

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.4643/2015

Order Reserved on 14.01.2016
Order Pronounced on: 20.01.2016

Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

1. Shri Sudershan Kumar
S/o Shri M.R. Bhardwaj
R/o V.P.O. Mundhela Kalan
New Delhi-73.
2. Shri Narayan Kumar
S/o Late Shri Shiv Charan
R/o Q. No.3, N.P. Girls Senior Secondary School,
Gole Market, New Delhi-01. -Applicants

(By Advocate: Ms. Jyoti Singh learned Senior Counsel with
Mr. Sameer Sharma)

Versus

1. New Delhi Municipal Corporation
Through:
New Delhi Municipal Council,
Palika Kendra, Sansad Marg,
New Delhi-01.
2. Secretary,
New Delhi Municipal Council,
Palika Kendra, Sansad Marg,
New Delhi-01.
3. Director (Personal)
New Delhi Municipal Council,
Palika Kendra, Sansad Marg,
New Delhi-01.
4. Delhi Subordinate Service Selection Board,
Through its Chairman,
F-18, Karkardooma Institutional Area,
New Delhi. -Respondents

ORDER**Per Sudhir Kumar, Member (A):**

Heard the learned Senior Counsel Ms. Jyoti Singh on the point of admission of the case for the purpose of issuance of notice.

2. The two applicants of this O.A. had joined as Assistant Fire Guard (AFG, in short) on 07.08.1990 and as a Peon on 01.04.1997 respectively.

3. The applicant No.1 was promoted to the clerical cadre on 10.12.1991 and posted as “Attorney”, which post was later re-designated as “Court Clerk”.

4. Through Circular dated 27.06.1997, the respondents had invited applications from its employees for internally filling up the post of Assistant Law Officer (ALO, in short), and the minimum-maximum age limits were fixed to be from 25 to 45 years. Three years later, in the year 2000, both these applicants completed their education in Law, and obtained their degrees in Law.

5. Thereafter, as Court Clerk, Applicant No.1 was assigned duties relating to certain specified Courts through Office Order dated 07.06.2004. These two applicants have approached this Tribunal earlier in O.A. No.568/2014, which was disposed off on 21.08.2014. The beginning and the concluding paragraphs of that order of a Coordinate Bench were as follows:-

“The present OA was filed praying for the following reliefs:-

- “i) Direct the respondents to consider the applicants for appointment as ALO against the aforesaid 2 vacant posts of ALO as per old recruitment rules by relaxing the age limit; and
- ii) Declare the action of respondents of filling up the posts of ALO from open market on contract basis as arbitrary and illegal; and
- iii) pass any other orders as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

During the oral submissions, the learned counsel for the applicants stated that he was not pressing for the first relief.

2. The fact of the case in brief are that the respondent No.2 invited applications from regular employees of NDMC for filling the post of ALO on ad-hoc basis vide circular dated 29.04.2011, which reads as under:-

“NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA: NEW DELHI
SECRETARYS ESTT., BRANCH

No. SO(E)/680/SA-I

Dated 29.4.2011

CIRCULAR

Pending recruitment of Assistant Law Officer, on a regular basis, from D.S.S.S.B, it is proposed to fill these posts from amongst regular employees working in NDMC. According, applications are invited from departmental candidates working in NDMC for filling up the post of Assistant Law Officer in the scale of Rs. 9300-34800+Rs.4600/- Grade Pay (6th CPC) on adhoc basis. The candidates possessing the following qualifications and experience may submit their applications on plain paper giving complete Bio-data in this office, duly verified from their respective establishment units latest by 16.5.2011.

Educational & other qualifications prescribed for the post are as under:-

Degree in Law from a recognized University or equivalent.

Two years experience in legal matters.

After appointment of ALO's on regular basis from the persons sponsored by DSSSB, the candidates appointed on adhoc basis as above shall revert to their normal posts.

Dy.Director(Estt)

Copy to :-

All HODs.

All Notice Boards.”

The applicants who fulfilled all the conditions given in the circular applied for the post and were selected by the respondents. They were assigned the Current Duty Charge/(CDC) of the post of ALO vide office order dated 2.8.2011, which is reproduced below:-

“NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA: NEW DELHI
SECRETARY'S ESTT., BRANCH

No.SO(E)/8682/SA-I

Dated 2.8.2011

OFFICE ORDER

The following officials are assigned the Current Duty Charge of the post of Assistant Law Officer:-

Sr.

