

(2020) 11 CAT CK 0008

In the Central Administrative Tribunal

Case No : Original Application No. 2952 Of 2018, Miscellaneous Application No. 14 Of 2019, 291, 385 Of 2020

Umesh Kumar & Others

APPELLANT

Vs

New Delhi Municipal Council (NDMC) & Others

RESPONDENT

Date of Decision : 03-11-2020

Acts Referred:

Citation : (2020) 11 CAT CK 0008

Hon'ble Judges : L. Narasimha Reddy, J; Mohd. Jamshed, Member (A)

Bench : Division Bench

Advocate : H.P. Chakrovorty, Vaibhav Agnihotri

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J

1. The applicants were working as Malis and in other categories, in the New Delhi Municipal Corporation (NDMC). On 07.07.2010, a circular was

issued, proposing to fill up the post for promotion to the post of Choudhary. The eligibility criteria was also indicated. The applicant and various others

took part in the process and in September, 2011, a list of 109 Malis and equivalent category of successful candidates was prepared. The applicants

figured at various places after Serial No.72.

2. It is stated that initially the orders of promotion were issued to six persons and thereafter, the promotions were made intermittently, upto Sl. No.31,

and at a time when the applicants were about to be considered for promotion, the respondents issued an OM dated 09.07.2018 proposing to conduct

selections for the post of Choudhary, once again.

3. The applicants contend that once they were declared successful in the written

test in the year 2021, and included in the panel, the respondents are under obligation to operate the same till the panel gets exhausted, and on this basis, they challenge the impugned OM dated 09.07.2018.

4. The respondents filed a detailed counter reply opposing the O.A. It is stated that the life of the panel is only one year. It is also stated that certain promotions beyond one year from the date of preparation of the panel were made on the basis of the orders passed by the Hon'ble High Court of Delhi. It is further stated that the selection process on the basis of the impugned order was complete and the panel was prepared on 30.10.2018.

According to the respondents, a panel prepared cannot be operated indefinitely and the selection needs to be conducted from time to time, so that the persons, who get qualified in the meanwhile, are also provided with an opportunity.

5. The applicants filed a rejoinder to the reply. According to them, the selection was made much beyond one year by the respondents on their own accord and the various points urged by the respondents are without any legal force.

6. We heard Mr. H.P. Chakrovorty, learned counsel for applicants and Mr. Vaibhav Agnihotri, learned counsel for respondents, at length, through video conferencing.

7. The facility of promotion for the post of Choudhary exists in the Corporation for the feeder category of Mali and equivalent posts. The selection process was commenced through Circular dated 07.07.2010. The relevant portion of the circular reads as under:-

â??CIRCULAR

Application in the following proforma, are invited from persons working as Mali, Malies, Mali cum Chowkidar, Hedgemen, Single Bulkman, and

...chiefmen in Hort. Deptt. in the regular cadre for the post of Choudhary in the scale of Rs. 3050-75-3950-4590 (5th CPC) and revised PB-1, Rs.

5200-20200 + Rs. 1900/- Grade Pay (6th CPC) possessing the following qualification:-

1. He should be able to read and write Hindi in order to take attendance of labour and prepare daily report.

2. He would have completed 10 yrs. Service as on 31-07-2010.

3. He should qualify a Trade Test to be conducted.

FORM FO APPLCATION FOR THE POST OF CHOUDHARY.

1. Name (IN BLOCK LETTERS)

2. Father's Name

3. Designation and Scale of pay

4. Employee Code No.

5. Date of appointment in the present cadre

6. Date of appointment in NDMC

7. Educational Qualifications

8. Whether belong to SC/ST

(if so add the photocopy of certificate)

9. Division and place of duty Where at present working Only those candidates will be considered for Trade Test & placed on the panel against whom

there is nothing adverse in the record and no enquiry is pending in the vigilance Deptt. Last date of receipt of application through the concerned HOD

is 23-07-2010. No application will be entertained after the expiry of the last date.

8. The applicants and quite large number of other employees responded and thereafter, a list of 109 successful candidates, as per the seniority,

who have qualified in the written examination, interview and trade test, was published in September, 2011.

9. Initially, the orders of promotion were issued to the selected persons against the available vacancies. It appears that the litigation ensued before the

Tribunal as well as Hon'ble High Court. In OA No. 727/2014, this Tribunal passed an order on 15.12.2014 directing that the respondents shall take

steps in accordance with the OM dated 10.03.2014 wherein it was decided to operate the panel beyond one year, as a onetime measure, to fill the

vacancies available as on that date. As a result, the employees in the panel up to Sl. No.31 came to be promoted. Thereafter, the respondents issued

the impugned circular dated 09.07.2018.

10. In case the applicants were of the view that they were entitled for the benefit of relief on par with applicants in OA No.727/2014, they were

supposed to pursue the remedies accordingly. Till the impugned circular was issued on 09.07.2018, the applicants did not make an effort. In this OA

also no interim order was passed. The result is that the selection process was undertaken and a panel was prepared on 30.10.2018 following the prescribed procedure. It is thereafter that an interim order was passed in this OA and the said panel could not be operated.

10. The respondents have clearly stated that the life of the panel is only one year. The operation thereof, beyond one year was on the basis of the circular issued, duly taking into account, the special circumstances, followed by the orders passed by this Tribunal. Once a selection process takes place, curtain needs to be drawn, so that the vacancies, that arise thereafter, are available for next batch of persons. The panel cannot be operated unendingly for years together. If that is done, the employees, who get qualified in the meanwhile, lose opportunity. At any rate, the panel can be operated only till the next selection process commences. Conversely, the subsequent selection process cannot be stalled only for the purpose of accommodating all the persons, who are included in the panel prepared in the earlier round of selection.

11. It has already been mentioned that the operation of the panel prepared in the year 2011 was mostly on the strength of the orders passed by the Tribunal. Once a panel is prepared on 30.10.2018, the one prepared in the year 2011 lapses and there is no way, that it can be operated. It is not the case of the applicants that anybody, who is junior to them in the panel, was promoted. Assuming that the respondents have wrongfully operated the panel, that cannot constitute any basis for the applicants to claim parity.

12. We do not find any merit in the OA. It is accordingly dismissed. Interim order, if any, shall stand vacated.

13. Pending M.As., if any, shall stand disposed of. There shall be no order as to costs.