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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2241/2004

New Delhi, this the 7th day of MARCH, 2005

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

Gurbaksh Singh
Delhi Fire Service
Shankar Road Fire Station
New Delhi.

... Applicant

(By Advocate: Sh. Arun Bhardwaj)

Versus

1. Govt. of N.C.T. of Delhi
Through its Chief Secretary
5, Sham Nath Marg
New Delhi.
2. Chief Fire Officer
Delhi Fire Service (Hqrs.)
Cannaught Lane
New Delhi.
3. Principal Secretary (Home)
Govt. of N.C.T. of Delhi
5, Sham Nath Marg
New Delhi.

... Respondents

(By Advocate: Sh. Ajesh Luthra)

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ORDER

By Mr. Justice V.S. Aggarwal:

Applicant (Gurbaksh Singh) joined as Radio Technician. Due to increase in fire hazards and increasing population of Delhi, it had been decided by the Municipal Corporation of Delhi which was the governing body at that time to modernize the communication system of Delhi Fire Service and accordingly, the Department was taken over by Respondent No.1.


2. The applicant contends that Recruitment Rules for the post of Wireless Officer has been framed. It provided that method of recruitment shall be by promotion failing which by direct recruitment which has to be made from Radio Technicians with five years regular service in the Grade. The applicant was eligible for being considered for promotion to the post of Wireless Officer and is the senior-most Radio Technician. That on 1.3.1995, the applicant was entrusted with the current duty charge of the post of Wireless Officer. He was removed from it in the year 2004.



3. The grievance of the applicant is that respondents have not held the Departmental Promotion Committee meeting. The applicant continuous to work as Radio Technician.

4. By virtue of the present application, the applicant seeks a direction to the respondents to hold a Departmental Promotion Committee meeting for considering eligible Radio Technician for promotion to the post of Wireless Officer.

5. The application has been contested. It is not disputed that the post of Wireless Officer fell vacant in the year 1994 on the retirement of one Sh. B.L.Arora. The Department was taken over by the Government of NCT of Delhi from 10.11.1994. Respondents' plea is that the re-notification of Recruitment Rules of different posts is under process for finalization. Respondents further plead that the applicant is not affected financially as he has already been given the benefit under the Assured Career Progression Scheme from 9.8.1999. As soon as the Recruitment Rules are notified, the DPC can be convened.



6. The Recruitment Rules for the post of Wireless Officer had already been notified. It provided that persons can be promoted, failing which the direct recruitment method could be adopted. Radio Technician with five years regular service is eligible to be considered for promotion. It is not disputed that in face of the said Recruitment Rules, the applicant was eligible to be considered for promotion.

7. The learned counsel for the respondents contended that Recruitment Rules for the said posts are being re-drawn and as soon as the same are notified, the DPC meeting can be convened. He also relied upon the decision of this Tribunal in the case of **RAJENDER SINGH TOMAR & OTHERS v. GOVT. OF NCT OF DELHI & ANOTHER**, O.A.No.491/2000, decided on 29.3.2001. So far as the decision in the case of **Rajender Singh Tomar (supra)** is concerned, perusal of the order passed by this Tribunal indicates that the applicants therein had questioned the propriety of the application of amended Recruitment Rules for filling up of the vacancies that occurred prior to the amendment.

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8. In the present case before us, no such Recruitment Rules have been notified and, therefore, the ratio deci dendi of the decision in the case of **Rajender Singh Tomar (supra)** has little application to the facts of the present case.

9. The main controversy herein was as to whether when the new Recruitment Rules have not been notified, the respondents can defer from calling the Departmental Promotion Committee meeting or not. We do not dispute the right of the State to draft the new Recruitment Rules. If a conscious decision had been taken not to fill up the posts till the Recruitment Rules are notified, indeed, the recruitment has to be effected in accordance with the new Recruitment Rules but the position in the present case is totally different.

10. Department concerned was taken over more than 10 years ago by Respondent No.1. They have not held any DPC to consider the eligible persons for promotion. At this stage, again to tell the Tribunal that as soon as the Recruitment Rules are notified, they would take steps to fill up the posts as per the new

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Recruitment Rules, looks abundantly erroneous. The Rules are not being amended and at the risk of repetition, it is stated that more than 10 years have lapsed. A person has a right to be considered for promotion. It is unfair to ask him to wait for an indefinite period. In the present case, the posts even exist because the applicant was made to work against it on current duty charge. Consequently, the plea of the applicant, in the peculiar facts, to which we have referred to above, cannot be ignored.

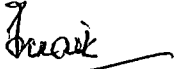
11. In that event, it was pointed that the benefit under the Assured Career Progression Scheme is being accorded to the applicant and he does not lose anything. We have no hesitation in rejecting the said contention, as the promotion under the ACP Scheme is not a regular promotion but it is a financial upgradation.

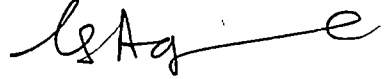
12. In the peculiar facts, therefore, we dispose of the present application with the following directions:

- a) The claim of the applicant should be considered for promotion to the next higher post of Wireless Officer.

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- b) Nothing said herein should be taken as an expression of opinion on the merits of the applicant's claim in this regard.


(S.K.Naik)
Member (A)


(V.S.Aggarwal)
Chairman

/NSN/