
(2018) 02 CAT CK 0047

In the Central Administrative Tribunal

Case No : Original Application No. 2028 Of 2016, Miscellaneous Application No. 1962, 3131, 3637 Of 2016

Pawan Kumar

APPELLANT

Vs

New Delhi Municipal Council And Ors

RESPONDENT

Date of Decision : 08-02-2018

Acts Referred:

Citation : (2018) 02 CAT CK 0047

Hon'ble Judges : V. Ajay Kumar, J;Nita Chowdhury, Member (A)

Bench : Division Bench

Advocate : Sanjay Kumar Singh, Yogesh Pachauri, Yogesh Sharma

Final Decision : Dismissed/Disposed Of

Judgement

Nita Chowdhury, Member (A)

1. This Original Application has been filed by the applicants claiming the following reliefs:-

"A) To set aside the impugned order dt. 11th May, 2016 issued by the respondents cancelling the promotion order of the applicants for the post of Fitter Grade-II be declared as illegal, arbitrary, untenable and violative of principles of natural justice equity and fair play.

B) To issue appropriate directions to the respondents by setting aside the impugned decision of the respondents hold review DPC as illegal and violative principles of natural justice, equity and fair play.

C) Issue appropriate directions to the respondents to restore the promotion orders of the applicants to the post of Fitter Grade-II with all consequential benefits.

D) Any other relief deemed fit and proper may also be given to the applicants."

2. Brief facts of the case are that initially the applicants were appointed as Beldar

and they have applied for consideration for the post of Fitter Grade-II as regular departmental candidates in terms of circular dated 18.09.2014 issued by the respondents for filling up 24 vacant posts of Fitter Grade-II in the Pay Band of Rs.8500-26300 plus Grade Pay of Rs.2800/-. In the said circular it was clearly provided that the applications were invited from the regular departmental candidates who have completed 5 years of regular service in the department as on 15.09.2013. The eligibility criteria was that (i) Literate persons who can read and write Hindi/English (ii) at least 5 years of regular service in the department (iii) candidate should qualify prescribed trade test. It is submitted that applicants fulfilled the above mentioned eligibility criteria and applied in response to circular dated 18.09.2013. Thereafter they were given promotion to the post of Fitter Grade-II on the basis of DPC held for the said post and were promoted in the pay scale of Rs.8500-26300 with immediate effect. On 11.05.2016, the respondents passed an order stating that there was a discrepancy in the seniority list but did not give any details of the discrepancy and hence this action of the respondents is illegal, arbitrary, erroneous and liable to be set aside.

3. The applicants are aggrieved by order dated 11.05.2016 passed by the respondents, illegally cancelling the promotion orders issued to them for the post of Fitter Grade-II vide office order dated 26.04.2016 without any justifiable reason and in violation of principles of natural justice, equity and fair play. The applicants have prayed for setting aside the impugned order dated 11.05.2016 passed by the respondents and restore the promotion orders dated 26.04.2016 issued for the post of Fitter Grade-II with all consequential benefits.

4. In reply to the above contentions of the applicants, the respondents informed that there were a total number of 23 vacancies under the departmental quota whereas 59 candidates had qualified the prescribed trade test. Initially the seniority list was prepared on the basis of merit and the applicants were promoted. This was objected to by the seniors in the department who represented that the order dated 26.04.2016 was incorrect as there is no provision of merit and promotions are made on the basis of either selection or non-selection method. The Recruitment Rules for this post clearly show that it was a non-selection post. The relevant extracts from the Recruitment rules for the post of Fitter Grade- II are as follows:

1.

Name of Post

Fitter Grade-II

2.

No. of post

17+26=43

3.

Classification

Class-III

4.

Scale of pay

Rs.260-6-326-EB-8-350

5.

Whether Selection or NonSelection post

Non selection

6.

Age limit for direct recruitment

20-30 years

7.

Educational and other qualification for a) Direct recruitment

b) Departmental recruitment

a) Persons having certificate in the Trade of Plumber from a recognized institution.

b) One year practical experience in handling of water distribution net work of C.I. and G.I. pipes and their accessories.

a) Literate persons who can read and write Hindi/English.

b) At least 5 years regular service in the deptt. c) Should qualify the prescribed trade test.

Trade Test: As per syllabus enclosed.

5. As per the instructions and guidelines on seniority issued by DOPT vide their O.M. No.20011/1/2008-Estt.(D) dated 11.11.2010, where promotions are made on the basis of recommendations of a DPC either by 'selection' or 'non selection' method as per due procedure, the seniority of an officer assessed as 'fit', in the promoted grade shall be same as in the feeder grade from which they are promoted. For the post of Fitter as per RRs a trade test is to be conducted.

6. It is the contention of the respondents that initially DPC was held wrongly and when the discrepancy in the panel was noticed after issuing of promotion order dated 26.04.2016, the review DPC was held on 08.09.2016 in accordance with the order dated 23.07.2016 passed by this Tribunal, on the basis of corrected seniority list of the eligible candidates.

7. We have heard learned counsel for both the parties and perused the record.

8. Subsequent to our orders dated 24.01.2018, directing the respondents to file an additional affidavit indicating "whether the applicants, after issuance of the impugned order, were reverted as Beldar or being continued in the promotional post of Fitter Grade-II and also indicate the status of the Review DPC conducted after filing of the OA", has already been complied with and their additional affidavit filed in this regard was also taken into account by which it becomes clear that the previous DPC's order dated 19.04.2016 has been cancelled and at present the applicants are not Fitter Grade-II and stand reverted to the post of Beldar.

9. The only relevant issue in this OA is as to whether the respondents have followed DOP&T OM with regard to the filling in of vacancies for the post of Fitter Grade-II. As per the DOPT instructions and guidelines on seniority, a simple reading of O.M. No.20011/1/2008-Estt.(D) dated 11.11.2010 clearly states as under:

2.2 Seniority of Promotees

Where promotions are made on the basis of recommendations of a DPC either by 'selection' or 'non-selection' method as per due procedure, the seniority of an officer assessed as 'fit', in the promoted grade shall be same as in the feeder grade from which they are promoted. Where, however, a person is considered as unfit for promotion and is superseded by a junior, such persons shall not, if he/she is subsequently found suitable and promoted, take seniority in the higher grade over the junior persons who had superseded him/her....."

10. From the above, it is clear that this was a non-selection post and as per prescribed procedure the seniority of an officer is only to be assessed as fit in the promoted grade. Hence, this follows that as a norm where a trade test is prescribed for promotion such a trade test is treated as qualifying and promotion affected from amongst the persons who had qualified such a trade test in order of their inter-se-seniority list in the feeder grade subject to fulfilment of other eligibility criteria and there are no orders to disturb/refix the seniority in those cadres where the recommendations of a DPC are simple promotion via trade test. We do not find that there was any instruction which prescribes that the eligibility of persons holding post in the feeder grade for the post of Fitter Grade-II should be prepared in order of merit as had been done in the case of initial DPC held on 19.04.2016. Accordingly, the review DPC held on 08.09.2016 is found to be in accordance with the orders dated 23.07.2016 passed by this Tribunal on the basis of corrected seniority list of eligible candidates. From the facts of this OA it becomes clear that the respondents have acted as per the rules and as per the DOP&T instructions contained in O.M. No.20011/1/2008-Estt.(D) dated 11.11.2010.

11. Accordingly, we find no merit in this OA and the same is dismissed. No order as to costs.

12. In view of the above order passed in the OA, no orders are required to be

passed in the pending MAs and the same are accordingly disposed of.