

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.4402/2013

Reserved on 18th February 2016

Pronounced on 23rd February 2016

Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

1. Mahi Pal Singh Verma
(Assistant Malaria Inspector (AMI))
s/o Mr. Kishan Singh
r/o 243, Village Dalupra
Delhi-96
2. Narender Kumar (AMI)
S/o Mr. Manohar Lal
r/o A1/1-2, New Kondli, Delhi-96
3. Ramvir Singh (AMI)
s/o Mr. Isham Singh
r/o B-3/14, Yamuna Vihar
Delhi-53
4. Dharmvir Singh (AMI)
s/o Mr. Jai Ram singh
r/o 19-B, Dilshad Garden, Delhi
5. Sharad Kumar (AMI)
s/o Mr. Ram Prakash
r/o X/1134B, New Chand Mohalla
Gandhi Nagar, Delhi
6. Virendra Kumar (AMI)
s/o Har Parshad Sharma
r/o 3A/Plot No.11, Sector 3
Vaishali, Ghaziabad
7. Dharm Singh (AMI)
s/o late Mr. Sabha Chand
r/o D-7/100, Gali No.7
Dayal Pur Colony, Delhi-94
8. Krishan Gopal Bhardwaj (AMI)
s/o Mr. Inder Sain
r/o A-98, Sector 12, Nodia. UP
9. Suresh Kumar (AMI)

s/o Mr. Raghuvir Singh
r/o D1/92, Gali No.3
Ashok Nagar, Delhi-93

10. Devender Kumar (AMI)
s/o Banwari Lal
r/o 349-A/1, Bhola Nath Nagar
Shahdara, Delhi-32
11. Surender Singh Chouhan (AMI)
s/o Mr. Ved Prakash
r/o A-1/91/54 East Gokal Pur
Delhi
12. Purushottam Kumar Gupta (AMI)
s/o late Mr. Ved Prakash
r/o 858, Gali No.2, Jwala Nagar
Shahdara
13. Subhash Chand (AMI)
s/o Mr. Devi Charan
r/o 4/166, Purana Tejab Mill
Bhola Nath Nagar
Shahdara, Delhi 32
14. Charan Singh (AMI)
r/o Mr. Hari Ram
B878 Gharoli Dairy Farm
Delhi-92
15. Ram Avtar (AMI)
s/o Mr. Netrapal
r/o A-52, Gali No.3
Punjabi Colony
South Gamri, Delhi-52
16. Mahinder Kumar Bhardwaj (AMI)
s/o late Mr. Kundan Lal Bhirdwaj
r/o 6/6 Pana Udyan, Narela
Delhi-40
17. Babu Ram Yadav (AMI)
s/o late Mr. Lakhmi Chand
r/o A-2/141, Sec 5, Rohini
Delhi-85
18. Jitender Kumar Gupta (AMI)
s/o late Mr. Shambhu Dayal Gupta
r/o 4293, Gali Bahuji
Pahari Dheeraj, Sadar Bazar
Delhi-6

19. Brahm Prakash Bhardwaj (AMI)
s/o Mr. Chander Bhan
r/o QU17A Pitam Pura
Delhi-34

20. Ashok Kumar (AMI)
s/o Mr. Ram Kishan
r/o 140, Khera Khurd
Delhi-82

..Applicants

(Mr. M.K. Bhardwaj, Advocate)

Versus

North Delhi Municipal Corporation & others through

1. The Director
Local Bodies
New Secretariat, IP Estate
New Delhi
2. The Commissioner
North Delhi Municipal Corporation
Civic Centre, New Delhi
3. The Commissioner
South Delhi Municipal Corporation
Civic Centre, New Delhi
4. The Commissioner
East Delhi Municipal Corporation
Civic Centre, New Delhi

..Respondents

(Mr. K.M. Singh, Advocate)

O R D E R

Mr. P.K. Basu:

Applicants have been initially appointed as Surveillance Worker against direct recruitment quota. They were treated on daily wage basis but subsequently regularized as Assistant Malaria Inspector (new designation for Surveillance Worker) (hereinafter referred to as 'AMI') from the date of initial appointment on daily wage basis.

