

Central Administrative Tribunal
Principal Bench, New Delhi.

OA-2765/2012

New Delhi, this 16th day of February, 2017

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Shekhar Agarwal, Member (A)

Smt. Anjana Saha,
Deputy Director (Systems) 1,
R/o 15-A, Pocket-IV,
Mayur Vihar, Phase-I,
Delhi-110091.

..... Applicant

(through Sh. M.K. Bhardwaj, Advocate)

Versus

DDA & Ors. Through:

1. The Vice Chairman,
DDA, Vikas Sadan,
New Delhi.
2. The Principal Commissioner (Systems),
DDA, Vikas Sadan,
New Delhi.
3. The Commissioner (Personnel),
DDA, Vikas Sadan,
New Delhi.
4. Sh. V.S. Tomar,
Director (Systems),
DDA, Vikas Sadan,
New Delhi.

.... Respondents

(through Sh. Arun Birbal, Sh. S.M. Arif and Ms. Sriparna
Chatterjee, Advocates)

ORDER (Oral)

Mr. Shekhar Agarwal, Member (A):

This OA was earlier allowed partly by our order dated

23.11.2015, operative part of which reads as follows:-

"9. This O.A., therefore, succeeds partly. Since we have found that respondent No. 4 was not eligible for regular promotion on the date on which DPC was held, we quash and set aside Annexure A-1 order dated 11.06.2012 granting him regular promotion as Director (Systems). As far as other prayers made by the

applicant are concerned, we do not find any justification in granting the same. No costs.”

Subsequently, on review applications filed by the official respondents in the OA as well as by private respondent no.4, the OA was restored to its original number for fresh hearing.

2. Brief facts of the case are that the applicant joined Delhi Development Authority (DDA) as Assistant Director (Systems) on 26.09.1988. She got promoted as Deputy Director (Systems) on 03.02.1995 whereas private respondent no.4 got promoted to the same level in May, 2007. The applicant has alleged that she was much senior to the private respondent no.4 yet, when the post of Director (Systems) fell vacant on 04.04.2012, the official respondents gave officiating charge of this post to the private respondent no.4. Later on he was regularly promoted on this post w.e.f. 11.06.2012. Aggrieved, by this action of the official respondents, the applicant has approached this Tribunal seeking the following relief(s):-

“(i) To declare the action of respondents in giving promotion to Respondent No. 4 to the post of Director (Systems) as illegal, arbitrary and unconstitutional and accordingly set aside order dated 11.06.2012.

(ii) To direct the respondents to fill up the post of Director (Systems) by considering the case of applicant as per recruitment rules for the post of Director (Systems) notified vide notification dated 04.10.2004.

(iii) To declare the action of respondents in changing the qualifications prescribed for appointment/promotion to the post of Director (Systems) contrary to DOPT model RRs and making

the same applicable even in the matter of promotion by amending the RRs within short period as illegal, arbitrary and unconstitutional.

(iv) To declare clause 9 of Recruitment Rules notified vide notification dated 22.02.2012 for promotion to the post of Director (Systems) as unconstitutional to the extent it mandates for possessing the educational qualification as in the facts and circumstances of the case.”

3. According to the applicant, the respondents have acted in a manner prejudicial to her interest inasmuch as they amended the recruitment rules of the post of Director (Systems) on 22.02.2012 to suit private respondent no.4. The earlier recruitment rules had been notified only on 04.10.2004 and there was no need for any amendment within such a short span. However, to favour the private respondent no.4, the official respondents carried out the amendment by which educational qualifications for the post of Director (Systems) prescribed for direct recruits were made applicable for promotees as well. The applicant has challenged the aforesaid amendment on the ground that its sole purpose was to favour the private respondent no.4 and also because this amendment was contrary to DOP&T instructions which clearly provide that educational qualifications prescribed for direct recruitment should not be insisted upon for promotion while framing the recruitment rules. Moreover, she has stated that since there is only one post of Director (Systems), after this amendment, the

applicant's channel of promotion has been totally blocked. The applicant has also challenged the aforesaid amendment on the ground that the qualifications prescribed for the post were dissimilar from the qualifications prescribed for equivalent post in Delhi Government as well as organizations like NIC. Thus, even on this ground, there was hardly any justification for carrying out the amendment. The applicant has also alleged that the official respondents delayed holding DPC for the post of Director (Systems) and thereby violated the DOP&T instructions regarding the model calendar for holding DPC. The delay in holding the DPC was intentional as the official respondents were determined to favour the private respondent no.4.

