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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1074/01

Hon'ble Shri V.K.Majotra, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 16th day of May, 2002

- a) Canteen Mazdoor Sabha (Regd.)
Through its working President
Sh. S.P.Khugsal
548, Lodhi Road Complex
New Delhi - 110 003.
- b) Balam Singh Mehta
Wash Boy,
Ministry of Water Resrouces Canteen
Shram Shakti Bhawan
New Delhi - 110 001. ... Applicants
- (By Advocate: Sh. J.S.Rawat)

Vs.

- a) Union of India through
Secretary
Ministry of Personnel, Public Grievances
and Pensions,
Department of Personnel and Training
North Block
New Delhi.
- b) Union of India through Secretary
Ministry of Water Resources
Shram Shakti Bhawan
Rafi Marg
New Delhi.
- c) Inderveer Singh Dagar
Coupon Clerk
Ministry of Water Resources Canteen
SHram Shakti Bhawan
Rafi Marg
New Delhi. ... Respondents
- (By Advocate: Sh. S.Mohd. Arif)

O R D E R

By Shanker Raju, M(J):

Applicant No.(a) is a President of Canteen Mazdoor Sabha and Applicant No.(b) is working as Wash Boy and also member of the aforesaid Association, have impugned an order of the respondents dated 7.2.2001, whereby their representation was rejected against deputation of one Shri Inder Veer Singh Dagar, as well as OM dated 24.9.1998, whereby the post of Wash Boy

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has not been made a feeder cadre for promotion under 50% quota for the post of Junior Clerk (Coupon). Applicant has also assailed Recruitment Rules framed by the respondents and also an Office Memorandum dated 9.2.2000, wherein the applicants have been denied participation in the departmental competitive examination for promotion to Group 'C'.

2. Employees of Non-statutory Canteens and Tiffin Rooms functioning in Central Government Offices have been declared as Government employees. Applicant No.(b) had been working as Wash Boy with the respondents w.e.f. 1.2.1983 and having qualification of Matric. The services of the applicant No.(b) have been utilised from Wash Boy to Manager. Prior to the implementation of the Fifth Central Pay Commission the pay scale of Wash Boy, Bearer, Tea/Coffee Maker were same being Group 'D' posts. As per the recommendations of Fifth Central Pay Commission contained in Para 55.22 the post of Safaiwala and Wash Boy remained in the pay scale of Rs.750-940 whereas the post of Bearer and Tea/Coffee Maker have been upgraded to the post in the pay scale of Rs.775-1025 as these are promotional posts for Wash Boy and Safaiwala. In pursuance thereof OM dated 24.9.1998 was issued by the respondents revising the pay scales and also laying down the criteria for filling up 50% of the posts in Group 'C' as Clerks for only Matriculates among the Bearers and Tea/Coffee Makers. While Sh. Rajesh Kumar Saini was appointed as LDC on 10.6.1998 despite no post of LDC in Canteen Cadre. Respondents have framed recruitment rules, wherein for Group 'C' post of Junior Clerk (Coupon) the feeder

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cadre was among Tea/Coffee Maker, Bearer with at least six years regular service in the grade. The applicants made representation to the respondents to appear in the Clerks Grade Examination but the same was refused by referring to OM 9.2.2000, wherein it has been decided that Group 'D'/Group 'C' Canteen employees cannot be permitted to take the Departmental Competitive Examinations for promotion to the post of LDC in CSCS primarily on the ground that they can seek promotion under direct recruitment quota as well there exists a Scheme for accelerated promotions for them. One of the representations made against the deputation of an outsider has been tendered down by the respondents impugned herein.

3. Shri J.S.Rawat, learned counsel for the applicants contended that the recruitment rules framed are unconstitutional and violative of Articles 14 and 16 of the Constitution of India as the Wash Boy ought to have been considered for the Group 'C' post among other employees of Group 'D' posts, i.e., Bearer and Coffee/Tea Makers. By according the benefits for promotion to the Bearers and Tea/Coffee Makers which amounts to promotion within Group 'D' and as their pay scale was identical before Fifth Central Pay Commission, the OM dated 24.9.1998 is arbitrary as the Wash Boy was left without any promotional avenue in his entire service career.

4. It is also stated that denial of participation in the Departmental Competitive Examination for Group 'C' posts is also arbitrary. They also contended that by appointing one Shri Inder

Veer Singh Dagar, who is from office staff, in the departmental canteen on deputation basis, their promotional avenues arbitrarily curtailed. The respondents should have resorted to deputation among the canteen staff. As the applicant No.(b) was eligible in all respects and belongs to the feeder cadre for Group 'C' post, he cannot be denied consideration for promotion to Group 'C'.

5. On the other hand, respondents have denied the contentions of the applicants and Shri S.M.Arif, learned counsel contended that in the interest of the organisation and in the interest of work the duties and responsibilities of the post of Manager Grade-II were distributed amongst the existing staff in the Departmental Canteen. Shri R.K.Saini, LDC was provided to the Departmental Canteen to tide over the work in the absence of Manager Gr.II, and was to provide an additional hand and it no way adversely affected the promotional prospects of any individual in the Departmental Canteen. Since Sh. Saini has been withdrawn from the Canteen on 18.2.2001, the grievance of the applicants no more survives.

6. It is contended that in the Recruitment Rules, Wash Boys and Safaiwalas having one year regular service in the respective service, are eligible for promotion as Bearer and further the Recruitment Rules for the post of Tea/Coffee Maker are separately being revised to provide Wash Boy/Safaiwala with at least one year regular service in the respective grades as eligible for promotion as Tea/Coffee Maker. It is further stated that as no

post of Tea/Coffee Maker has fallen vacant since 1.10.1991, the present amendment in the Recruitment Rules has not at all affected the promotional prospects of Wash Boys. It is denied that the rules are ultra-vires and in violation of the Articles of 14 and 16 of the Constitution of India.

