

(2008) 08 DEL CK 0040

In the Delhi High Court

Case No : Writ Petition (Civil) No. 8658 of 2004

Ashok Kumar Pandey, Appraiser (Direct Recruit), Civil
Services Examination (1991)

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-08-2008

Acts Referred:

Citation : (2008) 08 DEL CK 0040

Hon'ble Judges : Vidya Bhushan Gupta, J; Madan B. Lokur, J; J.R. Midha, J

Bench : Full Bench

Advocate : Kailash Vasdev and Praveen Kumar Singh, for the Appellant; Suresh Kait and Abhishek Verma, for the Respondent

Final Decision : Dismissed

Judgement

Madan B. Lokur, J.—The question that we are required to answer in this writ petition is whether it would be inequitable to direct the Respondents to allocate to the Petitioners a post in the Customs and Central Excise "Group A" Service. In our opinion, on the facts of the case and in view of the decision of the Supreme Court in Union of India and Others Vs. Kishorilal Bablani, , the answer is in the affirmative.

2. The Petitioners participated in the Civil Services Examination, 1991 conducted by the Union Public Service Commission. The number of vacancies advertised was about 950. For the sake of convenience we are considering the case of Mr. Ashok Kumar Pandey, since the facts in all the connected cases are similar. Mr. Pandey ranked 538 in the merit list of successful candidates and after undergoing necessary training, he was allocated a post in the Customs Appraisers Service Group "B". The formal letter of appointment was issued on 8th February, 1993, but his date of joining was given retrospective effect from 12th October, 1992.

3. According to Mr. Pandey, he came across an affidavit filed by the Chairman of the Central Board of Excise and Customs in the Supreme Court from which he

came to know that between 1980 and 1996 a very large number of vacancies available to the quota of directly recruited candidates was diverted to the promotee quota; that as a result, for the examination under consideration, the number of vacancies available for directly recruited candidates was not correctly calculated; and that if the correct number of vacancies were calculated, Mr. Pandey would have been allocated a "Group A" service.

4. On these broad facts, Mr. Pandey filed an original application before the Central Administrative Tribunal (for short the Tribunal) in which he prayed that a direction be issued to the Respondents to appoint him to a post in the "Group A" service relating to Central Excise and Customs. Mr. Pandey sought his appointment to a "Group A" post with effect from the date of his initial appointment in the "Group B" service.

5. The original application was dismissed by the Tribunal on the ground that it was filed beyond the prescribed period of limitation, but that decision was set aside by this Court in a writ petition filed by Mr. Pandey, being CWP 5540 of 2001 decided on 12th July, 2002. The original application was then heard on merits and by the impugned judgment and order dated 10th October, 2003 it was dismissed. Feeling aggrieved, Mr. Pandey filed a writ petition in this Court and that is how the matter is now before us.

6. What is the relevance of the decision rendered by the Supreme Court in Bablani on which we rely? The facts in that case were more or less similar. It was alleged in that case that the number of vacancies to be filled in by the candidates who had qualified at the I.A.S. and Allied Services examination was wrongly intimated. It was averred that had the vacancies been correctly notified, Bablani would have been appointed to a Class I post in 1974. In his petition filed in 1985, the Tribunal accepted the contention of Bablani and granted him the relief prayed for. However, the Supreme Court, while deciding his case in December, 1998 held that if the relief granted to him is also granted to all those similarly placed, then there would be a complete disruption of postings and positions in respect of those appointed way back in 1974. Therefore, while not upsetting the relief granted to him, the Supreme Court declined to extend and grant a similar relief to anybody else, in view of the lapse of time and potential disruption.

7. The reason given by the Supreme Court for coming to this conclusion was:

Delay defeats equity is a well-known principle of jurisprudence. Delay of 15 and 20 years cannot be overlooked when an applicant before the court seeks equity. It is quite clear that the applicants for all these years had no legal right to any particular post. After more than 10 years, the process of selection and notification of vacancies cannot be and ought not to be reopened in the interest of the proper functioning and morale of the services concerned. It would also jeopardise the existing positions of a very large number of members of that service.

8. The law laid down by the Supreme Court is fully applicable to the facts of this

case. If the posts and postings made in 1992 are disturbed today, it would cause an immense disruption to a very large number of persons in the service, over a considerable period of time. Moreover, like Bablani, the Petitioners in this case have no right to hold a particular post. Furthermore, no mala fides have been alleged against anybody, and there is no overriding reason warranting a settled position (unfortunately for the Petitioners) to get unsettled after such a long lapse of time.

9. Consequently, we see no merit in the writ petition. It is dismissed.