4. The applicant has also alleged that the DPC for granting regular promotion for the post of Director (Systems) was held in May, 2012. Till that time, the private respondent no.4 was not eligible for promotion as he did not have the prescribed five years of service, since the eligibility has to be seen on 1st January of the vacancy year in which DPC was being held.

5. In this OA, the private respondent no.4 did not file reply. He, however, sent a letter addressed to the Principal Registrar of this Tribunal, which has been taken on record [page 115 of the paper book]. In this, he has submitted that

he was promoted because he was the only one who was meeting the eligibility criteria for promotion since he was possessing the necessary technical and educational qualifications prescribed for the post.

6. The official respondents in their reply have stated that the instant case was beyond the scope of judicial review as framing of recruitment rules and prescribing educational qualifications fell exclusively within the domain of the official respondents. They have also questioned the locus of the applicant in challenging the authority of the State to amend or alter the existing service rules. Further, they have stated that private respondent no.4 was the only eligible candidate for promotion to the post of Director (Systems) as it was he alone who was meeting the educational qualifications prescribed for the post under the amended recruitment rules. It was for this reason that he was given officiating charge of the post on 04.04.2012. Subsequently, after the DPC was held, he was regularly promoted on the post w.e.f. 11.06.2012.

7. The official respondents have gone on to state that functioning of the computer system had come for severe criticism from the Lieutenant Governor. The official respondents, therefore, wanted a technically qualified person to be appointed as Director (Systems) with the sole intention

of improving the work of computerization in DDA. For this purpose, the recruitment rules were amended on 22.02.2012. The respondents have justified the amendments made by them by which educational qualifications prescribed for direct recruitment were made applicable for promotion as well by stating that this was very much in accordance with the DOP&T instructions wherein it has been laid down that for a technical post, educational qualifications prescribed for direct recruitment must be insisted upon for promotees as well in the interest of efficiency of the organization. Thus, they contended that there was no infirmity in their action. They have also denied that their action was to favour any person. On the other hand, they stated that it was done with the sole purpose of improving the efficiency of the organization. Regarding the qualifications, they have stated that for the post of Director (Systems), following qualifications have been prescribed:-

“(i) Engineering Degree in Computer Science/Computer Engineering/Electronics from a recognised University or Engineering College/Institute.

OR

Master Degree in Computer Science/Computer Application from a recognised University, Engineering College/Institute.

OR

Should have passed ‘B’ level examination from the Deptt. Of Electronics Accreditations of Computer Course (DOEACC).

(ii) Ten year experience in System Analysis, Design, Software Development & Implementation System and Network Administration with at least 2 years in Managing Information systems.”

8. The official respondents have further stated that the applicant herein has a B.A. Degree with Maths and Statistics as well as a MA Degree. Although she has done Computer Science in Basic Programming and Cobol Programming, System Analysis & Design, yet she does not meet the qualifications prescribed in the amended recruitment rules which, according to the respondents, were necessary for incumbent of this post.

9. We have heard both sides and have perused the material on record. The applicant relied on the judgment of Hon'ble High Court of Delhi in **W.P.(C) No. 8909/2014** (*Sansar Chand Rana & Ors. Vs. UOI & Ors.*). In the aforesaid case, the official respondents at the insistence of the Court had agreed to carry out the amendments in the recruitment rules to the effect that the qualifications prescribed for direct recruitment would not be applicable for promotion of existing incumbent. According to the applicant, this was done to comply with DOP&T instructions. The official respondents, on the other hand, drew our attention to OM No.AB.14017/48/2010-Estt.(RR) dated 31.12.2012, in para 3.9 of which the following is laid down:-

"AGE/EDUCATIONAL QUALIFICATION FOR PROMOTEES

3.9 Column: 8 (whether age / education qualifications prescribed for direct recruits will apply in the case of promotees)

