

**Central Administrative Tribunal
Principal Bench**

OA No.1590/2015

New Delhi, this the 13th day of July, 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

1. Balram
aged about 48 years
S/o Late Gurdas Ram
Working as Beldar having
Employee Code No.292368
presently posted in the Water Supply Wing
of New Delhi Municipal Council at
Service Centre situated at Netaji Nagar
New Delhi.
2. Subash Chandra Kushwaha
aged about 45 years
S/o Late Bikau Kushwaha
Working as Beldar having
Employee Code No.293126
presently posted in the Water Supply Wing
of New Delhi Municipal Council at
Service Centre situated at Netaji Nagar
New Delhi.
3. Raja Gopal
aged about 41 years
S/o Late Atti
Working as Beldar having
Employee Code No.281600
presently posted in the Water Supply Wing
of New Delhi Municipal Council at
Service Centre situated at Netaji Nagar
New Delhi.
4. Kamlesh Kumar Verma
aged about 45 years,
S/o Late Ram Naresh
Working as Beldar having
Employee Code No.305493
presently posted in the Water Supply Wing

of New Delhi Municipal Council at
Service Centre situated at Netaji Nagar
New Delhi.

5. Pawan Kumar
aged about 47 years
S/o Shri Ram Prasad
Working as Beldar having
Employee Code No.305491
presently posted in the Water Supply Wing
of New Delhi Municipal Council at
Service Centre situated at Netaji Nagar
New Delhi. ... Applicants.

(By Advocate : Shri Avijit Bhattacharjee)

Vs.

1. The Chairman
New Delhi Municipal Council
Office at Palika Kendra,
Sansad Marg,
New Delhi 110001.

2. Chief Engineer (Civil)
Water Supply Division
Civil Engineering Department
New Delhi Municipal Council
Palika Kendra, Sansad Marg,
New Delhi 110 001.

3. Assistant Secretary (Civil)
Water Supply Division
Civil Engineering Department
New Delhi Municipal Council
Palika Kendra, Sansad Marg,
New Delhi 110 001. ... Respondents.

(By Advocates : Shri Vaibhav Agnihotri and Shri Preet Singh)

: O R D E R (ORAL) :

Justice Permod Kohli, Chairman:

All the applicants in the present OA except No.2 were initially engaged as Beldars on muster roll in the Water Supply Division of New Delhi Municipal Council (NDMC). Later, they were appointed

as Belder on regular/substantive basis. Applicants No.1, 2, 4 & 5 came to be appointed on regular basis in the year 1997 and applicant No.2 was engaged on compassionate ground as Beldar in the year 1996. The dates of their appointments have been indicated in sub paras (i) to (v) of para 4.1 of the OA.

2. The applicants are claiming promotion to the post of Pump Attendant on completion of ten years of regular service as Beldar. It is stated that there are 100 posts of Pump Attendants, and according to the NDMC Regulations, Beldars with ten years service are entitled to promotion as Pump Attendant. The grievance of the applicants is that they have not been considered for such promotion despite being eligible having completed ten years of service, and the respondents granted promotion to various other categories like Drivers and Chowkidars. Reference is made to the promotion order dated 22.10.2014 (Annexure- A6). Earlier, the applicants after serving legal notice filed OA No.155/2015. This OA was disposed of vide order dated 15.01.2015 with the following directions:-

“4. In the circumstances, the OA is disposed of, without going into the merits of the case, by directing the respondents to consider the legal notice (Annexure A-9 dated 08.09.2014) and pass appropriate reasoned and speaking order within 90 days from the date of receipt of this order, in accordance with law.”

Consequent upon the aforesaid directions, the respondents passed a speaking order dated 05.03.2015. Being aggrieved of the said order, the present OA has been filed seeking following reliefs:-

- “8 (a) an order setting aside the speaking order dated 5.3.2015 issued by the respondents in compliance with the order of this Hon’ble Tribunal dated 15.1.2015 passed in OA 155/2015.
- (b) an order directing the respondents to promote the applicants immediately to the vacant posts of Pump Attendants in the Water Supply Division of the NDMC considering more than 17 years of regular service in the post of Beldars rendered by the applicants; and
- (c) such further or other order or orders as deemed fit by this Hon’ble Tribunal in the interest of justice.”

