

**Central Administrative Tribunal
Principal Bench**

OA No.3978/2014

New Delhi this the 08th day of October, 2015

Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)

1. Kamlesh Devik Sat,
W/o Shri Rajpal Singh,
68, Alipur, Delhi-36
 2. Sheela Dileep,
W/o Shri Dileep Kumar,
C-91A, Shalimar Garden,
Ext.II, Ghaziabad, UP
 3. Lathika N.Das,
W/o Narayan Das,
C-2, Manas Apartments,
Mayuv Vihar Ext. Delhi
 4. Sushila Gautam,
W/o Shri Suneel Kumar,
Gali No.3, H.No.131,
Block-A, Shastri Park Ext.,
Nathupura Mode, Delhi-84
 5. Saranjeet,
D/o Late Devinder Singh Bedi,
C/o Nehru Yuva Kendra Sangathan,
2nd Floor, Core-IV, Scope Minar,
Laxminagar, Delhi
- Applicants

(By Advocate: Mr. Rakesh Kumar Singh)

V E R S U S

1. Nehru Yuva Kendra Sangathan (NYKS)
Through the Director General,
(Under Ministry of Youth Affairs & Sports)
Core-4, 2nd Floor, Scope Minar,
Laxmi Nagar, Vikas Marg,
New Delhi-110092
2. Union of India,
Through the Secretary (Youth Affairs)

Ministry of Youth Affairs & Sports)
Room No.1, C-Wing, Shastri Bhawan,
New Delhi-110001

3. Union of India,
Through the Joint Secretary (NSS/NYKS),
Ministry of Youth Affairs and Sports,
Room No. 114, C-Wing, Shastri Bhawan,
New Delhi-110001 -Respondents

(By Advocates: Mr. R. Ramachandran, Ms. Lakshmi
Gurung and Mr. Sujeet Kumar Mishra)

O R D E R (Oral)

Mr. A.K. Bhardwaj, Member (J):

The prayer made in the present OA filed under
Section 19 of the Administrative Tribunals Act, 1985 read
thus:-

- “(A) Declare the NYKS decision dated 08.10.2014 as bad, arbitrary, unjust, unreasonable, unlawful, improper, irrational and unfair etc. in the eyes of law.
- (B) Declare that the respondents were negligent and failed to act on due time as per RR dated 05.03.1998 qua the LDCs/UDCs by not holding the requisite DPC for their consideration of promotion from the post of LDC to UDC and then UDC to Assistant despite having available vacancy on the post of Assistant since 1987 onwards in Nehru Yuva Kendra Sangathan (R-1).
- (C) The respondents consequently be directed and ordered to consider the cases of applicants LDCs/UDCs as applicable to be considered for promotion to the post of Assistant and for other further consequential promotions on the posts of i.e. Section Officer/Administrative Officer and thereafter to the post of DYC/Assistant Director in Nehru Yuva Kendra Sangathan in terms of RR dated 05.03.1998.

- (D) The respondents consequently be directed to ignore notes and proposals dated 20.09.2013 and 29.01.2014 and also declare the RR dated 08.11.2010 inapplicable and unjust, improper, unfair, unreasonable, inequitable etc. in the cases of applicants, failing which the RR dated 08.11.2010 and notes/proposals dated 20.09.2013 and 29.01.2014 may be declared as bad and unconstitutional qua the LDCs and UDCs and apply RR dated 05.03.1998 with relaxation in the rules and treat the applicants already working on the post of UDC and may so direct the respondents.
- (E) The respondents be directed to consequently order to relax the respective rules in the case of applicants for the purposes of considering them for promotion to the post of Assistant from LDC in Nehru Yuva Kendra Sangathan counting the requisite service as rendered on the post of UDC and combine the 13 services as LDC and UDC for the application of RR dated 05.03.1998.
- (F) The respondents be directed consequently to held the DPC to consider the cases of applicants LDC for their promotion from the post of LDC to Assistant within a time bound manner and other further consequential consideration for promotion and convene the next DPC immediately for DYC/Assistant Director after the consideration of the cases of the applicants as prayed hereinabove in order to consider and make them duly eligible for the respective consideration for the post of DYC/Assistant Director in Nehru Yuva Kendra Sangathan like the candidates as mentioned in O.O. dated 11.08.2014.
- (G) Pass any such other/further consequential order(s)/direction(s) which this Learned Tribunal deems fit and proper in the facts and circumstances of the present case.”

2. Learned counsel for the applicants submitted that the applicants herein were appointed as Lower Division

Clerks in Nehru Yuva Kendra Sangathan (NYKS) during the years 1993 to 1996 and are stagnating in the initial entry grade. According to him, sufficient number of vacancies in the grade of Assistants were available and if the respondents would make promotion of UDC to Assistant, there would be vacancies in the grade of UDC against which the applicants herein were also to be considered for their promotion.

