



**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA No. 1637/2014

New Delhi, this the 14th day of January, 2020

**HON'BLE MRS. JUSTICE VIJAY LAKSHMI, MEMBER (J)
HON'BLE MR. PRADEEP KUMAR, MEMBER (A)**

1. Sh. Raj Kumar (Since expired)

1/1 Smt. Rajni (W/o Late Sh. Raj Kumar
 1/2 Sh. Ravi Mumar S/o Late Sh. Raj Kumar
 1/3 Sh. Pradeep Kumar S/o Late Sh. Raj Kumar
 1/4 Sh. Ankit Kumar S/o late Sh. Raj Kumar
 R/o H. No. 1863, Gali-Ahari Gayan, Malika Ganj, Delhi-7
2. Sh. Suresh Kumar

Age: 61 Designation: SFW
 S/o Sh. Surat Singh,
 R/o- Vill-Chatia Aulia,
 Distt. Sonipat, Haryana.
3. Sh. Jetender Kumar

Age: 55 Designation: FW
 S/o Sh. Baldev Raj Sharma,
 R/o B-263, Gali No. 3, Majlish Park,
 Delhi- 110033
4. Sh. Ram Mehar,

Age: 57 Designation: SFW
 S/o Sh. Mange Ram,
 R/o- 719, A/2, Rani Das Nagar, Narela,
 Delhi-40
5. Sh. Om Prakash

Age: 52 Designation: FW
 S/o Sh. Anil Lal,
 R/o- 10-A, Tamoor Nagar, Delhi.
6. Sh. Ramesh Chand,



Age: 56 Designation: SFW
 S/o Sh. Deep Chand,
 C/o Civil Lines Zone,
 Rajpur Road, Delhi

7. Sh. Anand Prakash

Age : 61 Designation: SFW
 S/o Sh. Bhagwan Shay,
 R/o A-254, Bunker Colony
 Ashok Vihar, Phase-IV, Delhi

8. Sh. Krishan Kumar

Age: 50 Designation : FW
 S/o Sh. Ram Dhan
 R/o Vill & P.O. Mahara, Distt. Sonipat,
 Haryana

9. Sh. Mahipal,

Age: 48 Designation: FW
 S/o Shri. Rampal,
 R/o 10646/6, Pratap Nagar,
 Delhi-7

10. Sh. Bhagat Singh Rawat,

Age : 53, Designation: SFW
 S/o Sh. Late Govind Singh Rawat
 R/o 646-A, Gali No. 12, Bhagat Singh
 Colony, Karawal Nagar, Delhi.

11. Sh. Mahaveer Singh,

Age : 51 Designation: FW
 S/o Sh. Mool Chand
 R/o B-11, Gali No. 3
 Harijan Basti, Karawal Nagar,
 Delhi- 94

12. Sh. Jai Prakash,

Age: 49 Designation: FW
 S/o Sh. Veer Sen
 R/o H. No. 671, Gali No. 9

L-1 Sangam Vihar, Delhi



Sh. Ram Khalidi
 Age: 63, Designation: FW
 S/o Sh. Nathu Ram
 R/o A-146, Devali Ext. Delhi-62

14. Sh. Jagvir Singh
 Age: 56 Designation: SFW
 S/o Sh. Dharam Singh
 C/o MCD Office,
 Rohini Zone, Delhi

15. Sh. Ravinder Singh
 Age : 53, Designation: SFW
 S/o Sh. Sardar Singh
 R/o Vill. & Post- Nangal Kasha,
 Distt. Sonepat, Haryana

...Applicant

(By Advocate: Sh. H. P. Chakravorty with Sh. A. K .Bhakt)

Versus

1. M.C.D., Through its Commissioner
 Town hall, Delhi

...Respondents

(By Advocate : Sh. R. K. Jain)

ORDER (ORAL)

BY HON'BLE MR. PRADEEP KUMAR, MEMBER (A):

1. The applicants herein were recruited in Group D as Maleria Beldar and Jamadar at various points of time in the period 1984 to 1990, and they were working under



the respondent MCD. As per the then applicable recruitment rules, they were recruited on the basis of minimum qualification of 8th pass.

