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Central Administrative Tribunal, Principal Bench

Original Application No. 725 of 2002

New Delhi, this the 28th day of November, 2002

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. V.K. Majotra, Member (A)

Ram Kartar,
Ex-Peon,
Sales Tax Department
Village Pandwala Khurd,
PO Pandwala Khurd,
Delhi-43

....Applicant

(By Advocate: Shri S.C. Saxena)

Versus

1. The Secretary (Services)
(Services-II Department)
Government of NCT Delhi, Players Building,
I.T.O., New Delhi

2. The Commissioner
Sales Tax Department
(Establishment Branch)
Government of NCT, Bikri Kar Bhawan,
ITO, New Delhi

....Respondents

(By Advocate: Shri Vijay Pandita)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

Applicant Ram Kartar was a Peon in the National Capital Territory of Delhi. By virtue of the present application, he seeks a direction that he should be promoted as a Lower Division Clerk (LDC) from the date his junior Shri Ram Karan had been so promoted, with consequential benefits of pay and pension.

2. Learned counsel for the applicant had contended that the applicant was not considered for promotion while his juniors had been so promoted and therefore, a valuable right of his had been lost. As against this, respondents' plea was that the present application is highly belated and is barred by time. In addition to that, learned counsel

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for the respondents asserted that the applicant had never represented earlier in this regard that he should be promoted as an LDC and further that as per the recruitment rules, he had not passed the type test.

3. So far as the contention that application is barred by time, our attention has been drawn towards the decision of this Tribunal in O.A.1604/2001 decided on 4.7.2001. As is apparent from perusal of that order passed by the Tribunal, it is clear that applicant had earlier filed the O.A. which was disposed of directing the respondents to consider the representation of the applicant. Therein, question of delay had come up for consideration and this Tribunal had held that there was no delay in institution of the application and delay, if any, too was condoned. The operative part of the same reads:

"M.A. No.1355/2001 has been submitted for condonation of delay. We find that the respondents had by their order of 21.9.1999 called for vigilance reports and the impugned order of promotions has been issued on 29.6.2000. Applicant had earlier instituted OA No.1424/2001 which was disposed of by granting liberty to him by an order of 1.6.2001. Applicant has instituted the present OA on 2.7.2001. As such there is apparently no delay in instituting the present OA. However, the MA is granted and delay, if any, is condoned."

At this stage, therefore, it is improper for the respondents' counsel to raise such a plea which has been adjudicated by a Bench of this Tribunal.

4. As already pointed above, respondents' contention has been that while the applicant was in service, he never

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represented and, therefore, his case for promotion could not be considered. It was pointed that if the name of the applicant was not there in the seniority list, the respondents cannot share the blame.

5. We have no hesitation in rejecting the said contention. As a model employer, it is the duty of the respondents to consider the cases of all the employees in accordance with rules and regulations. It is the duty of the respondents to prepare the seniority list and act fairly rather than to compel every employee to rush to this Tribunal or keep representing time and again. When the respondents had failed to perform their duty, it is improper for them to insist that firstly a representation must be put forward before a relief due to a person can be granted. Thus we have no hesitation in negating such a plea.

6. In exercise of the power under Article 309 of the Constitution, the Delhi Administration has framed Delhi Administration Subordinate Ministerial/Executive Service (Second Amendment) Rules, 1971 on 16.12.71. It reads -

"(1) All vacancies in the grade IV (Executive) and 90% of the vacancies in Grade-IV (Ministerial) shall be filled by direct recruitment by open competitive examination to be held in such manner as may be prescribed by the Chief Secretary, from time to time by separate orders, and 10% of the vacancies in any calendar year, in Grade-IV (Ministerial) by promotion from Class IV employees having put in at least 5 years' regular service in the class, in the manner specified in sub-clause '2-A'. Unfilled vacancies would not be carried over to the next year.

(2-A) Selection would be made on the basis of

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merit to be determined through a departmental examination confined to such Class IV employees who fulfil the requirements of the minimum educational qualifications viz. Matriculation or equivalent, in such manner as may be prescribed by the Chief Secretary, from time to time by separate orders. The maximum age limit for this examination would be 45 years (50 years for Scheduled Caste/Scheduled Tribes employees). The candidates selected by this method shall be required to pass a test in typewriting at the speed of 30 w.p.m. in English or 25 w.p.m. in Hindi during the period of probation, unless exempted by the Administrator of Delhi."

7. It flows from the aforesaid that 10% of the vacancies in Grade-IV (Ministerial) are reserved/meant for promotion from Class-IV employees. If the concerned employee fulfils the minimum educational qualification and is within the age limit prescribed above, he could well be promoted but thereafter, he has to pass a type test at a particular speed unless it is exempted by the Administrator. If the junior of the applicant has since been promoted, a corresponding right accrues to the applicant to be considered for promotion in accordance with the rules referred to above.

8. Resultantly we allow the application and direct that respondent no.1 within the next three months from receipt of the certified copy of the present order, would consider the case of the applicant in terms of the rules quoted above, if he fulfils the educational qualification, the age qualification or any other requirement under the rules. He should be promoted from the date his junior has been promoted. A speaking order in this regard should be

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passed.

9. However, if any promotion is given from the back date, it would be notional and arrears would be confined only to 38 months before filing of the present application.

V.K. Majotra

(V.K. Majotra)
Member (A)

V.S. Aggarwal

(V.S. Aggarwal)
Chairman

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