

21

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 2813/2004
NEW DELHI THIS 20th DAY OF JANUARY 2006

HON'BLE SHRI JUSTICE B.PANIGRAHI, CHAIRMAN
HON'BLE SHRI N D DAYAL, MEMBER (A)

Lakhan S/o Late Sh Bhujbal
R/o Type-II/66, New Campus,
Delhi College of Engineering,
Bawana Road, Delhi – 42.

.....APPLICANT

(BY ADVOCATE: SHRI K S Bhati with Sh. Sinha)

VERSUS

1. Govt. Of NCT of Delhi
Through Chief Secretary
2. Govt. of National Capital Territory of Delhi
Delhi College of Engineering,
Bawana Road, Delhi

.....RESPONDENTS

(BY ADVOCATE SHRI S.Q. Kazim with Sh. Falak Mohd.)

ORDER

BY HON'BLE SHRI N D DAYAL, MEMBER (A)

The applicant was appointed as Mechanic Grade –B on 27.4.1996 in Delhi College of Engineering under Government of NCT Delhi. He applied on 24.8.2000 for promotion to the post of Draughtsman which was lying vacant in the Mechanical Engineering Department of the College. However, having not succeeded in convincing the authorities in this regard, the applicant had filed OA 1541/2005 seeking appointment to the post of Draughtsman w.e.f. September 1999 when he became eligible, along with arrears as per rules. This OA was allowed to be withdrawn for the purpose of filing a fresh OA challenging the Recruitment Rules of 1967(RR 67) for the post of Draughtsman, particularly clause 11 there of. The present OA was therefore filed seeking quashing of clause 11 of the RR for the post of Draughtsman being alleged to be inconsistent with the legal developments after framing of the Rules in 1967, and the prayer made in the earlier OA.

7

2. However, the applicant filed M.A. 1739/2005 wherein he made the following submissions in para 4 and 5 thereof :-

- i) In the present OA respondents have filed a counter affidavit in which they have brought out that the Draughtsman Mechanic Grade 'A' have been re-designated as Senior Mechanic and the merger of two classes of Draughtsman Mechanic Grade 'A' and 'B' which was earlier made effective w.e.f 19.12.2003 has now been made effective from 25.5.1998 (Annexure II to the counter affidavit refers) vide their order dated 17.12.2004 . The earlier order of merger dated 19.12.2003 has been filed along with the OA as Annexure A-12 at page 52. Therefore, as per Rule 11 of the recruitment rules (Annexure A-1 to OA), the applicant shall be deemed to have completed three years in Mechanic Grade 'A' on 25.5.2001 and therefore at least from this date he is entitled to promotion to the post of Draughtsman along with all consequential benefits.
- ii) In the present OA the respondents have filed an additional affidavit recently in which they have brought out that recruitment rules for all the technical posts including the post of Draughtsman are being framed thereby indicating that despite preponing the date of merger from 19.12.2003 to 25.5.1998 , the respondents are not prepared to promote the applicant w.e.f. May 2001 as per the service rules of 1967 which are still in vogue.

3. He therefore, sought permission in the above M.A. for amending the prayer in the O.A. as under:

"In view of the facts and circumstances of the case the applicant prays for the following relief:

- i. Respondent No. 1 and 2 may kindly be directed to appoint the applicant to the post of Draughtsman with all consequential benefits w.e.f. 25.5.2001.

- ii. The respondents may kindly be directed to pay to the applicant the arrears of salary applicable to the post of Draughtsman as per rules.
- iii. To pay cost of litigation.
- iv. Any other relief deemed fit and necessary in the facts and circumstances of the case."

The respondents opposed the same by filing their counter in the MA but when the matter was taken up on 6.10.2005 they raised no objection and the M.A. was allowed keeping in view the reasons mentioned therein by the applicant.

