ST staff those securing less than 60% in the aggregate will not be considered eligible for inclusion in the panel. Further, the service records of only those candidates who secure a minimum of 60% marks in the written examination shall be assessed.

(v) Based on (v) above the RRB will furnish the panel of successful candidates in order of merit, equal to the number of total vacancies intimated by the Zonal Railway/PU concerned. While it will be preferable to post the successful candidates in their respective Departments/Units, there is no bar to their being posted elsewhere if the number of successful candidates does not match the number of already assessed vacancies in the respective Deptt./Unit.

4. Training of the successful candidates: All such persons who are selected as OS-II or PI against LDCE quota will be required to undergo three months' training in a Personnel Training School followed by 15 days tour to other Zonal Railways/PUs etc. All such candidates will have to successfully complete the training/course before they are put on a working post, for which a prescribed examination at the end of the training course will be conducted. Exact modalities of the training etc. will follow."

19. A reading of the same would reveal that the circular contemplates holding an examination for all departments by Railway Recruitment Board. The process includes a written examination and assessment of service records. So in that sense, the procedure for examination having been laid down, the same has to be followed before giving a promotion under the LDCE quota. The paragraph 4 of the said Circular contemplates that, a person who has been selected for OS-II or PI against LDCE quota is required to undergo three months" training in Personnel Training School followed by 15 days tour to other Zonal Railways / PUs. It is only on successful completion of training / course that they are put on a working post for which the prescribed examination at the end of the training course will be conducted.

20. If the plea of Mr. Bhardwaj is accepted, it shall mean that the persons in feeder posts having eligibility should be given automatic promotion under the LDCE quota without following the procedure laid down including the written examination and assessment of records / training etc. The same is impermissible. This we say so, because the LDCE promotion is not based on seniority but on merit. It is from amongst the persons working as Sr. Clerk / Clerk / Head Clerk having eligibility, who may not be in the zone of consideration under 80% quota, to have accelerated promotion to OS Grade-II.

21. The Railway Board had reviewed the matter vide letter dated June 6, 2006 and issued instructions that, LDCE for the quota of OS Grade-II in the grade of Rs. 5,500 - Rs. 9000/-, may be held by the Zonal Railway / PUs concerned, in accordance with the said instructions. The notification for selection to the post of OS Grade-II against 20% LDCE quota was conducted in the headquarters of the Northern Railways in the year 2007. Though, the reasons for not completing the selection process in terms of the above notification, have not been spelt out it is a fact that fresh notification was issued in the year 2011. It is to be noted that the petitioners had not approached any judicial forum against that particular action of the respondents not to complete the selection process pursuant to notification of 2007.

22. It is pursuant to notification issued in 2011 that the Northern Railway has notified the panel, which included the name of the petitioners, who had joined their posting as OS Grade-II. If the petitioners have not challenged the cancellation of selection process of 2007, surely they cannot claim the promotion from 2003, i.e., from the year prior to 2007. The petitioners having not challenged the action and had applied in terms of notification issued in 2011, it is

quite late in the day for the petitioners to seek a benefit from a date earlier to their selection.

23. Mr. Bhardwaj had relied upon the judgment of the Supreme Court in the case of Manpreet Singh Poonam (*supra*) wherein the Supreme Court held that a mere existence of vacancy per se will not create a right in favour of an employee for retrospective promotion when the vacancies in the promotional post are specifically prescribed under the rules, which also mandate clearance through a selection process. The Supreme Court also held that there can never be parity between two separate sets of rules. It held a right to promotion and subsequent benefits and seniority would arise only with respect to the rules governing the said promotion, and not a different set of rules which might apply to a promoted post facilitating further promotion which is governed by a different set of rules. It also held when the rules are specific and clear, there is no need for interpretation which may lead to a case of judicial legislation.

24. The said judgment would not help the case of the petitioners for the proposition it has been relied upon. Rather, it support the case of the respondents inasmuch as promotion under 80% quota cannot be equated with promotion under LDCE quota. Even, if it is sought to be relied upon, to contend that the vacancies having been approved on November 2, 2003, pursuant to restructuring, the same need to be filled w.e.f. that date, still the judgment shall not be applicable in view of our conclusion that filling up the post of LDCE entails a process, and is not automatic as it presupposes a written examination; assessment of records; training etc., as has been stated by us in paragraphs 18 and 19 above.

25. In the conspectus of the facts of the case, this Court is of the view that there is no merit in the petition and the same needs to be dismissed. It is ordered accordingly. No costs.