It should precisely be stated whether age and educational qualifications prescribed for direct recruits should also apply in the case of promotees. Unless there are any specific grounds, the age limit prescribed for direct recruits are not insisted upon in the case of promotees. Regarding educational qualifications, these are not generally insisted upon in the case of promotion to posts of non-technical nature; but for scientific and technical posts, these should be insisted upon, in the interest of administrative efficiency, at least in the case of senior Group A posts in the Pay Band-3 Grade Pay Rs. 6600 and above. Sometimes the qualifications for junior Group A posts and Group B posts may not be insisted upon in full but only the basic qualification in the discipline may be insisted upon. For example, if a degree in Civil Engineering is the qualification prescribed for direct recruits, the promotees may be required to possess at least a Diploma in Civil Engineering. In such cases, the entry under this column may be edited as "Educational Qualifications: No, but must possess at least....."

10. Regarding the scope of judicial review, the respondents have relied on the judgment of Hon'ble Supreme Court in the case of **P.U. Joshi and Ors. Vs. Accountant General, Ahmedabad and Ors.**, (2003) 2 SCC 632.

11. We have considered the rival submissions. The first issue to be decided is whether DOP&T instructions prescribe that educational qualifications provided in the recruitment rules for direct recruitment should not be made applicable for promotion. On perusal of the DOP&T instructions, we find that for non-technical posts, these instructions provide that qualifications required for direct recruitment should not be insisted upon while considering cases of promotion of existing incumbents. However, the situation is different for

technical posts. The instructions relevant for such posts have been extracted above. Perusal of these would reveal that the DOP&T has laid down that for scientific and technical posts, educational qualifications provided for direct recruitment should be insisted upon for promotion as well in the interest of administrative efficiency particularly for senior posts. Hence, we find that the action of the official respondents in carrying out the amendment in the recruitment rules mentioned above is in accordance with DOP&T instructions. The decision in *Sanchar Chand Rana & Ors. Vs. UOI & Ors.* (supra), relied upon by the applicant, would not be of any help to her as the post in question in that judgment was a non-technical post.

12. As far as the applicant's challenge to the qualifications prescribed was concerned, we find that the amendment made in 2012 did not alter these qualifications at all. The only effect of this amendment was to make the qualifications mandatory even for the purpose of promotion. We also find justification in the action of the official respondents to insist on an Engineering Degree in Computer Science or a Master Degree in Computer Science for the post of Director (Systems).

13. Lastly, the applicant has questioned the promotion of the private respondent no.4 by stating that he did not have

the prescribed eligibility service of five years on the date on which he was regularly promoted. It was argued on her behalf that the post fell vacant in the vacancy year 2012-13 and the eligibility of the officer as per DOP&T instructions valid at that time, was to be seen on 1st January of that year i.e. 01.01.2012. The DPC in the instant case held on 07.06.2012. Since the private respondent no.4 had admittedly been promoted as Deputy Director (Systems) only on 03.05.2007, he did not have the requisite five years of regular service as on 01.01.2012. Consequently, he was ineligible for grant of regular promotion on that date for want of required eligibility service. The official respondents on the other hand argued that DDA had been following the system of assessing the eligibility of a candidate for promotion on the date of DPC rather than 1st January of the vacancy year. They stated that the DPC was held on 07.06.2012 and by that date the private respondent no.4 had completed required five years of service as Deputy Director. Consequently, he was eligible for regular promotion. The respondents have further stated that DDA adopted the system of counting eligibility service from 1st January of the vacancy year only after a Resolution of the Authority passed in the meeting of the Authority held on 26.07.2013. We have seen the relevant document and we find that from the Agenda Item No.87 of 2013 of this meeting that it is clear

that DDA was having practice of computing eligibility service for promotion as on the date of convening DPC. Thus, there is merit in the contention of the official respondents that when the private respondent no.4 was promoted, the system followed by the DDA was to see eligibility of officers being considered for promotion as on the date of convening DPC. In this view of the matter, we find that private respondent no.4 was eligible and was, therefore, rightly promoted.

14. In view of the above analysis, we are of the opinion that there is no merit in this OA and the same is accordingly dismissed. No costs.

(Shekhar Agarwal)
Member (A)

(Justice Permod Kohli)
Chairman

/Ahuja/