No	Name	Designation	Emp. Code No.	Deptt.
1	Sh.Sudershan Kumar	Court Clerk	262197	Law Deptt.(working in EBR
2.	Sh. Nararan Kumar	Meter Reader	305884	Cmml. Deptt. (working in diverted capacity in law deptt.)

This will be a working arrangement and shall not have any bearing in terms or seniority or monitory benefits. They will continue to draw their salary in their present scale of pay. The arrangement will not create any vacancy in their respective cadres and will be re-examined after 1.1.2012.

These issues with the approval of Competent Authority/NDMC

Dy.Director(Estt)”

3. It is an admitted fact that the “re-examination after 1.1.2012, as stated in the above order, did not take place and the applicants continued to work as ALOs on CDC basis. In the meantime, on the requisition received from the respondent-NDMC, the DSSSB published an advertisement for the post of ALO under Post code No.61/2011 in the Employment News dated 20-28th October 2011. The applicants, however, submitted representation to the respondents and DSSSB that vacancies in question arose in the year 2004-07 prior to the promulgation of amended Recruitment Rules (RRs) of the year 2008 and therefore should be governed by the old RR. The revised RR provide for age relaxation for the employees of NDMC up to 5 years with a cap on the upper age limit at 30 years, while in the old Recruitment Rules, the upper age limit was 40 years for the NDMC employees. The process of recruitment was put on hold by DSSSB for some clarification and its present status is not known. In the meantime, respondents have issued an advertisement on 28.1.2014, which is reproduced below:-

“NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA: NEW DELHI
SECRETARYS ESTT., BRANCH

WALK-IN-INTERVIEW

Applications are invited from the eligible candidates in the prescribed format for walk-in-interview at 3rd Floor, Council Room, Palika Kendra, Sansad Marg, New delhi-110001 on 19.02.2014 at 11:30 AM for appointment of Asstt. Law Officer on contract basis on fixed remuneration of Rs. 25,500/- p.m. for a period of six months or till the posts are filled on regular basis, whichever is earlier, having (i) Degree in Law from a recognized University or equivalent (ii) Two years experience in legal matters (iii) Age limit 30 years.

The application format can be downloaded from our website www.ndmc.govt.in

Director (Personnel)
NDMC”

4 to 10 xxxxxxxxxxxxxxx(Not reproduced here)

11. Going by the law as laid down in the judgment of Hon'ble Supreme Court in the case of Hargurpratap Singh vs. State of Punjab (supra), we are of the view that respondents in the preset OA have failed to establish the reason for terminating one "ad-hoc" arrangement to make another "ad-hoc" arrangement by appointing contractual ALO through proposed walk-in-interview and therefore the notice dated 28.1.2014 is not in accordance with law.

12 & 13xxxxxxxxxxxxxxxx(Not reproduced here)

14. Taking into account the entire conspectus of the case and for the aforesaid reasons, the Notice for walk-in-interview dated 28.1.2014 (impugned) is quashed. The respondents are directed to conduct the "re-examination" of the CDC arrangement as envisaged by order dated 2.8.2011 in respect of the applicants and take a decision regarding continuation of the arrangement taking into account the functional necessity and the performance of the incumbents till the posts are filled up by regular appointments through DSSSB. This action will be completed by the respondents within four weeks from the date of receipt of this order. No order as to costs."

6. The case of these two applicants in the present O.A. before us is that till the year 2008, the Rules followed by New Delhi Municipal Corporation (NDMC, in short), for the post of ALO, only required a candidate to be a Law Graduate with 3 years' experience in legal matters, and being well conversant with the provisions of PM Act, Municipal Bye-Laws, Labour, Commercial and Civil Laws, and other Allied Business, and that the said post of ALO was at that time known as Legal Assistant in the Law Department, NDMC (Annexure A-7).

7. Having acquired more than 3 years' experience in legal matters by that time, in the year 2005 the Applicant No.1 made a representation to the respondent Nos. 1 to 3 to fill up the said post of Legal Assistant in

Law Department from departmental candidates, as was done in the past, and put forth his candidature, but his request was not acceded to.

