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**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. O.A. 1265 of 2019
M.A. 730 of 2019

Reserved on : 13.9.2019
Date of order: 1.10.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

ANITA BALA & ANR.

VS.

UNION OF INDIA & ORS. (APWD)

For the Applicants : Mr. P.C. Das, Counsel

For the Respondents : Mr. R. Halder, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

The applicants have approached the Tribunal primarily challenging orders bearing No. 930 dated 30.8.2019 in which the applicants have been reverted to the entry grade post of Draughtsman Grade - III (C) on adhoc basis, as well as Office Order No. 931 dated 30.8.2019 in which the applicants were promoted to the post of Draughtsman Gr. II, along with Office Order No. 932 dated 30.8.2019 vide which the applicants were transferred and posted as Draughtsman Gr. II against existing vacancies. In particular, the applicants would seek the following interim relief:-

"(a) To stay of operation the impugned Office No. 930 dated 30th August, 2019 by which the respondent authority have cancelled the Office Order No. 202 dated 26th February, 2010 without giving any notice to the applicants by which your applicants have got the adhoc promotion to the post of Junior Engineer (C) and reverted the applicants from the post of Junior Engineer (C) to the post of Draughtsman Grade - III (C) after the lapse of 10 years wherein the names of the applicants appeared at Serial Nos. 2 and 5 being Annexure A-10 of this original application in any manner whatsoever till the disposal of this original application;

(b) To stay of operation of the impugned Office Order No. 932 dated 30th August, 2019 by which the respondent authority compelled the present applicants to join in a reverted post to the post of Draughtsman Grade - III (C)

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by withdrawing the appointment orders to the post of Junior Engineer (C) after the lapse of 10 years without giving any notice to the applicants before issuing of order of reversion being Annexure A-11 of this original application in any manner whatsoever till the disposal of this original application;

(c) To stay of operation the impugned demotion order being Office Order No. 931 dated 30th August, 2019 issued by the Chief Engineer, APWD in respect of the applicants to the post of Draughtsman Gr. III (C) by withdrawing the promotion orders of the applicants to the post of Junior Engineer (C) after a lapse of 10 years behind the back of the applicants without giving any notice to the applicants and in the same day they conducted a DPC in a reverted post to the post of Draughtsman Grade - II (C) without giving any opportunity of hearing to the applicants and without providing any notice to the applicants being Annexure A-12 of this original application.

(d) Till the disposal of this original application, the applicants may be continuing to the post of Junior Engineer (C) which they are continuing in terms of the Office Order No. 202 dated 26th February, 2010 for more than 10 years by stay of operation of the impugned Office Order No. 930 dated 30th August, 2019."

2. Heard both Ld. Counsel and examined documents on record. The matter is taken up for adjudication on the prayer for interim relief as sought by the applicants.

3. An M.A. bearing No. 730 of 2019 has been filed arising from O.A. No. 1265 of 2019 praying for liberty for joint prosecution which is allowed under Rule 4(5)(a) of Central Administrative Tribunal (Procedure) Rules, 1987 on being satisfied that the applicants share a common interest and are pursuing a common cause of action.

The M.A. is disposed of accordingly.

4. The applicants' submissions, as advocated through their Ld. Counsel, is that they had been appointed to the post of Draughtsman Gr. III (C) on 9.7.1992. In terms of Recruitment Rules, 1979, they were promoted to the post of Junior Engineer (Civil) after conduct of DPC and, vide Office Order No. 202 dated 26.2.2010, they had received adhoc promotions to the post of Junior Engineer (Civil) in the pay scale of Rs. 9300-34800/- and posted accordingly.

Subsequently, a seniority list was also published on 16.1.2019 wherein applicant No. 1 figured at Srl. No. 67 and the said seniority list

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recorded that the applicant was holding the post of Junior Engineer (Civil) during publication of the said seniority list.

That, the applicants thereafter made several representations praying for regularization of their services to the post of Junior Engineer (Civil) but, the respondent authorities, instead of considering such representations, issued a reversion order No. 930 dated 30.8.2019 whereby the applicants were reverted to the post of Draughtsman Gr. III in their entry grades.

Vide another office order No. 931 dated 30.8.2019, the respondent authorities issued an order promoting the applicants to the post of Draughtsman Gr. II and, on the very same day, posted the applicants as Draughtsman Gr. II against existing vacancies.

The applicants are aggrieved that they had been promoted as per recruitment rules and on the recommendations of DPC to the post of Junior Engineer (Civil), and they had been continuing for more than 10 years in their adhoc posts of Junior Engineer (Civil). The applicants are also further aggrieved that their prayers for regularization was ignored by the respondent authorities.

Ld. Counsel for the applicant would also refer to the decision in **(2000) 8 SCC 25** wherein in the matter of **Rudra Kumar Sain & ors. v. Union of India & ors.** the Hon'ble Apex Court had ruled that appointment of employees possessing statutory qualifications to the promotional post after due consultation with or approval of, the competent authority, and which continues for a fairly long period, is not ad hoc, fortuitous or stopgap and, hence, cannot be ignored in computing the length of service for determining inter se seniority between such promotes and direct recruits.

