

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.3187 OF 2014

New Delhi, this the 5th day of September, 2016

CORAM:

**HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

í ..

B.K.Ghai,
S/o R.K.Ghai,
Aged about 52 years,
Group-III,
Foreman PT No.45209,
DTC Raighat Depot, New Delhi í .. Applicant

(By Advocate: Mr.Rajesh Srivastava)

Vs.

Delhi Transport Corporation Ltd.,
I.P.Estate,
New Delhi 110002,
Through its Chairman-cum-Managing Director í .. Respondent

By Advocate: Mr.Abhay N.Das)

ORDER

Per Raj Vir Sharma, Member(J):

The applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:

ó(I) to set aside the RR for the post of Manager (Mech.) being violative of Article 14 of the Constitution of India and direct the respondent to frame RR in accordance with RRs in other departments, so as to bring them at par by providing of separate (%) percentage for promotion of Degree Holders to the post of Manager (Mech.) from the

post of Foreman and so far as it provides different period of experience for direct recruits and promotion of Degree Holders.

(II) set aside the seniority list dated nil pertaining to the Foreman (Mech.) working in the respondent Corporation and prepare the seniority list in accordance with the RRs and DOPT guidelines provide in para 3.12.1 that the eligibility list for promotion shall be prepared with reference to the date of completion by the officer of the prescribed qualifying service in the respective grade/post i.e. place the persons in the seniority list in accordance with the date when they become eligible for promotion in accordance with RRs and not on the basis of promotion to the feeder post.

(III) direct the respondent Corporation to prepare the seniority list in accordance with the RRs i.e. place the persons in the seniority list in accordance with the date when they become eligible for promotion in accordance with RRs and not on the basis of promotion to the feeder post.

AND ALSO

Pass such other and further orders as this Hon'ble Court deems fit and proper in the facts and circumstances of the case.ö

2. Opposing the O.A., the respondent has filed a counter reply.

The applicant has filed a rejoinder reply thereto.

3. We have perused the records, and have heard Shri Rajesh Srivastava, the learned counsel appearing for the applicant, and Shri Abhay N.Das, the learned counsel appearing for the respondent.

4. The applicant was initially appointed as Assistant Foreman in the Delhi Transport Corporation. He was subsequently promoted to the post of Foreman, and is presently working as Foreman. At the time of his initial appointment as Assistant Foreman, the applicant was having Diploma in Mechanical Engineering. Subsequently, he obtained Degree in Mechanical Engineering from AMIE, with due permission from the Delhi Transport Corporation. The Recruitment Rules for the post of Manager (Mechanical)

provide for recruitment to the post of Manager (Mechanical) 50% by transfer on deputation, failing which by direct recruitment, and 50% by promotion, failing which by transfer on deputation, and failing both, by direct recruitment. The cadre of Foremen is the feeder cadre for promotion to the post of Manager (Mechanical). In case of recruitment by promotion, Foreman having Degree in Mechanical/Automobile Engineering and with two years service, Foreman having Diploma in Mechanical/Automobile Engineering and with five years of service, and Foreman (Unqualified) with eight years of service are eligible for promotion to the post of Manager (Mechanical).

5. It is contended by the applicant that the Recruitment Rules of various other organizations, like Municipal Corporation of and Delhi Development Authority, provide for separate percentage for Degree Holder-Junior Engineers to be promoted to the post of Manager/Assistant Engineer, whereas the Recruitment Rules for the post of Manager (Mechanical) in the Delhi Transport Corporation do not provide for separate percentage for Degree Holder-Foremen to be promoted to the post of Manager (Mechanical). He and other Degree Holder-Foremen being similarly placed as Degree Holder-Junior Engineers of other Departments, non-amendment and/or non-modification of the Recruitment Rules for the post of Manager (Mechanical) in the Delhi Transport Corporation providing for separate percentage for Degree Holder-Foremen to be promoted to the post of Manager (Mechanical) is violative of Articles 14 and 16 of the Constitution

of India. It is also contended by the applicant that preparation of seniority list/eligibility list of Foremen for promotion to the post of Manager (Mechanical) on the basis of date(s) of their appointment/promotion to the post of Foremen has resulted in promotion of Diploma Holder-Foremen and Unqualified Foremen to the post of Manager (Mechanical) before promotion of the Degree Holder-Foremen. Hence, the respondent-Delhi Transport Corporation ought to have prepared the eligibility list of Foremen for promotion to the post of Manager (Mechanical) with reference to the date(s) when they became eligible for promotion to the post of Manager (Mechanical) in accordance with the Recruitment Rules and not on the basis of date(s) of their appointment to the post of Foreman. The representations made by the applicant and some other Degree Holder-Foremen for amendment/modification of the Recruitment Rules providing for separate percentage for Degree Holder-Foremen having been turned down by the respondent-Delhi Transport Corporation, vide order dated 17.4.2014 (Annexure A to the O.A.), the applicant has filed the present O.A. seeking the reliefs as aforesaid.