3. The respondents in their counter affidavit have admitted that on completion of ten years of substantive service, Beldars are entitled to be considered for promotion to the post of Pump Attendants. It is stated that under the Regulations framed by NDMC, 50% of the posts of Pump Attendants/Pump Drivers are required to be filled by direct recruitment and 50% by departmental promotion from amongst eligible candidates including Beldars who undergo selection process such as clearance of literacy/trade test. According to the respondents, promotion to the post of Pump Attendants/Pump Drivers is required to be made according to the criteria laid down in the regulation framed by the NDMC. It is further stated that in the year 2005, the eligible candidates were considered for promotion as

Pump Attendants/Pump Drivers. Only applicants No.1 & 4 appeared in the literacy/trade test held in the year 2005 whereas applicants No.2, 3 & 5 did not even choose to appear in the said test. Applicants No.1 & 4 who appeared in the test could not secure minimum qualifying marks of 50 to be included in the select list and thus were not promoted. In the year 2005, out of 297 candidates who appeared in the trade test only 60 could obtain the minimum qualifying marks and were accordingly promoted.

4. In the year 2016, a circular was issued on 28.11.2016 inviting applications for filling up the departmental promotion quota of Pump Attendants/Pump Drivers. The eligibility criteria laid down for the post of Pump Attendant is as under:-

“2. The eligibility criteria for the post are as under:-

1. Persons who can read/write Hindi/English.
2. At least 5 years regular service in the Council.
3. Should qualify the prescribed trade test and have at least one year experience of handling of pumps.

5. The applicants accordingly approached this Tribunal seeking a direction that they are also entitled to be considered but without fulfilling the eligibility criteria. It was argued that the Beldars are entitled to be promoted to the post of Pump Attendants on completion of ten years of qualifying service without undergoing any kind of test. This Tribunal on consideration of the plea of the

applicants directed the respondents to place on record the relevant regulations and the recruitment rules which *inter alia* contain the provision of promotion to the post of Pump Attendants. Consequent upon the aforesaid directions, the respondents have placed on record additional affidavit along with a copy of the Regulation (Annexure R-II) framed for the post of Pump Attendant/Pump Drivers. Para 7 of such regulation provides for education and other qualifications for the post of Pump Drivers/Pump Attendants. The same reads as under:-

“(b) Departmental : (i) persons who can read and write Hindi/English.
 Recruitment (ii) At least 5 years regular service in the committee in the scale of not less than Rs.2550-3200.
 (iii) Should qualify the prescribed trade test and have at least one years experience of handling the pumps.”

6. We have heard learned counsel for the parties.
7. In the impugned speaking order dated 05.03.2015, the respondents have mentioned following grounds for denial of the claim of the applicants for promotion to the post of Pump Attendant/Pump Driver:-

“1. Whereas, the service of the applicants namely S/Sh. Bal Ram, Employee Code No.292368, Kamlesh Kumar Verma, Employee Code No.305493, Subash Chandra Kushwaha, Employee Code No.293126, Pawan Kumar, Employee Code No.305491, Raja Gopal, Employee Code No.281600 and Babu Khan, Employee Code No.305490 working as TMR/RMR Beldar, were regularized to the post of Beldar in the year 1997 as per Council’s Policy.

