

(2006) 09 DEL CK 0155

In the Delhi High Court

Case No : Writ Petition (C) 1984 of 2006

Sh. Pradeep Kumar Meena

APPELLANT

Vs

Khadi Gramadyog Bhawan and Khadi and Village Industries
Commission

RESPONDENT

Date of Decision : 01-09-2006

Acts Referred:

Citation : (2006) 133 DLT 202

Hon'ble Judges : J.M. Malik, J

Bench : Single Bench

Advocate : Apurab Lal, for the Appellant; G.K. Srivastava, for the Respondent

Final Decision : Allowed

Judgement

J.M. Malik, J.—The petitioner, who, belongs to the Scheduled Tribe was appointed as a Peon in Khadi Gram Udyog Bhawan, New Delhi on 09.11.90. Thereafter, the petitioner passed secondary examination in 1994. According to Service Rules a Class IV (Group D) employee is eligible to be promoted to the post of LDC or Salesman-III, Class III (Group C) post provided he has passed the metriculation or equivalent examination from a recognised Board or University and has also to his credit the three years of completed service in Group D post. Since the petitioner qualified the above said conditions, Therefore, he requested the respondent to promote him to a Class III post. At that time 12 posts of LDCs including two posts for SC quota were lying vacant.

2. Khadi and Village Industries Commission, Bombay (to be referred as KVIC henceforth) Head Office issued/circulated the standing order No. 1536 dated 06.06.1996 superseding/modifying the earlier standing orders relating to the appointment of Class-IV employees to the post of LDC and added the following third guideline:

iii) The Group "D" employee should have proficiency in typing with required minimum speed of 40 w.p.m. even to be eligible for the post of LDC for which

typing test shall be conducted departmentally.

The petitioner appeared for type test but could not qualify. The type test was required to be passed within 2 years and three chances were to be availed by the applicant/candidate. It was also stipulated that in case the petitioner has crossed the age of 45 years, he could be exempted from qualifying the type test. The petitioner again appeared in type test on 21.08.96 but he could not qualify.

3. He again requested that he should be permitted to appear in the type test. The Manager, Khadi Gramadyog Bhawan (to be referred as KGB henceforth) replied that no sanctioned post of LDC was lying vacant. The petitioner sent another representation dated 25.09.1997. The Grievance Officer of KVIC wrote to Director(Marketing) KVIC, Mumbai, that the grievance of the petitioner should be looked into vide letter dated 25.09.1998. The petitioner also learnt that a letter had been sent by Director Marketing, KVIC, Mumbai in the month of March, 1998 to the Manager KGB, New Delhi, to look into the grievances of the petitioner. Deputy Director(Marketing), KVIC, Mumbai wrote a letter to the Manager of KGB, New Delhi where it was stated that KVIC had no objection if the petitioner was asked to appear for type test. The petitioner appeared for type test on 09.08.1999. Petitioner qualified the type test.

4. Vide letter dated 12.08.1999 Manager, KGB, New Delhi wrote to the Director, Marketing, KVIC, Mumbai, that the petitioner had qualified the type test held on 09.08.1999 and he fulfilled all the other conditions of eligibility for promotion to the post of LDC. The permission was sought by Manager KGB from Director Marketing for promoting the petitioner to the post of LDC. It is explained that as a matter of fact no such permission was required to be sought as the Director/Manager KGB, New Delhi, was competent to make promotion of the petitioner from the post of Peon to LDC. Vide letter dated 12.10.99 sent by Director Marketing to the Manager, KGB, New Delhi an information was sought regarding the details and particulars of the petitioner for promotion and also the information regarding availability of the vacant post. Manager, KGB, New Delhi complied with the directions and supplied the requisite information. Request made by the petitioner to Senior Officer including Manager KGB fell on deaf ears. Petitioner received a copy of letter dated 24.10.2002 sent by Director, KGB, to Deputy C.E.O.(Marketing), KVIC, Mumbai, wherein it was requested that the request of the petitioner may be considered sympathetically and urgently. Service book and personal file of the petitioner were sent by the office of Directorate of Marketing, KVIC, Mumbai to the Manager, KGB, New Delhi, for completing the formalities regarding the promotion of the petitioner. Since the needful was not done, Therefore, the petitioner submitted his grievance before the Secretary of Khadi Gramadyog Bhawan Kamgar Manch (the Union), on 04.07.2005, which sent a letter to the Commissioner of Khadi and Village Industry, Mumbai, but no reply was received. A registered notice dated 15.07.2005 was sent to the respondent. Vide reply dated 25.07.2005, the petitioner was informed that the matter is still pending for approval before the

