

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1350 OF 2014

New Delhi, this the 20th day of January, 2017

CORAM:

HON^ØBLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

AND

HON^ØBLE SHRI K.N.SHRIVASTAVA, ADMINISTRATIVE MEMBER

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Kumme Ram Meena, aged 33 years,
son of Sh.Ram Kishan Meena,
working as Mali in DDA,
under Deputy Director (P-4),
Vikas Sadan, New Delhi,
R/o C-1/50A, Leavee Road,
Keshav Puram, New Delhi 110035

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Applicant

(By Advocate: Mr.Yogesh Sharma)

Vs.

1. Delhi Development Authority,
through its Vice-Chairman,
Vikas Sadan, INA, New Delhi.
2. The Commissioner (Personnel),
Delhi Development Authority,
Vikas Sadan, New Delhi
3. The Deputy Director (P-IV),
Delhi Development Authority,
Personnel Branch,
Vikas Sadan, New Delhi

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Respondents

(By Advocate:Mr.M.S.Reen)

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ORDER**Per Raj Vir Sharma, Member(J):**

The brief facts of the applicant's case are that he belongs to ST community. He was appointed as a Mali (Group -D) in Delhi Development Authority (hereinafter referred to as -DDA) w.e.f. 9.3.2004. Respondent no.3, vide circular dated 9.5.2011(Annexure A/4), invited applications only from those Group D regular employees of the DDA, who were appointed on or before 30.4.2009 working in various wings of the DDA, for promotion to the post of Lower Division Clerk (LDC) in PB-1 + GP Rs.1900/- under 10% quota meant for Group -D employees on the basis of their seniority-cum-merit/fitness. Having possessed 12th Class qualification and fulfilled all the eligibility criteria, the applicant applied for consideration of his case for promotion. The DPC met for recommending suitable candidates against 41 vacancies, the breakup of which was UR 32, ST-8, and PH-1. On the basis of the recommendation of the DPC, the respondent-DDA, vide order dated 23.8.2012 (Annexure A/3), promoted 41 persons to the grade of LDC. The seniority position of Shri Roop Ram Meena, s/o Sh. Bhorilal Meena, who was promoted to the post of LDC under ST category was at Sl.No.497, and that of the applicant was at Sl.No.504. He was the eligible ST candidate next to Shri Roop Ram Meena. After the order dated 23.8.2012 (Annexure A/3) was issued by the respondent-DDA promoting 41 persons to the post of LDC on the basis of the recommendation of the DPC, the respondent-DDA recalculated the vacancies and found that the total vacancies under 10% promotion quota were 78 (UR-34, SC-23,ST-14, PH-7). Out of 78 posts, 41

posts having already been filled up by way of the promotion, vide order dated 23.8.2012, *ibid*, 37 posts remained vacant, which included 8 posts for ST as per office noting dated 5.12.2012. The respondent-DDA, vide order dated 28.1.2013, promoted 18 General category persons as against the said 37 remaining posts. The respondent-DDA did not fill the 8 vacancies falling under ST quota. Thus, the applicant was not promoted, though he was the first eligible ST candidate and had been considered along with the persons who were promoted by orders dated 23.8.2012 and 28.1.2013, *ibid*. Being aggrieved, the applicant made a number of representations to the respondents. There being no response, the applicant had filed OA No.4356 of 2013. The Tribunal, vide order dated 17.12.2013, disposed of OA No. 4356 of 2013 and directed the respondents to dispose of the applicant's representation through a reasoned and speaking order. In compliance with the Tribunal's order dated 17.12.2013, *ibid*, respondent no.4 considered the applicant's representation, but rejected the same, vide order dated 7.3.2014, without assigning any reason as to why only 18 General candidates were promoted, and why the reserved category candidates including the applicant were not promoted against the vacancies reserved for them. Hence, the applicant has filed this Original Application seeking the following reliefs:

- “(i) That the Honorable Tribunal may graciously be pleased to pass an order quashing the impugned order dated 28.01.2013(Annexure A/1) only to the extent by which the respondents have not conducted the DPC to fill up the 8 ST posts out of 32 remaining posts declaring to the effect that the same is illegal, arbitrary and discriminatory in the eyes of law and consequently pass

an order directing the respondents to conduct a review DPC to consider the case of applicant for his promotion to the post of LDC in PB-1 + GP 1900 against the ST quota post w.e.f. 28.01.2013 with all consequential benefits including the arrears of difference of pay and allowances.

- (ii) That the Honøble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 07.03.2014 (Annexure A/2) declaring to the effect the same is illegal, arbitrary and discriminatory and is not a correct compliance of the Honøble Tribunal order dated 17.12.2013.
- (iii) Any other relief which the Honøble Tribunal deem fit and proper may also be granted to the applicant along with the costs of litigation.ö

1.1 It has been contended by the applicant that there was nothing adverse against him. The action of the respondents in not promoting him to the post of LDC against one of the available ST vacancies, along with 18 General category candidates promoted vide order dated 28.01.2013, is totally illegal, arbitrary and discriminatory in the eyes of law.