6. The respondent has taken the stand that amendment of the Recruitment Rules for the post of Manager (Mechanical) providing for separate percentage for the Degree Holder-Foremen to be promoted to the post of Manager (Mechanical) would adversely affect the interest of the Diploma Holder-Foremen and other Foremen. It is also stated by the respondent that in case it is decided by the Corporation to fill up the post by

way of direct recruitment, the Foremen, who possess the higher qualification and fulfill the requisite qualification and experience, as stipulated in the Recruitment Rules for the post of Manager (Mechanical), may apply for selection and appointment, and they will be entitled for relaxation in age limit as per rules. As regards the applicants' claim for preparation of seniority list/eligibility list of Foremen on the basis of the date(s) of acquisition of their eligibility for promotion to the post of Manager (Mechanical) as per the Recruitment Rules, the respondent has stated that as per rules and practice, the seniority of an incumbent is reckoned from the date of his holding the post. Acquisition of Degree qualification by the applicant while in service would not entitle him to get any precedence over Diploma Holder-Foremen/Non-Diploma Holder-Foremen who were appointed earlier than the date of his appointment to the post of Foreman.

7. We have carefully considered the rival contentions of the parties. The respondent has not acceded to the claim of the applicant and other Degree Holder-Foremen for amendment/modification of the Recruitment Rules for the post of Manager (Mechanical), vide order dated 17.4.2014. The viewpoint taken by the respondent is that the Recruitment Rules cannot be varied to the disadvantage of the Diploma Holder-Foremen and Non-Diploma Holder-Foremen, just to provide better promotional avenues to the Degree Holder-Foremen. It has also been observed by the respondent in its order dated 17.4.2014, *ibid*, that allowing the claim of a few Degree Holder-Foremen would disturb the seniority list of the feeder

cadre and open *Pandora's* box. Even if in Municipal Corporation of Delhi, and Delhi Development Authority, the Recruitment Rules provide for separate percentage for Degree Holder-incumbents to be promoted to the higher grade, we do not find any substance in the contention of the applicant that non-amendment and/or non-modification of the Recruitment Rules for the post of Manager (Mechanical) in the Delhi Transport Corporation providing for separate percentage for Degree Holder-Foremen to be promoted to the post of Manager (Mechanical) is violative of Articles 14 and 16 of the Constitution of India. The Municipal Corporation of Delhi and the Delhi Development Authority are two independent organizations which frame Recruitment Rules for their employees of different cadres, after taking all relevant aspects of the matter into consideration. The applicant being an employee of the Delhi Transport Corporation cannot be said to be similarly placed as employees of the Municipal Corporation of Delhi, and the Delhi Development Authority. Therefore, the applicant cannot be allowed to claim same conditions of service, including promotional prospect, as available to the employees of the Municipal Corporation of Delhi, or Delhi Development Authority, or any other organization/Department. We have also found substantial force in the contention of the respondent that preparation of seniority list/eligibility list of Foremen on the basis of the date(s) of acquisition of their eligibility for promotion to the post of Manager (Mechanical) as per the Recruitment Rules and not on the basis of date(s) of their appointment/promotion to the post of Foreman would disturb the

seniority positions of the incumbents in the entire cadre of Foremen. In the above view of the matter, the decision of the respondent rejecting the aforesaid claim of the applicant and other Degree Holder-Foremen cannot be said to be unreasonable and arbitrary. Therefore, we are not inclined to interfere in the matter.

8. **In Asif Hameed & others v. State of J&K and others**, 1989 SCC Suppl. (2) 364, the Hon'ble Supreme Court has held that when a State action is challenged, the function of the Court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution, and if not, the Court must strike down the action. While doing so, the Court must remain within its self-imposed limits. The Court sits in judgment on the action of a coordinate Branch of the Government. While exercising power of judicial review of administrative action, the Court is not appellate authority. The Constitution does not permit the Court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive.

9. **In Mallikarjuna Rao v. State of A.P.**, (1990) 2 SCC 707, the Hon'ble Supreme Court has held that Courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule making power in any manner. The

Courts cannot assume to itself a supervisory role over the rule-making power of the executive under Article 309 of the Constitution of India.

10. It has been held by the Hon'ble Supreme Court in **Technical Executive (Anti-Pollution) Welfare Association v. Commissioner of Transport Department and another**, (1997) 9 SCC 38, that it would be for the appropriate Government to take policy decision. The Tribunal is not competent to give any direction to the Government to lay down any policy. Such a direction would amount to entrenching upon area of policy-making which is exclusively within the purview of the Government.

11. In **P.U.Joshi and others, etc. vs. The Accountant General, Ahmedabad and others**, etc., (2003) 2 SCC 532, the Hon'ble Supreme Court has held thus:

“Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenue of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and after or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more

and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.ö

12. In the light of the above legal position, we do not find any merit in the O.A. Accordingly, the O.A., being devoid of merit, is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SHEKHAR AGARWAL)
ADMINISTRATIVE MEMBER

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