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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 2806/2016, CM APPLs.11808/2016 (stay) and 20145/2017**
UNION OF INDIA AND ORS Petitioners

Through: Mr.R.V.Sinha with Mr.A.S.Singh and
Mr.Amit Sinha, Advocates.

versus

SHAKEEL AHMAD BURNEY Respondent
Through: None.

+ **W.P.(C) 7757/2016 and CM APPL.32028/2016 (stay)**
UNION OF INDIA & ORS Petitioners

Through: Dr.Ashwani Bhardwaj, Advocate.
Mr.Ankur Chhibber, Advocate.

versus

SURESH CHANDER SHARMA & ORS Respondents
Through: None.

+ **W.P.(C) 2505/2018 and CM APPL. 10403/2018 (stay)**
UNION OF INDIA & ANR Petitioners

Through: Dr.Ashwani Bhardwaj, Advocate.

versus

MUKHTIYAR SINGH & ORS Respondents
Through: None.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH



ORDER
30.09.2019

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1. This is the second round of litigation on the issue of whether employees of the Department of Posts, Ministry of Communications, Government of India who have served as Postal Assistants would be entitled to the third MACP benefit. It may be mentioned at the outset that the MACP benefit is meant to make up for an employee not being able to get promotions despite long years of service.

2. An incidental question that arises in the context of the governing recruitment rules (RRs) for the post of Postal Assistant is whether persons who got appointed as Postal Assistants by qualifying in Limited Departmental Competitive Examination ('LDCE') should be considered as direct recruits or promotes?

3. The case of the Union of India is that Postal Assistants appointed as such through LDCE should be considered as promotees by virtue of the relevant RRs. On the other hand, the Respondents herein who have succeeded before the Central Administrative Tribunal ('CAT') Principal Bench rely on a series of judgments of the High Courts of Rajasthan, Karnataka and Madras which have held that such Postal Assistants who have been appointed through LDCE are to be considered as direct recruits and not as promotees.

4. The view of the Madras High Court in its judgment dated 4th February 2015 in CWP 30629 of 2014 (*Union of India v. D.Shiva Kumar*) which holds that Postal Assistants who have been appointed through LDCE are to

W.P.(C) 2806/2016, W.P.(C) 7757/2016 and W.P.(C) 2505/2018



be considered as direct recruits and not as promotees has been affirmed by the Supreme Court by dismissal of SLP No.4848 of 2016 by an order dated 16th August 2016. Against the said order Review Petition (C) No. 1939 of 2017 was filed which was dismissed both on the ground of delay as well as on merits by the Supreme Court by an order dated 13th September 2017.

5. However, as regards the other two High Courts, there appears to be a re-thinking. The High Court of Karnataka in a judgment dated 27th November 2018 in W.P.No.102322 of 2018 (S-CAT) (***Union of India v. Smt. R. K. Kulkarni***) has taken a view different from the earlier view taken by it in a judgment dated 28th September 2016 in WP No.200807 of 2016 (***Union of India v. Sh.Basanda Nayak***) where it upheld the contention of the present Respondents and held that appointment through LDCE as Postal Assistant would not be by way of promotion but by way of direct recruitment. Despite noticing that the Supreme Court has dismissed the Special Leave Petition ('SLP') of the Union of India against the said judgment in ***BasandaNayak***, the Karnataka High Court has in ***Union of India v. Smt. R.K. Kulkarni*** taken a contrary view on the ground that the earlier judgment did not discuss the relevant RRs. The Court is informed that against the said judgment of the Karnataka High Court a review petition has been filed by the Respondents therein which is stated to be pending.

6. Turning now to the High Court of Rajasthan, by a judgment dated 10th December 2015 in D.B.CWP No.16150 of 2013 (***Union of India v. Jagdish Prashad Sharma***), the Rajasthan High Court held that appointment to the post of Postal Assistant through LDCE should not be construed as



promotion but by way of direct recruitment. This judgment of the Rajasthan High Court was affirmed by the Supreme Court by dismissal of SLP (C) Diary No.22650 of 2018 on 30th July 2018. Likewise, the Supreme Court also dismissed another SLP against the same judgment of the Rajasthan High Court by order dated 10th August 2018 in SLP (C) Diary No.23260 of 2018 (**Union of India v. Bhanwar Lal Regar**) and this was by a 3 Judge Bench of the Supreme Court.

7. Subsequently, another Bench of the Rajasthan High Court in a judgment dated 10th May 2018 in D.B. CWP No.18488 of 2016 differed from the earlier view in D.B. CWP No.11336 of 2012 and batch and held that appointment as Postal Assistant through LDCE should be construed as appointment by way of promotion. Against the said judgment of the Rajasthan High Court dated 10th May 2018, a SLP (C) Diary No.4793 of 2019 has been filed (**Dev Karan Mahala and Ors. v. Union of India and Ors.**) in which notice has been issued by the Supreme Court.

8. Thus, it is seen that as far as Karnataka High Court is concerned the review petition is pending whereas as far as Rajasthan High Court is concerned an SLP is pending in the Supreme Court.

9. Counsel for the Union of India in these petitions urges that this Court should follow the changed views of the Karnataka High Court and the Rajasthan High Court whereas counsel for the Respondents insist that the earlier views of the said two High Courts as well as of the Madras High Court in the **D.Shiva Kumar** case, all of which have been affirmed by the W.P.(C) 2806/2016, W.P.(C) 7757/2016 and W.P.(C) 2505/2018



Supreme Court should be followed.

10. It may also be noticed here that an order dated 19th February 2019 has been issued by the Superintendent of Post Office, Seekar Division, Seekar (Rajasthan) noting the above history of the litigation and deciding to implement the judgment dated 15th February 2018 of the Rajasthan High Court the SLP against which has been dismissed by the Supreme Court but subject to the condition that “this may not be treated as precedent in other similar identical cases.”

11. The Court finds that against the changed view of the Rajasthan High Court, the Supreme Court is considering a Special Leave Petition in which notice has been issued.

12. In that view of the matter, this Court considers it appropriate to await the outcome of SLP (C) Diary No.4793 of 2019 (***Dev Karan Mahala v. Union of India***) before proceeding with the further hearing of these petitions. Accordingly, these petitions are adjourned to 19th February 2020.

13. Interim orders to continue.

S. MURALIDHAR, J.

TALWANT SINGH, J.

SEPTEMBER 30, 2019

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