The next promotion was to the post of Malaria Supervisor, for which the recruitment rules were issued by the respondent MCD vide its Corporation Resolution No. 225 dated 04.06.1974. This RR provided that 50 per cent of post of Malaria Supervisor were to be posted by direct recruitment and remaining 50 per cent were to be filled by promotion from the categories of Anti Malaria Beldar & DDT Beldar and were to be filled by various methods. Specified experience was one year for matriculates and ten years in case of middle pass candidates (i.e 8th Pass).

2. Subsequently, the recruitment rules were modified on 12.08.1985, wherein the promotee quota was reduced to 5 per cent and the essential qualification prescribed for Malaria Jamadar was three year regular service, who have passed middle class from a recognised University, Board, school or equivalent.

The Tribunal notes that with this amendment, thought promotee quota was reduced, yet the Malaria



Jamadars could still aspire for promotion to the post of Malaria Supervisor, which was now re-designated as Assistant Malaria Inspector (AMI).

3. It appears that there was some representation against such reduction for promotion quota from 50 per cent to 5 per cent. This was taken into account where recruitment rules were modified and notified on 16.02.2010. This indicates that promotion quota for the post of AMI was increased to 30 per cent, failing which these were to be filled up by direct recruitment. For promotion, the eligibility requirement specified on 16.02.2010 was " Malaria Jamadar and Malaria Beldar with 11 years regular service in the Grade Pay of Rs. 1800 who have passed 10th under 10+2 system or higher secondary system from recognised university/board/school or equivalent and having Sanitary Inspector Diploma".

4. The applicants are aggrieved that while promotion quota was enhanced from 5 per cent to 30 per cent, the education qualification of Sanitary Inspector Diploma was also specified, which is much beyond the minimum qualification of 8th Pass when they were



recruited. Since, applicants were recruited as Group D when the minimum qualification was 8th Pass, the amended RR of 16.02.2010, has practically eliminated any chance of promotion of the applicants. With this, the promotions have effectively come to a halt except in respect of those departmental candidates who might have acquired the qualification for Sanitary Inspector Diploma while in service.

5. The applicants are aggrieved with this change of minimum educational qualification for 30 per cent promotion quota and challenged the said recruitment rules to this extent by filing the instant OA.

6. Per contra, the respondents opposed the OA. It was brought out that with the change of Technology and modernisation in working, higher qualification is essential for promotion to the post of Assistant Malaria Inspector. Accordingly, the recruitment rules of the 16.02.2010 prescribed this qualification of Sanitary Inspector Diploma for promotion as well as Direct Recruitment.

It was further pleaded that the issuance of recruitment rules and what is contained therein, is a



policy decision which should not be interfered by the Tribunal as has also been held by the various judgements by higher courts.

It was further brought out that some of the Malaria Beldar & Jamadars had actually acquired the qualification of Sanitary Inspector Diploma and they had already been promoted also as Assistant Malaria Inspector. Thus, those who did not acquire this qualification, cannot be promoted.

7. The applicants also drew attention to a judgement by the Tribunal in OA No. 118/2010 before the Principal Bench where the RR of 16.02.2010, came to be examined and following directions were passed on 29.01.2010:-

“9. Though we understand the anxiety and urgency of the respondents to go ahead with appointment in the cadre of AMI due to forthcoming of Commonwealth Games, yet the right of the applicants which is a fundamental right cannot be ignored and overrides any other exigency.

10. Resultantly, we dispose of this TA though giving liberty to the respondents to fill up 70% quota by direct recruitment in AMI cadre, yet for 30% quota, we direct respondents to re-examine the claim of the applicants and without insisting the qualification or by way of further amending the recruitment regulations, consider their claim for promotion within a period of one



month from the date of receipt of a copy of this order.