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5. Ld. Counsel for the respondents would argue that the applicants have no right to claim regularization in regular posts of Junior Engineer (Civil) as because the recruitment rules for Junior Engineer (Civil) have been amended in 2009. In terms of such recruitment rules dated 9.10.2009, the post of Junior Engineer (Civil) would no longer be filled up by 25% promotion. Further, non-diploma candidates from the cadre of Draughtsman Gr. III (C) / Surveyor would not be considered as eligible for promotion to the post of Junior Engineer (Civil). Accordingly, as the applicants are non-diploma candidates, and as the promotional quota had been withdrawn, the earlier DPC which had proceeded to recommend the applicants on promotional quota (ST) vide recruitment rules of 1979, was decided to be withdrawn. Order dated 30.8.2019 was issued to such effect. According to the respondents, the post of Draughtsman Gr. III/Surveyor was the feeder post to Draughtsman Gr. II and, accordingly, the applicants were rightly promoted on 30.8.2019 as Draughtsman Gr. II and, thereafter, posted in available vacancies. Hence, there is no irregularity in the orders of the respondent authorities which the applicants seek to stay in a prayer for interim relief.

Ld. Counsel for the respondents would furnish before us the minutes of the DPC meeting held on 24.11.2017 whereby the applicants were decided to be promoted in the post of Draughtsman Gr. II as per extant recruitment rules and would also refer to an O.A. filed by one Shri S. Rajendran, who had approached the Tribunal in O.A. No. 351/1083/2018. This Tribunal, while adjudicating upon the same, observed as follows:-

"4. As per the DPC meeting held on 24.11.2017 the reversion of the applicant has already been proposed to the post of Draughtsman Grade - III (Civil). The applicant apprehends that in case he is transferred as Junior Engineer to Rangat, it may create further complications. Therefore, the

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Engineer to Rangat, it may create further complications. Therefore, the applicant does not have any objection, if he is transferred after implementation of the reversion order."

Further, while deciding to drop contempt proceedings bearing No. 351/79/2018 arising out of O.A. No. 351/1083/2018, this Tribunal observed as follows:-

"2. Since the review DPC met on 17.6.2019 & 18.6.2019 to review the promotion cases for the post of Junior Engineer (Civil) and Draughtsman Grade-II (Civil) from the inter-se seniority Draughtsmen Grade -III (Civil) and Surveyor as per the recommendation of the DPC meeting held on 26.2.2010, 24.6.2015 and 24.11.2017 and since the applicant's name figure at Serial No. 3 to be given promotion to the post of Draughtsman Grade - II (Civil), the direction of this Tribunal has been duly complied with.

3. Hence, we do not find any wilful deliberation of the Tribunal's order. Accordingly, Contempt Proceedings are dropped. Notices, issued if any, are discharged."

Although the recruitment rules of 2009 have not been furnished before us, from the Minutes of the DPC so furnished by the Ld. Counsel for the respondents, we find that non-diploma candidates were debarred from being considered for promotion to Junior Engineer (Civil) and also the 25% promotion quota to the post of Junior Engineer (Civil) was withdrawn, a decision consciously taken by the respondent authorities to reportedly upgrade and improve the efficiency of the Engineering sector in planning and implementation of infrastructural Schemes of the local administration.

It is settled law that recruitment rules are a matter of policy and the policy decision of Government regarding recruitment, as held in **State of Orissa v. Bhikari Charan Khuntia, (2003) 10 SCC 144**, is not amenable to judicial review unless the same is arbitrary. Further, in **Banarsidas v. State of UP, AIR 1956 SC 520**, the Hon'ble Apex Court ruled that it is now well settled that it is open to the appointing authority to lay down requisite qualifications for recruitment to government service. In **Commissioner, Corpn. Of Madras v. Madras Corpn. Teachers' Mandram, 1997 (2) SLR 468 (SC)** the court reiterated that recruitment qualifications pertains to the domain of policy.

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The ratio in ***Rudra Kumar Sain (supra)***, as relied upon by the applicant, refers to employees in ad hoc posts but with statutory qualifications. The applicants herein do not possess the statutory qualifications for eligibility to the post of Junior Engineer (Civil) as per Recruitment Rules of 2009. Hence, the matter in ***Rudra Kumar Sain (supra)*** is distinguishable from the instant O.A.

6. Accordingly, we would hesitate to interfere in the orders to which stay is sought by the applicants, as such orders are consequent to the amended recruitment rules of the respondent authorities and nothing has been brought before us to establish that such recruitment rules are arbitrary or have been influenced by extraneous reasons.

7. The prayer for stay of Office Order Nos. 930, 931 and 932 dated 30.8.2019 and the operation of the same therefore, does not merit consideration and the prayer for interim relief does not succeed.

At the same time, however, we would hasten to add, that, in case the applicants have received any benefits during the period in which they have served as Junior Engineer in ad hoc capacity, the same shall not be recovered from the applicants by the respondent authorities.

8. With these directions, the prayer for interim relief is disposed of.

Reply and rejoinder to the O.A. are to be furnished within a period of 4 weeks and 2 weeks respectively from the date of receipt of a copy of this order.

9. List this matter on 13.1.2020.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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