8. In August, 2006, the Applicant No.2 was promoted from the post of Peon to the post of Meter Reader.

9. In the year 2007, a second post of Legal Assistant (now ALO) fell vacant, but the respondents still did not fill up these two posts.

10. As there were no promotional avenues for Court Clerks, the post on which the Applicant No.1 was working, along with some others, and many of them were stagnating on the same post for the last 15 years, on 11.01.2007, the Law Department of the Respondent-NDMC recommended for creation of a higher clerical level post of Senior Court Clerk, and it was also suggested that in the appointments to the posts of Legal Assistants (now ALO), 20% quota should be reserved for the Court Clerks.

11. However, on 15.05.2008, the post of Legal Assistants came to be re-designated as ALO, and new Recruitment Rules (RRs, in short) for the said posts of ALO were notified, by which the upper age limit for appointment to the post of ALOs was reduced from 40 years to 30 years, and the experience requirement was reduced from 03 years to 02 years.

12. The applicants have assailed these RR's, notified on 15.05.2008, now in the present O.A., submitting that no departmental candidate can have both the degree of Law, and 2 years' legal experience, at the age of

30 years. Further, the applicants of this OA are aggrieved that as per the said RRs dated 15.05.2008, the re-designated posts of ALOs were made as direct recruitment posts, while as per the Resolution dated 27.11.1997, earlier passed by the Municipal Council, until the new RRs were notified, the modifications could have been made even by the Chairman, NDMC, which he did not do, to modify the said Rules, and did not fill up the two vacant posts, in the interregnum period from 27.11.1997 to 14.05.2008, in spite of requirement of ALOs.

13. Since the 15.05.2008 RRs did not envisage a departmental quota for recruitment to the re-designated post of ALOs, certain persons, including the applicants before us, made a representation to the Director (Welfare) NDMC on 14.03.2011, praying for creation of a departmental quota for recruitments to the posts of ALOs, as done for other posts of the Municipal Council like Junior Engineers (Civil & Electrical).

14. Soon thereafter, on 29.04.2011, an internal Circular was issued by the respondents, inviting applications from the departmental candidates already working with the respondents for filling up the post of ALOs on ad hoc basis, as per the new RRs, and the qualifications and experience prescribed therein, though no age limit was prescribed in that Circular (Annexure A-10).

15. The present applicants considered themselves as being eligible for appointment as ALOs, but the recruitment could not be proceeded ahead at that time, because it was statedly opined that RRs of 2008 are

defective, as the respondents had failed to undertake consultation with the Union Public Service Commission (UPSC, in short), before notifying the said RRs.

16. As noticed by the Coordinate Bench also in its order dated 21.08.2014, the applicants' case is that through Office Order dated 02.08.2011 both the applicants were appointed as ALOs in the Law Department on Current Duty Charge (CDC, in short) basis. Later on, the respondents had decided to fill up the vacant posts of ALOs, and made a requisition in this behalf to the Delhi Subordinate Service Selection Board (DSSSB, in short), which had notified the said posts under the Post Code No. 61/2011 in the Employment News dated 20-28th October, 2011. The present applicants were aggrieved, and requested the Secretary, DSSSB, to defer that process of recruitment, and ultimately the entire selection process started by that advertisement of DSSSB came to be scrapped. The respondents thereafter tried to fill up the aforesaid two vacant posts of ALOs on contract basis, and issued an Advertisement dated 28.01.2014 accordingly, for appointment of ALOs on contract basis, on fixed remuneration, for a period of six months, or till the posts are filled on regular basis, which was the subject matter of the present applicants' earlier O.A. No.568/2014 (supra), and through this Tribunal's order dated 21.08.2014, as reproduced in part above, that advertisement also was quashed, because the Coordinate Bench felt that the respondents had failed to establish the reasons for terminating one ad hoc arrangement, and making another ad hoc arrangement, by trying to appoint contractual ALOs through proposed walk-in-interview, which

was held by the Bench to be not in accordance with the law as laid down by the Supreme Court in **Hargurpratap Singh vs. State of Punjab 2007 (13) SCC 292.**

17. As a result, while the walk-in-interview for contractual appointment of ALOs was quashed, but the respondents were directed to re-examine the present applicants' CDC arrangement, and to take a decision regarding continuation of the arrangement, taking into account its functional necessity, and the performance of the incumbents, **till the posts are filled up by regular appointments through DSSSB.** Thus, the Coordinate Bench had not quashed or interfered with the capacity of the respondents to make regular appointments to the concerned posts through DSSSB.