2. Resisting the O.A., the respondents have filed a counter reply. The respondents have stated, inter alia, that in response to the circular date 9.5.2011, *ibid*, 276 applications from Group D employees belonging to different categories were received. The DPC meeting was held on 11.7.2012. On the basis of the recommendation of the DPC, a panel of 59 Group ð officials was prepared. Out of 59 empanelled Group ð officials, 41 Group ð officials, which included 8 Malis belonging to ST community, were promoted to the grade of LDC, vide order dated 23.8.2012, *ibid*. As per the seniority list, the appellant was assigned seniority no.504 whereas the 8th

candidate belonging to ST category promoted as LDC, vide order dated 23.8.2012, was assigned seniority no.497. Therefore, the applicant was not included in the panel of 59 Group D officials. The Recruitment Rules for the post of LDC were modified by the competent authority, and the same were notified on 18.10.2012 (Annexure R/2). Through this modification, the educational qualification for the post of LDC was changed from 10th to 12th Class. After taking one time relaxation from the Honøble L.G. to consider matriculate candidates for promotion, 18 remaining Group D officials, out of 59 of the empanelled Group D officials, were promoted as LDC, vide order dated 28.1.2013. As his name was not included in the panel of 59 Group D officials, the applicant was not considered for promotion as LDC. The Recruitment Rules for the post of LDC were again amended in December 2013, and the posts of Mali and Security Guards were excluded from the feeder cadre of Group D officials for promotion under 10% quota of LDC because both the posts have their own promotion channel in their cadres. Thereafter, 50 eligible Group D employees were promoted as LDC under 10% quota, vide order dated 12.1.2015. In view of the amendment to the Recruitment Rules that took place in December 2013, the applicant was not considered for promotion to the post of LDC.

3. We have carefully perused the records, and have heard Mr.Yogesh Sharma, the learned counsel appearing for the applicant, and Mr.M.S.Reen, the learned counsel appearing for the respondents.

4. The respondents have not specifically rebutted the statement made by the applicant that after the order dated 23.8.2012 (Annexure A/3) was issued by the respondents promoting 41 Group D officials to the post of LDC on the basis of the recommendation of the DPC, the vacancies falling under the 10% quota were recalculated and it was found by the respondents that the total vacancies under 10% promotion quota were 78 (UR-34, SC-23, ST-14, PH-7), and that 41 posts having been filled up by way of the promotion order dated 23.8.2012, *ibid*, 37 posts remained vacant, which included 6 posts for ST category of Group D employees. This apart, the noting dated 5.12.2012 in the relevant file, copy of which has been supplied by the respondents under the R.T.I. Act to the applicant and produced before us supports the above statement made by the applicant. The noting dated 5.12.2012, which was prepared by the Dy. Director (P.B.) IV, DDA, and placed before the Director (P)-1, Commissioner (P), Pr. Commissioner (P), Vice-Chairman, and Honorable Lt. Governor, is reproduced below:

~Apropos to the position stated by Dy. Director (PB-II) pre-page wherein it has been informed that the notification regarding incorporating the qualification of 10+2 in the Recruitment Rule has been notified only on 18.10.2012, i.e., much after the recommendations of the DPC.

It would be pertinent to place on record again that the panel of 18 officials so recommended by the DPC comprise of Group D officials, who are primarily either Matriculate or Higher Secondary with only 2 (two) candidates who fulfil the requisite qualification that is mandatory at present i.e. 10+2. Since relaxation was sought with regard to Educational Qualification under a specific condition (P 7/n) the applicants were essentially not covered at that point of time, as no vacancies were available. At present, however, the vacancy

position notified by the PB-III Branch for the 10% quota is 678 (Unreserved 634 + Scheduled Tribe 623 + Schedule Tribe 614 + Physically Handicapped 67) up to 31.3.2013. Since the vacancies exist now, the competent authority may consider to grant promotion to this particular category of Group D Staff as implementation of the revised Recruitment Regulations which have taken place only after the conduct of DPC, may deprive them of their claim to promotion, which every government official looks forward to especially at the fag-end of their careers on sympathetic & humanitarian conditions.

It is accordingly proposed that the file be submitted to the Honøble Lt. Governor, Delhi to grant one time relaxation to these 18 Group D officials so that they may be promoted as per the old Recruitment Rules that stipulated Matriculation as the requisite qualification for grant of promotion since all their cases had been recommended by the Junior Level DPC prior to enactment of the present notification.

Submitted please.ö

In the order dated 7.3.2014, whereby the applicant's representations were rejected, the Deputy Director (PB)-IV (respondent no.4) also stated that 18 Group D officials belonging to General category were promoted vide order 28.1.2013, *ibid*, and that the remaining vacancies were left to be filled up in the next selection. The respondents have not disclosed any reason, far less justifiable reason, as to why the remaining vacancies falling under ST quota were not filled by promoting the applicant and other Group D officials belonging to ST community. In the above view of the matter, we find substantial force in the contention of the applicant that the action of the respondents in not promoting him to the post of LDC against one of the available ST vacancies, along with 18 General category candidates promoted vide order dated 28.01.2013, is totally illegal, arbitrary and discriminatory in the eyes of law.

5. In the light of our above discussions, we direct the respondents to consider the applicant's case for promotion to the post of LDC with effect from 28.1.2013 against an ST vacancy which was available during 2012-13, as indicated in the noting dated 5.12.2012. The respondents shall comply with the direction contained in this order within three months from today.

6. Resultantly, the O.A. is partly allowed to the extent indicated above. No costs.

(K.N.SHRIVASTAVA)
ADMINISTRATIVE MEMBER

(RAJ VIR SHARMA)
JUDICIAL MEMBER

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