2. The next promotional post of AMI is MI in the erstwhile pay scale of Rs.4000-6000. The next post for MI in the promotional hierarchy is Senior MI in the pay scale of Rs.4500-7000. According to the Recruitment Rules (RRs) notified in the year 1976, 75% posts of MI are to be filled up by way of promotion and remaining 25% by direct recruitment. The minimum qualification is as follows:-

“Qualifications

Essential

- (i) Matric with science subject from a recognized university or board.
- (ii) Sanitary Inspectors Diploma or Malaria Inspectors Course from a recognized Institution.
- (iii) three years experience in mosquito control field work.”

3. The qualification for AMI is matric with Sanitary Inspector Diploma from a recognized Institution. However, for MI it is **matric with science** with Sanitary Inspectors Diploma.

4. According to the applicants, since the post of MI has to be filled up 75% on the basis of promotion, the respondents should not have kept the qualification of **matric with science** as essential qualification for MI. It is stated that ultimately the respondents took a policy decision for amending the RRs of MI and as per the proposed amended RRs the condition of **matric with science** was dispensed with. In this regard, the applicants have filed a chart at Annexure A-2, which is the proposed RRs and indicate the essential qualification as matric pass apart from other two conditions.

5. It is stated that based on the above policy decision, the respondents held DPC on 23.05.2002 and promoted 135 similarly placed persons to the post of MI as per draft RRs treating the essential qualification prescribed to be matric, instead of **matric with science**. In this regard, promotion order dated 25.06.2002 has been filed as Annexure A-3. Since the applicants had completed 24 years of regular service but could not be granted promotion due to want of vacancies, the respondents considered their cases for financial upgradation under Assured Career Progression (ACP) Scheme dated 09.08.1999. The applicants were granted first and second financial upgradations in the pay scales of Rs.4000-6000 and Rs.4500-7000 vide order dated 13.05.2003 (Annexure A-4). As some vacancies became available, another DPC was held on 14.07.2006 and 62 AMIs were promoted vide order dated 02.08.2006 to the post of MI as per proposed RRs. It is stated that the proposed RRs were approved by the erstwhile Municipal Corporation of Delhi on 17.08.1992 and again on 29.09.1997 and sent for notification.

6. It is alleged that all of a sudden, the respondents stopped making promotion to the post of MI. Being aggrieved by this, some of the promotee AMIs filed O.A. No.735/2009, which was disposed of by this Tribunal with a direction to the respondents to consider the representation of the applicants. As a consequence, the respondents issued speaking order dated 25.05.2009 in compliance of the orders of the Tribunal in O.A. No.735/2009 and communicated the following decision:

“In respect of M.I., the notified RRs speaks that the eligible candidates should have the qualification or at least matric with sanitary inspector diploma. The above notified RRs, however, were amended by the Corporation deleting the word “science” with matric qualification in 1992 and in the year, 1997 the said RRs were further amended by raising the departmental quota from 75% to 100%. The

said RRs were yet to be notified. On the basis of amended RRs the promotions were given from time to time.

Keeping in view the above, the Competent Authority unanimously decided that there is no question of reverting the employees who have already been promoted as per amended RRs and it was also decided during the DPC held on 10/6/2008 that no further promotions will be given as per amended RRs and promotions will be considered as per notified RRs.”

7. Learned counsel for the applicants further points out that based on the fact that AMIs were given promotion as MI without insisting on the qualification of **matric with science**, other AMIs, who were initially appointed on daily wage basis as class IV and got promotion as AMI, filed O.A. No.2117/2010 and O.A. No.1997/2010. These O.As, were dismissed vide order dated 28.02.2002 relying upon the decision dated 05.05.2010 by Hon’ble High Court in Writ Petition No.1223/2010. However, the learned counsel points out that the petitioners in the aforesaid cases were claiming second financial upgradation by treating them as directly recruited AMI and the Hon’ble High Court held that the petitioners were unable to establish that they were appointed directly to the post of AMI and rejected their claim. According to the applicants, they were directly recruited AMI and none of the applicants/petitioners in the aforementioned cases were direct recruits. Furthermore, it is added that the applicants were granted financial upgradation as per the policy decision taken to follow the draft RRs. However, suddenly vide circular dated 12.11.2013 the respondents wrote to all field level officers to apply guidelines regarding fulfillment of promotion norms prescribed in the old RRs amended in the years 1992 and 1997. It is alleged that the circular dated 12.11.2013 makes it clear that the same has been issued by misinterpreting the order dated 28.02.2012 of this Tribunal. It is stated that perusal of the order dated 28.02.2012 makes it