18. However, the applicants first submitted a representation dated 12.01.2015 to the respondents, requesting to consider their case for converting their appointments to the post of ALOs from CDC basis to ad-hoc basis, and, thereafter, submitted another representation dated 29.06.2015, through Annexure A-17, praying for regularization of their services as ALOs, by passing a Resolution of the Respondent-Municipal Corporation, amending the said RRs of 2008, and creating a departmental quota for eligible departmental candidates.

19. Another representation to this effect was once again submitted by them directly to the DSSSB on 15.07.2015, praying for deferment of the process of recruitment for the posts of ALOs. The respondents, thereafter, issued a Show Cause Notice to the applicants, as to how they

had directly approached the DSSSB to defer the process of recruitment, since, through the DSSSB Advertisement dated 20.10.2015, the respondents had advertised for filling up four vacancies for the posts of ALOs against Post Code 31/15. We are not concerned in the present O.A. about the progress and outcome of those show-cause notices. However, the applicants have submitted that they have since replied to the Show Cause Notice issued to them through their reply dated 30.10.2015 (Annexure A-20).

20. The applicants have filed this OA taking 41 grounds from Para 5.1 to 5.41, and have prayed for the following reliefs in this OA:-

- “i) To appoint the applicants on the post of Assistant Law Officer on regular basis, a Group B post, in Law Department of New Delhi Municipal Council;
- ii) Without prejudice to prayer clause (i), quash and set aside advertisement bearing No.F.1 (142)/DSSSB/P&P /2015 /Advt.769 dated 20.10.2015, whereby respondent No.4 DSSSB has advertised 5 vacancies for the post of Assistant Law Officer at Sl. No.:31, and Post Code is 31/15;
- iii) Without prejudice to prayer clause (i) and (ii), to quash the Office Order dated 14.11.2014 to the extent of denying to give monetary benefits to the applicants who are working as Assistant Law Officer on current duty charge since 02.08.2011 without any financial benefits;
- iv) Without prejudice to prayer clause (i), (ii) and (iii), to direct the respondent Nos.1 to 3 to revisit and revise the Recruitment Rules for the post of Assistant Law Officer by introducing quota for departmental candidates for appointment of Assistant Law Officer in the NDMC;
- v) pass any other orders as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

21. Learned Senior Counsel for the applicants argued very vehemently that since the two applicants have performed well in the task as ALOs assigned to them on CDC basis, their rights for promotion to the said Group 'B' posts cannot be denied to them by the respondents in any manner. She argued that the applicants have been stagnating, and have been left with no promotional avenues, and that in the absence of promotional avenues being provided, by making a provision for a quota for appointment of ALOs on promotion basis in the said RRs of 15.05.2008 (supra), the applicants would suffer undue hardship, and that any action to the contrary would lead to denial of fair opportunity of promotion to the two applicants herein.

22. We have considered the case of the applicants and the arguments of the learned Senior Counsel appearing on their behalf.

23. It has been held by the Apex Court that the employer has the full rights to prescribe the qualifications in respect of the posts created, and as to the manner of filling up all those posts. In Para-7 of the judgment of the Supreme Court in **Nilangshu Bhushan Basu vs. Deb K. Sinha and Others (2001) 8 SCC 119**, the Supreme Court had held as follows:-

“7. In absence of any rule to that effect, it would be an administrative function of the appointing/appropriate authority to take a decision as to which method should be adopted for recruitment on any particular post. It may depend on various factors relevant for the purpose e.g. status of the post, its responsibilities and job requirement, the suitable qualifications as well as the age as may be desirable may also be taken into consideration while making such an administrative decision. In this connection, on behalf of the appellant the selected candidate a

decision reported in AIR 1989 SC 2060, **State of Andhra Pradesh v. Sadanandam** has been relied upon. It has been observed as also quoted in the impugned judgment

"..... We need only point out that the mode of recruitment and the category from which the recruitment to a service should be made are all matters which are exclusively within the domain of the executive. It is not for the judicial bodies to sit in judgment over the wisdom of the executive in choosing the mode of recruitment or the categories from which the recruitment should be made as they are matters of policy decision falling exclusively within the purview of the executive."