headquarter of KVIC at Mumbai and the promotion of the petitioner would be made only after the receipt of approval from the head office.

5. In the meantime, the office order dated 20.04.2005 was issued by Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), wherein it was specifically ordered in Clause (iii) that the mode of recruitment for the post of LDC in CSCS is changed by way of 70% by promotion of Group D staff and 30% through limited departmental competitive examination for Group D staff. Thus, from the date of the said office order dated 20.04.2005, no scope for recruitment to the post of LDC by direct recruitment method was left. Under these circumstances, the instant writ in the nature of mandamus directing the respondent to promote the petitioner to the post of LDC/Salesman-III w.e.f. 1994 or from any other subsequent date with all consequential benefits was filed before this Court on 08.02.2006.

6. The respondents contended that the present petition is not maintainable because the petitioner has not acquired any right of promotion. Mere selection or merely being eligible, would not clothe the petitioner with any actionable right. The post of LDC is a post of direct recruitment quota as per the directions of the head office at Mumbai. The Govt. of India has banned the filling up of direct recruitment post since 1999. The said ban is still continuing. The matters related to appointment or promotion, demotion, or to take disciplinary action or any other policy are controlled by head office of KVIC at Mumbai.

7. I have heard the counsel for the parties. The learned Counsel for the respondent did not pick up any conflict with the facts of this case. He, however, half-heartedly argued that since the promotion of post was banned in the year 1999, Therefore, the petitioner could not be promoted. He has also submitted office memorandum no. 7(3)/E(Coord)/99, Government of India, Ministry of Finance, Department of Expenditure, dated 05.08.1999. Points no. 1 and 2 of the office memorandum are germane to the present controversy, which are reproduced as here under:

(1) Ban on creation of Plan and Non-Plan posts

The existing ban on creation of Non-Plan post will continue and should be strictly enforced. Any unavoidable proposals for the creation of plan posts including Group "B", "C" and "D" posts shall continue to be referred to the Ministry of Finance (Department of Expenditure) for approval.

(2) Ban on filling up of vacant posts

Every Ministry/Department shall undertake a review of all the posts which are lying vacant in the Ministry/Department and in the attached and subordinate office, etc. in consultation with the Ministry of Finance(Deptt. of Expenditure) as will ensure that the review is completed in a time bound manner and full details of vacant posts in their respective Ministries etc., are available. Till the review is completed no vacant posts shall be filled up except with the approval of the

Ministry of Finance(Department of Expenditure).

He opined that in view of this memorandum the respondent could not promote the petitioner.

8. Instead of coming to the point the learned Counsel for the respondent tried to stretch the thinks a bit far. The respondents have tried to overcharge the importance of the above said memorandum dated 05.08.99. I have thoroughly gone through the above said memorandum. It nowhere bans the promotions. The respondents are trying to make bricks without straw. It is difficult to fathom as to why the petitioner was not promoted. No lucid Explanation is forthcoming. It appears that the petitioner was not promoted without any rhyme or reason. He should have been promoted in the year 1999. The subsequent order dated 20.4.2005 does not put a crimp in his promotion. I, Therefore, allow the writ petition with costs of Rs. 5000/- and direct the respondents to promote the petitioner to the post of LDC / Salesman-III with immediate effect i.e. from the date of announcement of this judgment.