clear that the Tribunal had not dealt with the cases of applicants, who were granted financial upgradations way back in the year 2003 as per the decision taken by the competent authority. It is further stated that on the basis of the aforesaid impugned circular the respondents have initiated process for effecting recovery from the salary of the applicants in a most arbitrary and unjustified manner. Being aggrieved by the said decision, the applicants filed representation dated 12.11.2013 but no action has been taken. It is stated that being aggrieved by the said action of the respondents, this O.A. has been filed with the following prayers:-

- “(i) To quash and set aside the impugned circular dated 12.11.2013 (A-1).
- (ii) To direct the respondents to follow their order dated 25.05.2009 (A-7).
- (iii) To declare the action of respondents in initiating process for withdrawing financial upgradation from the applicants by applying circular dated 12.11.2013, as illegal and unjustified.
- (iv) To allow the O.A. with exemplary cost.
- (v) Pass any further orders as this Hon’ble Tribunal may deem fit and proper considering the peculiar facts and circumstances of the case.
- (vi) Grant such other and further relief as may be deemed fit in the interest of Justice.”

8. The grounds on which this O.A. are as follows:

- a) Impugned circular dated 12.11.2013 has been issued equating the applicants with applicants in O.A. No.2117/2010 and O.A. No.1997/2010, though there is a clear distinction in both the cases. The applicants in the aforesaid O.As were on daily wage basis and subsequently promoted as AMIs, whereas the applicants herein were directly appointed as AMI and granted financial upgradation under

the ACP/MACP Schemes as per the policy decision not to insist on the qualification of **matric with science**. The amended RRs were approved by the erstwhile MCD in 1992 and 1997 but were not notified and hence the Department went ahead on the basis of draft RRs.

- b) The respondents cannot be permitted to take advantage of their own mistake of not notifying the amended RRs for 21 years and on the other hand attempting to withdraw the financial upgradation granted in the year 2003.
- c) The applicants have been discriminated against similarly placed officials, who have been granted promotion vide order dated 25.06.2002 and 02.08.2006.
- d) In the case of **Dr. K.Ramulu & Anr. v. Dr. S. Surya Prakash Rao & ots**, (1997) 3 SCC 59 the Hon'ble Apex Court held that the Govt. is competent to take a decision not to follow existing RRs.
- e) When the initial appointment to the post of AMI is without insisting on qualification of **matric with science**, how could this qualification be insisted for promotion to the post of MI.
- f) The impugned circular dated 12.11.2013 has been issued without giving an opportunity of hearing to the applicants, thus violating principle of natural justice.
- g) The applicants have not been given even a single promotion despite rendering more than 30 years of regular service and in case the ACP upgradation is withdrawn, the same would cause grave injustice to them. The applicants are similarly placed to Mr. S.D. Tyagi, Shyam Narain, Vinod Kumar, who were granted promotion vide order dated

25.06.2002 inasmuch as the said persons were also granted promotion by following the approved amended draft RRs.

9. It is further clarified by the learned counsel for applicants that on the date of second ACP, the applicants had the qualification as well. Learned counsel also placed along with the written statement the following two judgments:

- i) Judgment dated 28.05.2009 of Hon'ble High Court of Delhi in W.P. (C) No.9330/2009 and
- ii) Judgment dated 05.08.2014 in W.P. (C) No.4879/2014.

The first case was regarding denial of benefit of ACP on the ground that applicants were not having necessary qualification for promotion to the next higher post of Handicraft Promotion Officer (HPO). The applicant was holding the post of Technical Assistant (Metal). The question to be adjudicated was whether while considering promotion to the post of HPO the relaxation granted in the said qualification of Technical Assistant (Metal) could be denied to him. It would be clear that facts and circumstances of that case are completely different from the present case and, therefore, decision of the Hon'ble High Court in W.P. (C) No.9330/2009 cannot be said to be a precedent.