3. Learned counsel for the respondents explained the various steps taken by them in making promotion to the grade of UDC in accordance with the recruitment rules in vogue from time to time. In the counter reply filed on behalf of the respondents, a reference to different set of recruitment rules has been made and it has been espoused that the LDCs need to first become eligible for promotion to the post of UDCs and then only after satisfying the eligibility conditions mentioned in the rules can aspire to be considered for next promotion. It would be useful to extract the following relevant excerpt of the reply filed on behalf of the respondents to put the factual position:-

“A. LDC to UDC

As per the Recruitment Rules, 1998, which has been enclosed as Annexure-A2 by

the Applicants themselves, (available at Page 99), the post of UDC is to be filled in the following modes:

- (a) 100% by promotion, failing which by transfer on deputation.

Eligibility:

LDCs with 8 years of regular service in the grade are eligible for consideration.

Sanctioned and working strength in UDC/Assistants:

The following 5 persons were working as UDCs as on 5.3.1998.

- (1) Sunita Sharma
- (2) Sneha Lata
- (3) Dhanpat Daisy
- (4) Madan Lal and
- (5) Bhupender Singh

Consequent to the sanction of additional posts in the year 2007, the total number of posts in the UDC rose to 6. As 4 persons from the above list of UDCs viz.,

- (1) Sneha Lata
- (2) Dhanpat Daisy
- (3) Madan Lal and
- (4) Bhupender Singh

got promoted to the post of Assistant in June, 2009

DPC for filling up UDC Vacancies:

Thus, after taking into account the above vacancies created and additional posts sanctioned in the year 2007, totally 5 vacancies arose in the year 2009. Keeping in view the vacancies, promptly a DPC was held on 29.04.2009 to consider LDCs for promotion to fill up all the five vacant posts of UDC. The zone of consideration for filling up one vacancy is five. It is pertinent to mention here that two

applicants in the present OA namely, Smt. Kamlesh Devi Sat and Smt. Sheela Dileep, out of the five applicants in the present OA, were in the zone of consideration and they were considered by the DPC. The following five LDCs were promoted to the post of UDC. It is vide office order dated 18.06.2009 (**Annexure R-1**).

- (1) Pardeep Kumar
- (2) Brij Kishore Singh
- (3) Angsuman Chakaroborty
- (4) Laxmi Rawat and
- (5) Shriraman Jha

All the five persons promoted as UDCs through the DPC held in the year 2009, were senior to the present Applicants.

Therefore, the contention of the Applicants that they have not been considered for promotion as per the applicable Recruitment Rules is completely false, contrary to facts and made with an intention to mislead this Hon'ble Tribunal with ulterior motives.

When there were no further vacancies in the post of UDC, the grievance of the Applicants that they are not being considered for promotion to the higher post of UDC is totally untenable.

Grant of Minimum Assured Career Promotion:

Applicant's name	First Financial Upgradation on (I MACP)	Second Financial Upgradation granted on (II MACP)
Smt. Kamlesh Devi	22.03.2005	22.03.2013
Smt. Shile Deelip	11.03.2005	11.03.2005
Smt. Saranjit	09.02.2008	---
Smt. Sushila Goutam	22.01.2008	---
Smt. Lathika N Das	01.12.2007	---

Now a fresh vacancy in the post of UDC has arisen due to the resignation by Sunita Sharma on 8.10.2014. A DPC will be conducted in the year 2015 in which the Applicant No.1 and 2 who fall within the consideration zone will definitely get considered.

B. LDC to Assistant

The applicants claim that they be promoted from LDC to the post of Assistant as was done in the past prior to the introduction of the Recruitment Rules, 1998.

It is pertinent to point out that once there is a Recruitment Rules, 1998 is in place, all promotions can be done only strictly in accordance with the said Rules and not de hors the same.

As per the Recruitment Rules, 1998, which has been enclosed as Annexure-A2 by the Applicants themselves, (available at Page 88), the post of Assistant is to be filled from the feeder cadre of UDC in the following modes:

- (a) 25% by promotion;
- (b) 75% by direct recruitment.
- (c) failing both by transfer on deputation including short term contracts.

Eligibility:

UDCs with 5 years of regular service in the grade are eligible for consideration.

When the Applicants are not UDCs, the question of aspiring for promotion to the post of Assistants, especially when the Recruitment Rules, 1998 is in place, is totally untenable and preposterous.

Claim based on past practice prior to coming into force of 1998 Recruitment Rules:

3. The applicants are citing past practice, prior to the coming into force of the Recruitment Rules, 1998, where some of the LDCs, Auditor and Stenographers were promoted straight to the post of Assistant, Jr. Computer Programmer, Section Officer, Sr. Hindi Translator etc. It is categorically submitted those promotions were made prior to the introduction of the 1998 Recruitment Rules, and no such deviation had been done in the matter of promotion after the coming into force of the Recruitment Rules, 1998.

