

**(2012) 03 DEL CK 0416**

**Delhi High Court**

**Case No:** LPA 68 of 2012

Kamini Vadhera

APPELLANT

Vs

Govt. of NCT of Delhi and  
Another

RESPONDENT

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**Date of Decision:** March 6, 2012

**Hon'ble Judges:** Rajiv Sahai Endlaw, J

**Bench:** Single Bench

**Advocate:** R.K. Saini and Mr. Vikram Saini, for the Appellant; Sumit Chander, for R-1, Mr. Sandeep Sharma and Mr. Anuj Malhotra for R-2, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

A.K. Sikri, Acting Chief Justice

1. The appellant herein was appointed to the post of Lower Division Clerk (LDC) in the year 1979. Thereafter she was appointed as Stenographer in the pay-scale of Rs. 330-560 on ad-hoc basis with effect from 11.01.1982 and on regular basis with effect from 01.03.1983. The dispute now relates to the up-gradation to the next higher level under the Assured Career Progression (ACP) Scheme. The said Scheme was introduced by the Department of Personnel and Training with effect from 09.08.1999 and as per this Scheme, financial upgradations are granted to Group B, C and D employees on completion of 12 and 24 years of regular service if they do not get promotion to the next post in the normal course. To put it otherwise, as per the ACP Scheme, financial upgradations are granted to those employees who are stagnating on their existing post.

2. The appellant was granted first financial upgradation with effect from 09.08.1999 and according to the appellant, she on 01.03.2007 became entitled to second financial upgradation, on completion of 24 years of regular service with effect from 01.03.1983. Though on the representation of the appellant, initial orders were passed to this effect but thereafter the same were kept in abeyance after

reconsideration of the matter, when according to the respondent, it was found that the appellant was not entitled to second financial up-gradation with effect from 01.03.2007.

3. On this juncture, the appellant filed W.P.(C) No.1164/2011 seeking grant of second financial up-gradation which has been dismissed by the learned Single Judge vide impugned order dated 07.07.2011. Assailing that order, present appeal is filed.

4. The case of the appellant is that she was appointed to the post of Stenographer with effect from 01.03.1983 and it was an appointment to a different cadre altogether and not a promotion from the post of LDC to UDC. The outcome of this appeal is entirely dependent upon the aforesaid issue viz. whether the appointment to the post of Stenographer was appointment to a new post or it was by way of promotion from the post of LDC. If the respondents are correct in their submission that it was promotion, naturally on grant of promotion, in normal course, the appellant would not be entitled to second up-gradation.

5. When this appeal came up for hearing on 30.01.2012, the learned counsel for the appellant had argued that since the appellant went through the Limited Departmental Competitive Examination (LDCE), as per clarification issued vide Office Memorandum dated 10.02.2000 by the Department of Personnel and Training, it would not be treated as promotion. He specifically referred to para 8 of the said Office Memorandum which reads as under:

8. Appointment on the basis of limited departmental examination by which an employee joined a new service should be treated as promotion or not. For example, in case of Group-D employees appointed as LDCs or Grade-D stenographers appointed from amongst LDCs should be treated as direct recruits or not in the respective higher grades.

If the relevant Recruitment Rules provide for filling up of vacancies of Stenographers Grade "D" / Junior Stenographer by direct recruitment, induction of LDCs to the aforesaid grade through Limited Departmental Competitive Examination may be treated as direct recruitment for the purpose of benefit under ACPS. However, in such cases, service rendered in a lower pay-scale shall not be counted for the purpose of benefit under ACPS. The case of Grade "D" employees who become LDCs on the basis of departmental examination stand on different footing. In their case, relevant Recruitment Rules prescribe a promotion quota to be filled up on the basis of departmental examination. Therefore, such appointments shall be counted as promotion for the purpose of ACPS. In such situations, past regular service shall also be counted for further benefits, if any, under the Scheme.

6. He had also submitted that as per the Recruitment Rules, the post of Stenographer was to be filled through LDCE and it was a new service and therefore appointment to the post of Stenographer had to be treated as direct recruitment to a new post for grant of benefit under the ACP Scheme.

7. Both these contentions are refuted by the learned counsel for the respondent who has produced the record to show that the appointment to the post of Stenographer was by way of promotion from LDC.

8. After going through the record, following factual position emerges therefrom.

9. The Recruitment Rules indicate that post of Stenographer can be filled either by promotion or on direct recruitment or by deputation.

10. There were two vacant posts of Stenographers (Eng.) in the year 1982 and it was decided to fill one of these posts by resorting to direct recruitment by holding a test in Steno typing and General English. The appellant, then working as ad-hoc Stenographer requested for being allowed to appear in the said test for direct recruitment and was so permitted; the appellant so appeared in the test. However, she failed in that test. One Ms. Jaswinder Kaur was appointed to the post of Stenographer. The office notings show that on appointment of regular candidate to the post of Stenographer, the appellant was on 30.09.1982 reverted to her own post of LDC.

11. Thereafter the appellant made request dated 05.10.1982 submitting that other post "should be earmarked in the promotion quota. This will provide avenue of promotion for departmental candidate to better their prospects." This request of the appellant was processed. From the original record, we find that the respondents conceded to the aforesaid request and decided to fill the post by way of promotion. The notings further disclose that for adjudging the suitability of the appellant for promotion to this post, it was decided to hold qualifying shorthand and typing test, test for General English followed by interview. A Selection Committee was constituted. The aforesaid tests were held in which the appellant also appeared. The appellant also faced the interview which was conducted by the Committee constituted for this purpose. It was remarked that the performance of the appellant in the interview was satisfactory. On this basis, the appellant was on 01.03.1983 appointed to the post of Stenographer.

12. We have also gone through the relevant Recruitment Rules for the post of Stenographer. As per Rule 7, the Methods of Recruitment is as under:

"7. METHODS OF RECRUITMENT:

1. Recruitment to a post under the Parishad may be made:-

i) by promotion;

ii) by direct recruitment; or

iii) by appointment of a borrowed employee;

2. The Appointing Authority shall lay down the method or methods by which vacancies shall be filled.

3. Notwithstanding that a vacancy is proposed to be filled by direct recruitment, the vacancy may be filled by promotion, if an employee eligible for promotion in accordance with bye-laws 8 is considered to be more suitable than the candidates for direct recruitment."

13. Thus promotion is one of the methods of recruitment. Rule 8 prescribes the procedure for recruitment by way of promotion and reads as under:

"8. RECRUITMENT BY PROMOTION:

1. Appointment to a post in any grade by promotion shall be made, whether in a substantive or officiating capacity:-

i) from amongst employees serving in posts in the next lower grade; or

ii) from amongst employees of outstanding ability and merit serving in the next lower grade but one.

2. Every appointment by promotion shall be by selection on the basis of merit, with due regard to seniority and on the recommendations of a Selection Committee. Provided that every appointment to the posts equivalent to Class I & II Govt. of India solely on the basis of merit."

14. It is thus clear that promotion can be made from amongst the employees serving in post in the next lower grade. It is not in dispute that in the instant case, the LDC was the next lower grade from which post the appellant was promoted to the post of Stenographer by resorting to the method of promotion. In these circumstances, it cannot be said that the promotion was by way of direct recruitment.

15. These facts would also demonstrate that Para 8 contained in Office Memorandum dated 10.02.2000 (supra) would not be applicable in the case of the appellant. Neither was the appellant appointed to the post of Stenographer through LDCE nor was she appointed to a new post.

16. We thus do not find any infirmity in the order of the learned Single Judge. The appeal is totally devoid of any merit and is dismissed.