The second matter is regarding the applicant, who at the relevant point of time was working in Department of Telecommunications (DoT). However, in this case, there was an issue of equivalence of qualification, which was under consideration and which decided the issue. Again this

order is not in the background of same facts and circumstances of the present case and cannot act as a precedent.

10. Learned counsel for the respondents, first of all, points out that the applicants have challenged the circular dated 12.11.2013, which is not a final order of the Government with regard to the applicants. Through this circular, all field level officers have been directed to examine the case of ACPs in respect of each employee working under them as per the provisions of the guidelines of the circular. Therefore, unless each and every employees' case is decided and some order issued, no cause of action lies. It is further pointed out that this circular was issued on 12.11.2013 and the applicants filed their representation on 12.11.2013, i.e., the same very day and without even waiting for the response thereto, they have approached this Tribunal by filing this O.A. on 12.12.2013. It is, thus, argued that this O.A. is pre-mature and needs to be dismissed on that ground itself.

11. It is further argued that in its order dated 05.05.2010 in W.P. (C) No.1223/2010 the Hon'ble High Court dismissed the writ petition against the Tribunal's order (dismissing the O.A.) by passing the following order:-

“In the totality of the facts and circumstances, the petitioners have not been able to establish that they were appointed directly to the post of Assistant Malaria Inspector as they did not have requisite qualification as contemplated under the Recruitment Rules and consequently, the inevitable inference that they were promoted from the post of Seasonal Malaria Beldar to the post of Assistant Malaria Inspector and on account of getting one promotion in 1977-78, they are only entitled for one benefit under the ACP Scheme and not to the other benefits, cannot be faulted.

In the circumstances, this Court does not find any such illegality or irregularity or such perversity in the order of the Tribunal, which shall require any interference by this Court in exercise of its jurisdiction under Article-226 of the Constitution of India.

The writ petition, in the facts and circumstances, is without any merit and, it is therefore, dismissed.”

12. Our attention is further drawn to O.A. No.2117/2010 and O.A. No.1997/2010, which were similar on point and were dismissed by order dated 28.02.2012. Paragraphs 14 and 15 of the aforesaid order, which clearly explain case, are extracted below:

“14. Perusal of above judgment clarifies that the facts and circumstances of the said case was absolutely same as in the present case before us. Hon’ble High Court of Delhi had clearly given a finding that since the applicants therein did not possess the educational qualification as per the RRs in vogue at that time the inevitable inference was that they were promoted from the post of Seasonal Malaria Beldar to the post of Assistant Malaria Inspector and since they had got one promotion in year 1977-78, they are only entitled to one benefit under the ACP Scheme and not the other. Exactly the same position exists in the present case also. In the present case also it is admitted by the applicants that they were not having the requisite educational qualification on the date when they were appointed as SW/AMI. It is correct that the order of appointment contain the terms which are generally given for regular appointment but in the said order it was specially mentioned that the appointment is on ad hoc basis. It could be so because they did not have the educational qualification as required by the RRs, therefore, it cannot be stated that the applicants were appointed on regular basis by way of direct appointment in 1978 otherwise the word ad hoc would not have been used in the appointment letter (page 101). In any case since Hon’ble High Court has already concluded that in the absence of having requisite qualification at the time of appointment, the inevitable inference that be drawn is that applicants were promoted from the post of Seasonal Malaria Beldar to the post of Assistant Malaria Inspector, the present case is fully covered by the above judgment of the Hon’ble High Court of Delhi.

15. Counsel for the applicants had submitted that the RRs were not notified. Since there were no notified RRs, the RRs which were passed by way of Resolution would hold the field. Counsel for the applicants has not been able to produce any other RRs for the post of SW/AMI, therefore, this contention is rejected being without any merit.”