11. *It goes without saying that the respondents till then are restrained from filling up 30% quota meant for promotion. Though provisionally the respondents may fill up 70% quota as per the purposed recruitment regulations or on draft recruitment regulations but ultimately it will be governed by the recruitment regulations to come up keeping in light our observations and on re-examination. No costs.”*

This judgement was in turn of challenged by filing a Writ Petition No. 7649/2010 before the Hon'ble High Court of Delhi wherein judgement was pronounced on 14.05.2013 and following directions were passed :-

“32. *The Tribunal could not have restrained MCD to fill up the vacant posts merely because an amendment was proposed to the Recruitment Rule, but we need not trouble ourselves any further on the subject because as of today, the amended Recruitment Rules have come into force.*

x x x

“35. *The petition stands disposed of permitting the petitioner to fill up the post of Assistant Malaria Inspectors as per the current Recruitment Rules and simultaneously reserving liberty for the respondents to challenge the Recruitment Rules as amended in the year 2010, but advising them to weigh the option whether or not to challenge the amendment keeping in view the benefits which have accrued to them firstly under the Assured Career Progression Scheme and secondly under the Modified Assured Career Progression Scheme.”*



8. The respondents also drew attention to an earlier judgment by the Hon'ble High Court of Delhi in Writ Petition No. 2919/1999 in the case of Bhule Ram Sharma & Ors. Vs. Govt. of NCT of Delhi & Ors., decided on 24.04.2010. The amended RR of 16.02.2010 came under question in the sense that certain staffs were not promoted. The Hon'ble Court passed following directions:

“5. The respondent MCD is accordingly directed to, within three months of today, consider the petitioners for promotion under the Recruitment Regulations notified on 16th February, 2010. If the petitioners are eligible for promotion in accordance with the said Recruitment Regulations, the respondent MCD to, within the said three months, also promote the petitioners. However, if the respondent MCD, after considering within the time aforesaid, does not promote the petitioners and the petitioners are aggrieved from the decision to be taken by the respondent MCD within three months, the petitioners shall be entitled to apply afresh.

With the aforesaid directions, the petition is disposed of. No order as to costs. Copy of the order be given dasti to the counsel for the parties.”

9. Matter has been heard at length. Learned counsel Sh. H. P. Chakravorty represented the applicant and learned counsel Sh. R. K. Jain represented the respondents.



10. Promotion quota is prescribed in RRs to give certain promotional avenues to the employees who are already in service. This quota is even otherwise necessary to motivate the staff to work better and aspire for promotions. However, in keeping with changing needs and technology, the respondents have the liberty to prescribe the requirements and experience in the RRs and their amendments. The RRS are therefore, the basic document which normally need not be interfered. However, if RRS are amended in a manner so as to totally eliminate any chance of promotion to certain class of existing employees, who were otherwise having the eligibility for promotion as per unamended RRs, this cannot be called reasonable and calls for judicial intervention.

In the instant case, the applicants had avenue of promotion as per the RRs of 04.06.1974 as well as 12.08.1985, even though quota was reduced. However, the amendments carried out on 16.02.2010, have practically eliminated any avenue of promotion to these employees as a much higher qualification of "Sanitary Inspector Diploma" has been prescribed as an essential qualification even for promotion quota. This



was not the prescribed minimum qualification when such staffs were recruited. The amendment dated 16.02.2010 is therefore, held to be unreasonable to this extent and cannot be accepted.

11. In keeping with above and the spirit behind the judgement in OA No. 118/2010 and Writ Petition No. 7649/2010 by the Hon'ble High Court of Delhi (Para 7 supra) and in W.P No. 2919/1999 (Para 8 Supra), where a common thread runs that if certain part of RR is unreasonable, it can be agitated against, this Tribunal directs the respondents that the RRs need to be reviewed in respect of minimum essential qualifications for promotee quota. While providing a faster channel of promotion to such employees who may have acquired a higher qualification, is in order, it is essential that certain avenue of promotion is available to those also who still have the minimum qualification which was applicable when they were initially recruited and had the avenue of promotion till RRs were modified and have the requisite experience and are otherwise suitable. The respondents have liberty to allocate the promotee quota in these two channels.



12. In view of foregoing, the RR dated 16.02.2010, need to be reviewed and the respondents are directed to complete this exercise within a period of four months from now and notify the result of this exercise for information of all concerned. The case of promotion of departmental employees including applicants herein for the post of AMIs shall be considered thereafter within a further period of three months. Promotion already made and seniority acquired by them, shall not be disturbed in any manner. No costs.

(Pradeep Kumar)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

/pinky/