4. Since the respondents had commenced the process for direct recruitment to the post of Draughtsman without considering the applicant for promotion, the Tribunal by interim order in OA 1541/2004 passed on 01.7.2004 directed that the process of recruitment may continue but the final appointment be not made till further direction of the Tribunal. This was reiterated on 24.11.2004 in the present OA and continued thereafter.

5. We have heard the learned counsel for both sides and perused the pleadings. Shri K S Bhati learned counsel for the applicant has directly come to the point and stated that the applicant is eligible for appointment to the post of draughtsman in terms of the existing RR-67 at Annexure A-I of the OA. He has taken us to the Rules and drawn attention to column 10 and 11 thereof which prescribe the method of recruitment and the grades from which it is to be made. These columns show that recruitment has been prescribed by promotion failing which by direct recruitment and in the case of promotion it is to be made from Mechanic Grade-A (Design and Drawing) with three years standing in the grade. It is stated that the applicant is eligible in respect of the two aspects relating to i) being in the grade of Mechanic Grade – A (Design and Drawing) and ii) having three years standing in this grade. To substantiate this claim the Ld counsel has first referred us to the OM dated 24.4.1986 of the College at Annexure A-II which reveals that Ministry of Human Resources & Development, GOI had sanctioned the revision of pay scale in respect of Mechanic Grade – A and B combining them into one

revised scale of Rs.425-640/- and this revised scale has been made effective from 22.4.1985 thereby removing the anomaly in this regard. Such merger of Mechanic Grade A and B was also recommended by the Dr. T D Sachdeva Committee which was formed by the Principal of the College to examine the existing staff structure and make recommendations. Subsequently the V CPC in its recommendations contained in para 104.:63 had also observed as follows:

“Presently the cadre of technical supporting staff in Delhi College of Engineering includes post of Mechanic, Grade A and Mechanic Grade B in the identical scale of Rs.1400-2300, despite the latter being the feeder post for the former. The duties of these posts are similar. Accordingly we recommend that the posts of Mechanic Grade A and Mechanic Grade B may be merged and redesignated as Senior Mechanic in the scale of Rs.1400-2300.”

6. It is submitted that ultimately by order of Govt. of NCT of Delhi dated 19.12.2003 at Annexure A-12 (Page 52) the posts of Mechanic Grade A and Grade B were formerly merged and re-designated as Mechanic Grade A in the pay scale of Rs. 4500 – 7000/-. Thereafter another order dated 17.12.2004 was issued with approval of the Finance Dept in partial modification of the order dated 19.12.2003. This order appears at Page 31 of the counter reply filed in the present OA before amendment of the prayer vide MA 1739/2005. In this order the present post of Mechanic Grade A has been re-designated as Senior Mechanic in the same pay scale i.e. Rs. 4500-7000/-. Further, it is mentioned therein that the date of implementation of the merger and the re-designation is 25.5.1998 i.e. the date of issue of GOI DoPT OM dated 25.5.98. However, this was made subject to the condition that the RR will have to be amended so as to provide for promotions from the feeder grade to the merged grade according to the revised qualifying service issued vide this office order dated 19.12.2003.

7. In the above back ground the learned counsel for the applicant has submitted that even though merger of Mechanic Grade A and Mechanic Grade B by way of revised common scale had been promulgated as far back as 24.4.1986 to be effective from 22.4.1985, the formal order of merger was passed on 19.12.2003 also stipulating that the merged posts of Mechanic Grade A and B were re-designated as Mechanic Grade A in the pay scale of

Rs.4500-7000/-. It is therefore, urged that since the date of effect of this order was preponed to 25.5.1998 by order dated 17.12.2004, the applicant having become Mechanic Grade A by virtue of merger of Mechanic A and B Grades had also become eligible in respect of the condition regarding three years standing in the grade as on 25.5.2001. Thus it is prayed that the respondents be directed to promote the applicant to the post of draughtsman which has been available on 25.5.2001 with all consequential benefits as well as the arrears of salary applicable to the post as per rules.