13. The order dated 28.02.2012 was challenged before the Hon’ble High Court by filing Writ Petition (C) No.2178/2012 and 304/2012 but the same were dismissed as withdrawn vide order dated 07.01.2013. It is asserted

that none of the applicants, at the relevant point of time when the ACPs were granted, possessed the eligibility criteria of matric with science and Sanitary Inspector diploma as per the existing RRs for the said post and, therefore, in accordance with the ACP guidelines dated 09.08.1999, which clarifies that only those employees, who fulfil all promotional norms, are eligible to be considered for benefits under the ACP Scheme, and in compliance of the order dated 28.02.2012 passed by this Tribunal with a view to streamline the Malaria cadre, circular dated 12.11.2013 was issued.

14. It is argued that though the applicants are directly recruited as AMIs, they did not fulfil the qualifications prescribed under the RRs for the post of MI. The old RRs of 1976 are still applicable. It is true that the Department promoted some eligible employees as per amended/proposed RRs till 25.09.2009 but vide speaking order dated 25.05.2009, Government decided that no further promotion will be given as per the amended RRs and will be considered as per the notified RRs of 1976. However, the respondents also took a decision that employees promoted on the basis of proposed RRs will not be reverted back. It is stated that applicants are confusing the two issues; whereas the issue of promotion was resolved in the year 2009 as aforementioned, the issue of ACP has been decided vide circular dated 12.11.2013 in view of the specific provision of the ACP guidelines, as mentioned above. The order dated 25.05.2009 was an outcome of the order of this Tribunal in O.A. No.735/2009 whereas the Department had decided the issue of ACP after the W.Ps were decided by the Hon'ble High Court dated 07.01.2013. Therefore, the circular dated 12.11.2013 in question has been issued.

15. Heard the learned counsels for the parties and perused the pleadings/judgments/written statements.

16. First of all, a distinction has to be made between promotion and upgradation under ACP. Upgradation is to be done under ACP strictly following the guidelines. ACP guidelines stipulate that while considering upgradation all the promotional norms would need to be followed. This would mean that the applicants have to possess the educational qualification, as laid down in the RR in vogue at that time, i.e., RRs of 1976. The fact that the respondents have made some concession in case of promotion and used the amended RRs without the condition of matric with science cannot be used as a precedent to claim that the same condition has to be used in the case of ACP as well. In any case, circular dated 12.11.2013 was issued as a consequence of the directions of this Tribunal in O.A. No.2117/2010 and O.A. No.1997/2010, which order was also upheld by the High Court vide order dated 07.01.2013. The respondents have taken a re-look at the issue of ACP and issued the impugned circular dated 12.11.2013. First of all, we agree with the contention of learned counsel for respondents that this O.A. is premature. The circular is only a direction to the field level officers to examine each and every case. Moreover, applicants had also filed a representation on the same very day, i.e., 12.11.2013 and without waiting for the response from the respondents, they rushed to file this O.A. on 12.12.2013. Therefore, on this ground alone, since they have not exhausted the departmental remedies available to them and waited for the respondents to reply to their representation, this O.A. is not maintainable. However, even on merits, we have seen the Department has rectified its

mistake both in the case of promotion as well as ACP. In the case of promotion also they have decided that they will follow the RRs of 1976 in future starting from 25.05.2009. Similarly, in the case of ACP, they also issued circular dated 12.11.2013. The respondents are trying to streamline the ACP upgradation in accordance with RRs of 1976 as well as ACP guidelines strictly. The only concession the respondents have given is that those who had been promoted have not been reverted back. One can understand this position as under promotion, one holds a higher post with higher responsibility and reverting him would create several administrative problems. The applicants are only given ACP upgradation and not promotion. They continued to discharge same duties and responsibilities and got a higher scale, thus they cannot compare themselves with the cases of promotion granted to employees as a precedent. **Dr. K.Ramulu** (supra) would not apply in the present case as that judgment does not lay down that the Government has to follow draft/proposed RRs necessarily. In fact, the settled law is that the notified Rules in vogue at the time of promotion/upgradation have to be followed.

17. We are satisfied from the facts and circumstances of the case that the respondents have acted in a very fair and equitable manner in accordance with the RRs and we need not interfere with this matter at all. The O.A. is, therefore, dismissed. No costs.

(Raj Vir Sharma)
Member (J)

(P.K. Basu)
Member (A)

‘San’