7. It is also stated that the employees of Canteen are eligible to be placed in the next higher scale under the ACP Scheme introduced by the Fifth Central Pay Commission. Wash Boys are not eligible for direct promotion to the post of Junior Clerk (Coupon) and they have adequate promotion avenues to the post of Bearer and Tea/Coffee Makers. As the respondents have accepted the recommendations of the Fifth Central Pay Commission, the educational qualifications have already been prescribed for different posts.

8. As regards the Limited Departmental Competitive Examination for clerical cadre and having regard to the promotional avenues available to the Canteen Employees, it has been decided that Group 'D' and 'C' Canteen employees cannot be permitted to take the Limited Departmental Competitive Examinations for promotion to the posts of LDC in CSCS. These employees are eligible to take examination as departmental candidates and avail age relaxation as per Rules in force for recruitment to the posts which are filled up on direct recruitment basis. A Matriculate Wash Boy with one year regular service in the grade is eligible for promotion as Bearer and

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Tea/Coffee Maker and further six years service as Bearer and Tea/Coffee Maker entitles him to be eligible for promotion as Junior Clerk (Coupon).

9. As regards the appointment of Shri I.S.Dagar (supra) as Junior Clerk (Coupon), it is stated that as per the Recruitment Rules, the post of Junior Clerk (Coupon) under 50% by quota for promotion, is not filled up, the same is to be filled up on deputation basis. The deputation is to be effected from the officials of the Central Government holding analogous posts on regular basis; or with at least six years of regular service in the pay scale of Rs.2610-3540 with qualification of Matriculation. It is also submitted that one vacancy of Junior Clerk (Coupon) arose under the promotion quota and that since none of the persons in the feeder categories were eligible, Shri Dagar was selected and he joined the post of Junior Clerk (Coupon), on deputation, on 1.1.2001, and after the expiry of this deputation period and on his repatriation, this post again be available for filling by promotion.

10. Applicants, in their rejoinder, have reiterated their pleas and questioned the decision of the respondents and further contended that Group 'D' employees should not be promoted in Group 'D' but be considered as Group 'C'.

11. We have carefully considered the rival contentions of the parties and perused the material on record. Though, at the outset, we would like to observe that this application is not maintainable for

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multiple reliefs claimed which is not permissible under Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987 but having regard to the interest of justice, we proceed to dispose of this case on its merit.

12. The action of the respondents to deny the applicants' right to take departmental competitive examinations for the post of LDC in CSCS in Group 'C' cannot be found fault with. As the applicants have avenues for promotion in their set up therefore they cannot be considered for an additional promotional avenues in other cadres/streams. However, they are free to seek appointments to posts which are filled up on direct recruitment basis and also eligible for age concession/relaxation as well. This decision in no manner offends Articles 14 and 16 of the Constitution of India. The decision is rational and also has an object sought to be achieved of not to allow the applicants to be considered for an additional promotional avenues in other cadres despite having avenues for promotion in their own stream.

13. As regards the deputation by one Shri Dagar for a period of three years we find that the recruitment rules do contain a provision by which the 50% posts of Junior Clerks (Coupon) are to be filled up by promotion, failing which by deputation. As there was no eligible feeder cadre candidate, as per the recruitment rules, the respondents rightly resorted to the alternative clause of deputation. The aforesaid deputation is only for a period of three years and thereafter on repatriation of Shri Dagar,

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the post of Junior Clerk (Coupon) will be available for promotion to the incumbents in the Canteens, we do not find any legal infirmity in the action of the respondents.

14. The next grievance of the applicants is that no promotional avenues for Wash Boys have been created for the promotion as Group 'C' is concerned, we find that although the Wash Boys, Bearers and Tea/Coffee Makers had parity in the pre revised pay scales but on account of the recommendations of the Fifth Central Pay Commission in Para 55.22, as it has been recommended that the promotional post for Wash Boys was Bearer and Tea/Coffee Maker, the pay scales of these promotional post was upgraded without making any recommendations of Wash Boys.

15. On the strength of recommendations it has been accepted by the Government, the pay scales have been revised with a stipulation that the promotional avenues under 50% quota is among Matriculate Bearers and Tea/Coffee Makers. The respondents have acted in accordance with the recommendations of the Fifth Central Pay Commission. The contention that the Wash Boys have been left without any promotional avenues cannot be countenanced. The Recruitment Rules provides adequate promotional avenues for Wash Boys for their promotion to the post of Bearer and Tea/Coffee Maker and on completion of six years regular service, Wash Boy is eligible for promotion as Junior Clerk (Coupon). Apart from it, in view of the Assured Career Progression Scheme (ACP Scheme)

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recommended by the Fifth Central Pay Commission, the applicants are also entitled on upgradation subject to confirmation to the provisions of the Scheme.

16. The grievance that the applicants are not considered for further promotion cannot be countenanced. As after they have been declared Government employees on 1.10.1991, no post of Tea/Coffee Maker has fallen vacant, the present amendment in the recruitment rules as such has not adversely affected the promotional avenues of Wash Boys.

17. We held that the Recruitment Rules framed by the respondents are neither ultra vires nor offend Articles 14 and 16 of the Constitution of India. Applicants have not been discriminated in any manner by the action of the respondents which is in conformity with the legal parameters and being a policy decision which has not been proved to be malafide, no fault can be found with it.

18. In the result, and having regard to the aforesaid discussion, we do not find any merit in the present OA, the same is dismissed. No costs.

S. Raju
(Shanker Raju)
Member(J)

V.K. Majotra
(V.K. Majotra)
Member(A)

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