24. The essence of the Supreme Court judgment in the case of **Mrs. Rubi (Chandra) Dutta vs. M/s. United India Insurance Co. Ltd. (2011) 11 SCC 269** was that at the time of giving employment to a prospective employee, the employer is required to be satisfied about the competence and suitability of the applicant.

25. Finally, in the case of **Lila Dhar vs. State of Rajasthan & ors. (1981) 4 SCC 159; AIR 1981 SC 1777**, the Supreme Court had held as follows:-

“ 4. The object of any process of selection for--entry into a public service is to secure the best and the most suitable person for the job. avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service.....”.

26. Further, it is seen by us that respondents have in no manner denied to the applicants an opportunity to seek appointment to the said post of ALOs on a competitive basis, and had even circulated these posts among all the employees, including the applicants, for seeking appointments against these posts. Also, no employee can claim a vested

right for being considered for promotion to a post which does not lie in the normal Channel and Avenues of Promotion as prescribed for his own Cadre Post. A Group 'C' employee cannot claim a vested right to be considered for being promoted to a Group 'B' post *de hors* the Rules, and, likewise, a Group 'B' employee cannot claim a vested right to be considered for being promoted to a Group 'A' post, *de hors* the Rules.

27. Further, though the present applicants were successful in preventing the contractual appointment of ALOs through the orders of this Tribunal dated 21.08.2014 in OA No.568/2014, it is seen that the Bench that day had not at all prohibited the respondents from filling up of the posts concerned by regular appointments through DSSSB. As a result, the prayer in this O.A. at Para-8(ii), as reproduced above, praying for quashing and setting aside of the DSSSB advertisement for the posts concerned, is hit by principle of *res-judicata*, and cannot be granted.

28. Similarly, in view of the liberty granted to the respondents by the orders of the Coordinate Bench of this Tribunal to fill up the posts by regular appointments through DSSSB (*supra*), the applicants cannot also seek their direct appointment against the posts on regular basis, *de hors* the Rules, in the concerned Group 'B' posts, as prayed at Para-8 (i) of the present OA, in view of the order passed by the Coordinate Bench in their own earlier OA No.568/2014 on 21.08.2014 (*supra*).

29. The prayer at Para-8(iii) in this O.A. relates to the monetary benefits associated with the duties being performed by the applicants on

CDC basis so far, for which the applicants would be entitled to bring forth a separate Original Application, as the prayer at Para-8 (iii) of this OA, not being connected with the prayers at Para 8(i, ii & iv) of this OA, is hit by the principle of plurality of reliefs sought for in a single OA.

30. The prayer at Para-8 (iv) in this O.A. is for directions upon the respondents to re-visit and revise the RRs dated 15.05.2008 for the post of ALOs by introducing a quota for departmental candidates for such promotional appointments. It is seen that this prayer is a very much belated prayer, made more than 7 ½ years after the said RRs were notified, and, therefore, no immediate cause of action could be said to have accrued to the two applicants as of now, to be able to make this prayer as made at Para-8 (iv) of this OA, when the cause of action for making this prayer had accrued to them on 15.05.2008 itself.

31. Learned counsel for the respondents had relied upon the Supreme Court judgment in the case of **Food Corporation of India & Others vs. Parashotam Das Bansal and Others (2008) 5 SCC 100**, while making her submissions, and had emphasized especially upon the judgment in the case of **O.Z. Hussain (Dr.) vs. Union of India, 1990 Supp SCC 688: 1991 SCC (L&S) 649**, which was relied upon by the Supreme Court in Para-10 of the cited judgment. However, we do not find that the ratio as laid down by the Supreme Court in the above case **Food Corporation of India & Others vs. Parashotam Das Bansal and Others** (supra) can be invoked by the two applicants of the present OA in any manner whatsoever.

32. Therefore, in the absence of there being any immediate cause of action for the applicants to agitate this matter, and the prayers at Para-8 (i) & (ii) being hit by *res judicata*, on account of the orders of this Tribunal passed in their earlier OA, and the prayer at Para-8 (iv) being hit by the law of limitation, the present OA is dismissed, with liberty to the applicants to agitate their prayer at Para-8 (iii) by way of separate original proceedings, if they are so advised.

33. The OA is, therefore, dismissed in *limine*, at the admission stage itself.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

cc.