

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No.4740/2007**

% **Date of Decision: 11.01.2010**

Prabhu Dayal Petitioner
Through Mr.M.M. Singh and Mr.S.K. Singh,
Advocates.

Versus

C.P.W.D. and Others Respondents
Through Mr.R.V. Sinha, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J. (ORAL)

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Despite the last opportunity granted to the petitioner to file response to the affidavit of respondent, response has not been filed. Consequently, the right of the petitioner to file the response to the affidavit of the respondent dated 12th October, 2009 is closed.

The petitioner has challenged the order dated 1st November, 2006 in OA No.399 of 2006 passed by Central Administrative Tribunal, Principal Bench, in Prabhu Dayal v. Central Public Works Department and other declining the plea of the petitioner to grant him promotion to

the post of Assistant Painter and allowing the petitioner to make a representation to the respondent for grant of benefit under the ACP Scheme.

The petitioner has claimed promotion to the post of Assistant Painter from the post of Beldar with effect from 1988 and has also claimed promotion to the next post of Painter from Assistant Painter. According to the petitioner in 1988, DPC had recommended empanelling him for promotion to the post of Assistant Painter. His grievance is that despite empanelment in 1988 he has not been promoted. The petitioner asserted that in 1993, the Superintending Engineer, CPWD, had asked the Executive Engineer to furnish information regarding the employees who were qualified for promotion to the post of Assistant Painter and the name of the petitioner was not furnished.

The petitioner's plea is that he has not been promoted and the post of Assistant Painter has been abolished by order dated 9th September, 2003. After the abolition of the post of Assistant Painter, the petitioner has sought promotion to the said post from 1988 on the ground that he was empanelled for promotion in 1988.

The claim of the petitioner for promotion since 1988 was opposed by the respondents contending inter alia that though the petitioner was

found fit for promotion to the post of Assistant Painter, however, since the post has been abolished he is not entitled for promotion. The respondents also raised the plea about the limitation and opposed the application of the petitioner for condonation of delay in filing the petition. It was contended that no good and sufficient cause has been shown by the petitioner for condonation of delay in filing the petition seeking promotion since 1988.

This has not been disputed that the petition was filed by the petitioner on 31st January, 2006 seeking promotion from the year 1988. The ground agitated by the petitioner seeking condonation of delay was that he is not much educated and, therefore, he could not take appropriate legal/administrative actions for redressal of his grievances.

The Tribunal has noted that if the petitioner was to be in the select list in 1988 even if he is illiterate, he would not wait for almost 18 years. The Tribunal, therefore, did not find sufficient reason for condoning the delay. However, the pleas of the petitioner on merits were also considered. The learned counsel for the petitioner has not refuted that mere empanelment of the petitioner in 1988 would not give him an indefeasible right of promotion. This also cannot be disputed that the respondents have the power to abolish the post. If the post has already been abolished in 2003, the petitioner is not entitled to claim promotion to the post on the basis of alleged empanelment in 1988 by filing a

petition on 31st January, 2006. Learned counsel for the petitioner is also unable to show that there was year wide vacancy and that the petitioner is entitled for consideration for promotion against year-wise vacancy.

The plea of the learned counsel for the petitioner that juniors to the petitioner were promoted has also been repelled, as no facts have been disclosed to show that any person junior to the petitioner had been promoted.

The plea of the petitioner that he is entitled for financial up-gradation under ACP Scheme also cannot be accepted in view of the ground taken by the respondents that under the ACP Scheme for up-gradation to the post of Painter, an employee is liable to pass the trade test for the post of Painter. The petitioner has not qualified the trade test for Painter and, therefore, the petitioner is also not entitled for financial up-gradation to the post of Painter. The pleas and facts raised in the affidavit dated 12th October, 2009 filed by the respondents has not been refuted by the petitioner, as no reply was filed.

In the circumstances, the petitioner is not entitled for promotion to the post of Assistant Painter from 1988 nor the petitioner has been able to make out a case for grant of financial up-gradation to the post of Painter. In the circumstances, for the foregoing reasons, there are no

grounds to interfere with the order of the Tribunal. The writ petition is without any merit and it is, therefore, dismissed.

ANIL KUMAR, J.

January 11, 2010
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MOOL CHAND GARG, J.