Position obtaining prior to Recruitment Rules, 1998:

4. It is pertinent to mention here that NYKS established in 1987 and the Director General, NYKS was the appointing authority. Initially only selection staff were available with NYKS headquarter. Due to increase in work load, additional staff was required at headquarter and Zonal officers. The rules of NYKS at that point of time did not have any provision for promotion to higher posts. Therefore, being the appointing authority, the Director General used to appoint some employees to higher posts, based on performance and recommendations of the controlling officers. The Director General promoted/appointed the employees to higher posts as per his discretion, especially in the scenario of absence of any prescribed Recruitment Rules and Regulations.
5. The issue of such promotions being made by the Director General was earlier raised before the Secretary (Youth Affairs & Sports), by one Shri Ganesh Avtar.
6. Taking cognizance of the representation of said Shri Ganesh Avtar, a meeting was held on 31.10.2007 in the Chairmanship of Secretary and issues were discussed in

the presence of senior officers of the Ministry and NYKS.

7. The Secretary (Youth Affairs and Sports) observed that as these employees have already worked in their present post for so many years, their reversion to any lower posts at this stage would not be advisable and would also be against the principles of natural justice. Even if there was any fault in their appointment/promotion, it is a lapse on the part of the concerned organization/authorities and employees cannot be penalized. After noticing that the new Recruitment Rules, 1998 provided for screening of all employees particularly those holding higher post than their substantive posts, a decision was taken to consider those employees on the date of notification of the Recruitment Rules as their substantive post. Secretary directed to constitute a screening committee to review the complete process and make recommendations. A copy of Minutes of the Meeting, circulated vide OM dated 12.11.2007 is annexed herewith as Annexure R-2.
8. Based on decision taken in the meeting, a Screening Committee was constituted in the Chairmanship of Director (YS-I) with Deputy Secretary (Finance) and Deputy Director (Personnel), NYKS as member. The Committee held series of meetings and examined all relevant documents and records pertaining to the concerned employees. Committee submitted its recommendations. It was found that all appointments, upgradations and promotions were made with the approval of the then Director General, NYKS as chief executive of Sangathan and that all the employees had the required educational and technical qualifications except one whose case is required to be submitted to Board of Governors (BOG),

NYKS for directions. It is submitted that even in regard to the solitary case where the screening committee found that the employee did not possess the requisite educational qualification when he was promoted, the BOG relaxed the educational qualification clause as a special case.

9. It is pertinent to reiterate that from the date the Recruitment Rules became effective, all promotions have been granted only in accordance with the Recruitment Rules, without any deviation whatsoever.
10. In view of the above, the Applicants have no cause of action whatsoever and they have no fundamental, statutory or legal claim to be promoted to the higher post of Assistant without following the provisions of the Recruitment Rules, 1998 which is in force.
11. Thus, when the parabola is pierced, it can be found that there is no cause of action whatsoever in favour of the Applicants to bring and maintain the present O.A., and therefore the present O.A. is liable to be dismissed for this reason alone.”

3. We heard the learned counsels for the parties and perused the record.

4. As has been ruled by the Hon'ble Supreme Court in the case of **P.U. Joshi & Ors. vs. The Accountant General, Ahmedabad & Ors**, 2003(2) SCC 632, indubitably it is not for the courts or Tribunal to interfere with the recruitment rules even when there is no

promotional avenues available. Para 10 of the judgment read thus:-

“10. We have carefully considered the submissions made on behalf of both parties. 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 avenues 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 alter 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.”

The vacancies in the grade of Assistant could not be filled up, because sufficient number of UDCs with required length of service were not available. In the wake, there is ramification on promotional avenues of the applicants, as despite being eligible, they are not getting their promotion as UDCs. As has been noticed above, promotion has to be made in accordance with the recruitment rules. Nevertheless, in Rule 9 of the NYKS Rules dated 08.11.2010, a provision has been made that where the Central Government is of the opinion that it is necessary expedient to do so, it may relax any of the provision of the rules with respect to any class or category of post or persons. It is stare decisis that it is not for the courts or tribunals to issue any direction to the executive to relax rule and it is for the executive to take its own decision in this regard. If a situation is such that vacancies in the grade of Assistants are not filled up (in promotion quota) for want of eligible candidates, the respondents on their own may explore the possibility of relaxing the rules as one time measure to ensure that the post in the grade of Assistants (promotional quota) do not remain vacant and the candidates get sufficient opportunity for being considered for promotion. Subject to these directions, the OA is disposed of. It goes without saying that if after

the decision of the respondents to be taken expeditiously, preferably within four months, the grievance of the applicants subsists, it would be open to them to work out their claim in accordance with law, if so advised. No order as to costs.

(Dr. B.K. Sinha)
Member (A)

(A.K. Bhardwaj)
Member (J)

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