

Mohd Rashid vs The Director Local Bodies New ... on 15 January, 2020

Equivalent citations: AIR 2020 SUPREME COURT 1075, 2020 (2) SCC 582, AIRONLINE 2020 SC 55, (2020) 1 SCT 710, (2020) 2 SCALE 99

Author: Hemant Gupta

Bench: Hemant Gupta, L. Nageswara Rao

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 136 OF 2020
(ARISING OUT OF SLP (CIVIL) NO. 7243 OF 2017)

MOHD. RASHID

.....APPELLANT(S)

VERSUS

THE DIRECTOR, LOCAL BODIES,
NEW SECRETARIAT & ORS.

.....RESPONDENT(S)

WITH

CIVIL APPEAL NO. 137 OF 2020
(ARISING OUT OF SLP (CIVIL) NO. 19912 OF 2017)

JUDGMENT

HEMANT GUPTA, J.

1. The candidates for direct recruitment to the posts of Administrative Officer/Assistant Assessor and Collector¹ are in appeals before this Court directed against an order passed by the High Court of Delhi on 1st September, 2016.

2. The candidates who were initially appointed as Lower Division Clerks and promoted as Upper Division Clerks/Head Clerks invoked the jurisdiction of the Central Administrative Tribunal² challenging Advertisement No. 3 of 2013 dated 12th September, 2013 whereby, 1 for short, 'posts in

question' 2 for short, 'Tribunal' the respondents set in process to fill up the posts advertised by way of direct recruitment. The argument was that the Recruitment Regulations for the post of Administrative Officer/Assistant Assessor and Collector in North, South and East Delhi Municipal Corporations, 2013³ contemplate that the vacancies for the posts in question are to be filled up by promotion failing which by direct recruitment. It was thus alleged that without resorting to promotion by convening meeting of the Departmental Promotion Committee⁴, the alternative process of direct recruitment cannot be resorted to. The said Original Application was dismissed by the Tribunal on 28th May, 2015 by observing that the recruitment process is not against the constitutional provisions but the promotion must also not be tempered with. In the writ petition directed against such order, the High Court held that the respondents have failed to comply with the Recruitment Rules and that only after the respondents are unable to fill up the vacancies either by promotion or by transfer or by deputation, the Department would be entitled to publish the advertisement to fill up the vacancies. It was also found that no effort has been made to hold DPC to carry out promotions nor the respondents have explored the possibility to fill up the vacancies either by transfer or deputation.

3. The advertisement was published to fill up 30 vacancies by direct recruitment to the posts in question out of which 8 were reserved 3 for short, 'Recruitment Rules' 4 for short, 'DPC' for Other Backward Classes, 4 for Scheduled Castes, 2 for Scheduled Tribes and 16 were meant for General category candidates including 1 post meant to be filled up by physically handicapped candidate which is a horizontal reservation.

4. The Recruitment Rules were amended on 17 th June, 2013 i.e. before the advertisement was issued on 12 th September, 2013. The amended Rule reads as under:

1. Name of the Post Administrative Officer/Assistant Assessor and Collector

10. Method of recruitment whether i) 50% by promotion, failing by direct recruitment or by which by direct recruitment.

promotion or by ii) 50% by deputation, failing deputation/absorption and % of which by direct recruitment." the vacancies to be filled by various method.

5. A perusal of the above Rule shows that 50% of the posts are to be filled up by promotion. If the posts are not filled up by promotion, the same are to be filled up by direct recruitment. Similarly, 50% of the posts are meant to be filled up by deputation. If the deputationists are not available, the same are to be filled up by direct recruitment.

6. An affidavit dated 7th August, 2019 has been filed on behalf of North Delhi Municipal Corporation 5 as to how after the amendment of the Rules, the number of posts falling to the promotion quota have been filled up. The assertions in the affidavit are as under:

"5(i) After notification of new Recruitment Rules dated 17.06.2013, the promotion to the post of Admn.

Officer/AA&C (2013) was held as under:

5 for short, 'North DMC' Sanction Filled Vacan Filled up Vacant Post in up t after DSC after DSC promotion dated dated quota 30.08.2013 30.08.2013

(ii) The promotion to the post of Admn. Officer/AA&C (2014) was held as under:

Sanction Filled Vacan Filled up Vacant Post in up t after DSC after DSC promotion dated dated quota 31.01.2014 31.01.2014

(iii) The promotion to the post of Admn. Officer/AA&C (2015) was held as under:

Sanction Filled Vacan Filled up Vacant Post in up t after DSC after DSC promotion dated dated quota 22.07.2014 22.07.2014

(iv) The promotion to the post of Admn. Officer/AA&C (2016) was held as under:

Sanction Filled Vacan Filled up Vacant Post in up t after DSC after DSC promotion dated dated quota 08.07.2015 08.07.2015

(v) The promotion to the post of Admn. Officer/AA&C (2017) was held as under:

Sanction Filled Vacan Filled up Vacant Post in up t after DSC after DSC promotion dated dated quota 08.07.2015 08.07.2015 (including 3 SC & 1 ST)

(vi) That at present details of Vacancy position of Administrative Officer/AA&C in all three Corporations under Promotion Quota as on 01.07.2019 is as under, which is dealt by the North DMC being Nodal Corporation for promotion for all the three Corporation:-

	Sanctioned Post	Filled up post	Vacant Post
Promotion	72	54 (including	18
Quota		23 LAC given by SDMC)	

Note: A DSC is under process, wherein 94 Section Officers, Private Secretaries and Translators are being considered for promotion to the post of Admn.

Officer/AA&C.”

7. It is also mentioned that seniority list of feeder cadre has not been finalised on account of pendency of the matter before the Tribunal and the High Court and that in terms of directions of the High Court, recommendation of the review DPC has been placed before the High Court and the matter is pending consideration before the High Court.

8. The said affidavit also gives the details of the manner of posts falling under the deputation quota. It is mentioned that each of the three Municipal Corporations deal with the deputation quota at their own level. However, the vacancies of the North DMC are stated to be as under:

“(vii) Deputation Quota: The posts under deputation quota are being dealt by the concerned Corporation separately at their own level, the vacancy position of North DMC is as under:

North DMC Sanctioned Filled Vacant Note: As per Recruitment Rules North DMC has already invited applications for fill-up the post of Admn. Officer/AA&C under deputation quota vide circular dated 06.02.2019 and subsequent reminders dated 12.07.2019. 11 applications for appointment to the post of Admn. Officer/AA&C on deputation basis have been received till date. The last date of receipt of application is 31.08.2019.

The above said table shows that the vacancy to the post of Admn. Officer/AA&C has been filled up by the department regularly after notification of new Recruitment Rules dated 17.06.2013.”

9. Thus, in respect of 25 vacancies falling to the share of the North DMC, it is mentioned that there are 21 vacant posts and that applications have been invited to fill up the deputation quota vide Circular dated 6th February, 2019. 11 applications have been received though the last date of the receipt of the applications was 31st August, 2019.

10. In respect of deputation quota in South Delhi Municipal Corporation, it is mentioned in the separate affidavit that out of 32 posts falling to the quota of deputationists, 13 posts are vacant as on 1st August, 2019. By a separate affidavit filed on behalf of East Delhi Municipal Corporation, it is mentioned that out of 14 sanctioned posts, 5 posts are falling vacant against the deputation quota.

11. From the above information placed on record, we find that the Recruitment Rules providing 50% quota to be filled up by promotion failing which by direct recruitment and another 50% by deputation quota failing which by direct recruitment are being followed by the Municipal Bodies.

12. The appellants who are aspirants for direct recruitment have no right for appointment merely because at one point of time the vacancies were advertised. The candidates such as the appellants cannot claim any right of appointment merely for the reason that they responded to an advertisement published on 12 th September, 2013. Even after completion of the selection process, the candidates even on the merit list do not have any vested right to seek appointment only for the reason that their names appear on the merit list. In *Shankarsan Dash v. Union of India*⁶, a Constitution Bench of this Court held that a candidate seeking appointment to a civil post cannot be

regarded to have acquired an indefeasible right to appointment in such post merely because of the appearance of his name in the merit list. This Court held as under:-

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in the State of Haryana v. Subhash Chander Marwaha [(1974) 3 SCC 220 : 1973 SCC (L&S) 488 : (1974) 1 SCR 165] ; Neelima Shangla (Miss) v. State of Haryana [(1986) 4 SCC 268 : 1986 SCC (L&S) 759] or Jitender Kumar v. State of Punjab [(1985) 1 SCC 122 :

1985 SCC (L&S) 174 : (1985) 1 SCR 899] .” 6 (1991) 3 SCC 47

13. Since the selection process has not been completed and keeping in view the mandate of the Statutory Rules, we find that the appellants have no right to dispute the action of the Municipal Bodies to fill up the posts either by way of promotion or by deputation as such posts are being filled up in terms of mandate of the Rules. It is always open to the Municipal Bodies to fill up the vacant posts by way of direct recruitment after the posts by way of promotion and/or deputation quota are not filled up either on the basis of recruitment process already initiated or to be initiated afresh.

14. Consequently, we do not find any merit in the present appeals.

Accordingly, the same are dismissed.

.....J. (L. NAGESWARA RAO)J. (HEMANT GUPTA) NEW DELHI;

JANUARY 15, 2020.