2. Whereas, the method of Recruitment of the post of Pump Attendant is 50% by Direct Recruitment & 50% by Departmental Promotion and the vacancies meant for Departmental Promotion Quota which is not in hierarchy of the post of Beldar but are to be filled up from regular departmental employees including Beldar who can Read & Write Hindi/English working in the pay scale not less than Rs.2550-3200 with five years regular service and have at least one year experience of handling pumps.
3. Whereas, the last procedure to select the candidates against the Departmental Quota was held in the year 2005 by inviting the applications from the eligible employees of NDMC as per RRs of the post.
4. Whereas, out of six applicants only three namely S/Sh. Babu Khan, Balram & Kamlesh Kumar Verma have applied & appeared in literacy/trade test held in the year 2005 but could not achieve the target of minimum qualifying 50 marks and the candidates who applied/appeared in literacy/trade test and obtained minimum 50 marks were promoted to the post of Pump Attendant frequently in four spells according to availability of vacancies from time to time.
5. Whereas, an employee including the applicants who did not get promotion to the next higher post due to non availability of the vacancy according to seniority/eligibility is granted three Time bound promotion scales on completion of 10/18/26 years of service respectively and the applicants regularized in the year 1997 have been granted 1st TBP on completion of 10 years qualifying service & 2nd TBP is due to them in the year 2015 on completion of 18 years qualifying service.
6. Whereas, the department is in the process to fill up the resultant vacancies of the post of Pump Attendant & the applicants can apply for the same as & when, the applicants will be invited from the departmental regular/eligible employees against the departmental promotion quota."

8. Shri Avijit Bhattacharjee, learned counsel appearing for the applicants has vehemently argued that the posts of Pump Attendant

and Pump Driver are different posts. According to him, the regulations produced by the respondents are for the post of Pump Drivers and not for Pump Attendants, and thus the criteria laid down therein is not applicable to the case of Beldars for promotion to the post of Pump Attendant. According to him, Beldars are entitled to be promoted as Pump Attendants merely on completion of ten years of service without having to undergo any kind of trade test or fulfilling other conditions as alleged by the respondents. On repeatedly asking by the Tribunal as to what is the basis for such a claim, learned counsel for the applicant has not been able to rebut the additional affidavit filed by the respondents.

9. To the contrary, Shri Vaibhav Agnihotri, learned counsel for the respondents has relied upon the regulations framed by NDMC which has been placed on record along with the additional affidavit and thus its authenticity cannot be disputed. The regulations have been reproduced herein above. According to additional affidavit and these regulations, the post of Pump Driver/Pump Attendant is the same post with two nomenclatures. It is relevant to note that even in para 4.2 of the OA, the applicants have referred the post as Pump Attendant/Pump Driver. The post of Pump Attendant/Pump Driver is required to be filled 50% by direct recruitment and 50% by departmental recruitment. Insofar as the departmental recruitment is concerned, in Para 7 (b) thereof the eligibility criteria prescribed is as

indicated hereinabove in para 5 of this order. The same criteria has been noticed in the impugned order dated 05.03.2015. From the regulations, it is evident that not only the Beldars but all persons serving in the NDMC who can read and write Hindi/English and have five years regular service in the pay scale of not less than Rs.2550-3200 and at least one year's experience of handling pumps are also entitled to be considered for promotion. As mentioned in the counter affidavit, applications were invited in the year 2005 for consideration of the eligible candidates for promotion to the post of Pump Attendant/Pump Driver. Only two applicants, i.e., applicants No.1 & 4 applied, whereas other applicants did not choose to apply for their consideration. Those, who applied could not qualify by securing 50 marks in the trade test and were not selected. The other applicants chose not to apply in response to the circular dated 28.11.2016 and thus were not considered. The respondents have also mentioned that those who could not be granted regular promotions have been granted financial upgradation and the applicants have also been granted financial upgradation on completion of 10/18 years of service. Since the applicants have completed 10/18 years of service they have earned two financial upgradations.

10. From the pleadings of the parties, particularly, the counter affidavit, additional affidavit and the regulations placed on record by the respondents, we are of the considered opinion that Beldars are

not entitled to promotion merely on completion of ten years of service. They are required to fulfill the criteria as laid down in the regulations framed by NDMC, and noticed by us hereinabove. The applicants have failed to earn promotions by qualifying the trade test conducted by the respondents in the year 2005. Only two applicants, i.e., applicants No.1 & 4 appeared in the trade test but they could not secure the minimum qualifying marks of 50 in the literacy/trade test. Other applicants chose not to appear. Subsequently also, the applicants chose not to appear in the trade test in the year 2016 when the applications were invited and thus they could not be considered for promotion.

11. The claim of the applicants for promotion without undergoing the trade test is misconceived. We do not find any merit in this OA. It is accordingly dismissed.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

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