8. Shri S.Q. Kazim learned counsel for the respondents has opposed the claim of the applicant and submitted that the RR-67 cannot be regarded as valid after the merger of Mechanic Grade A and B and their re-designation as Senior Mechanic by order dated 19.12.2003 and 17.12.2004 which is the grade for promotion to the post of draughtsman. Since the RR for all the technical posts including the post of draughtsman are in the process of being drawn up following the merger and re-designation as above, the applicant cannot base his case upon RR-67 because there are no RRs in existence after the merger and re-designation. It is therefore argued that until RRs for the post of draughtsman are drawn up again the applicant has no case and does not qualify for the relief prayed for.

9. We notice that the V CPC while recommending the merger of the posts of Mechanic Grade A and B did not indicate any requirement to amend the RR for the post of draughtsman. A meeting appears to have been convened by the Principal of the College with various heads of departments on 13.2.2004 (Annexure A-16) to formulate proposals to be submitted for framing of RR in respect of different categories of posts. The minutes of this meeting show that a decision was taken to incorporate certain provisions in the proposed RR for various categories. However, there is nothing to indicate that any fresh RR has been finalized and issued.

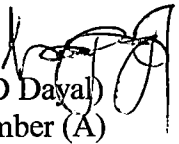
10. Shri S.Q. Kazim learned counsel for the respondents further contends that there is no averment in the OA seeking benefit of the order dated 17.12.2004 by which the date of implementation of the merger of


Mechanic Grade A and B as Mechanic Grade A and redesignation as Senior Mechanic was advanced from 19.12.2003 to 25.5.1998. As such it was argued that the claim of the applicant was not tenable for the Tribunal to take cognizance of. We have however, noticed while going through the pleadings of this case that the respondents have included a copy of the order dated 17.12.2004 at page 31 of the counter reply filed in this case in response to the unamended OA. It is further observed that this order has been mentioned in the counter at page 18 thereof against para 4.17 and 4.18. The applicant has noted such response of the respondents in his rejoinder to this counter reply and sought to take advantage of the preponement of the date of merger in his parawise reply at running page 159 of the unamended OA and later on also by his MA 1739/2005 which was allowed. Since the plea has been raised by the applicant in the pleadings of this case we are not inclined to concede that the applicant would not be within his rights to seek the benefit thereof. Besides, it is noteworthy that the opportunity given to file reply has not been availed of in the amended OA by the respondents.

11. In the aforesaid situation we are of the considered opinion that there is much force in the stand taken by the applicant. It is well settled that the existing RR shall govern the recruitment to be made which cannot be postponed merely because a revised RR is under process of finalisation and so the applicant cannot be deprived of the consideration of his case for promotion in terms of the prevailing RR. In the present case the RR-67 still holds the field for promotion to the post of draughtsman. It cannot be said that the applicant who became Mechanic Grade A with the merger of Mechanic Grades A and B with effect from 25.5.98 and has therefore completed three years in the grade of Mechanic Grade A on 25.5.2001 would not be eligible for promotion to the post of draughtsman from that date in terms of RR 67. It would not be open to the respondents to pursue direct recruitment for the post of draughtsman before taking up the filling of the post by promotion in terms of Cols. 10 and 11 of RR 67. It is not the case of the respondents that there is no vacant post of draughtsman or that they do not require to fill it up.

12. The respondents are directed to take steps as per RR-67 and the relevant procedure laid down to convene a DPC and consider the promotion of the applicant to the post of Draughtsman along with other eligible persons, if any, in accordance with law within a period of three months from the date of receipt of this order. In case the applicant is approved for promotion he shall be appointed within two weeks thereafter to the post of draughtsman with notional fixation of pay from 17.12.2004.

13. The application is disposed of as above. Interim order is vacated.
No costs.


(N D Dayal)
Member (A)


(B. Panigrahi)
Chairman

Patwal/