

(1995) 07 DEL CK 0082

In the Delhi High Court

Case No : Civil Writ Petition No. 2063 of 1994

Attaur Rehman

APPELLANT

Vs

M.C.D. and Others

RESPONDENT

Date of Decision : 17-07-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 3 AD 1029 : (1995) 59 DLT 476

Hon'ble Judges : R.C. Lahoti, J; Lokeshwar Prasad, J

Bench : Division Bench

Advocate : S.K. Bisaria, S.C. Bisaria and Madhu Tawetia, for the Appellant;

Judgement

L. Prasad, J.

(1) The Petitioner, named above, who is an employee of the Municipal Corporation of Delhi (hereinafter referred to as "the MCD") has filed the present writ petition under Article 226 of the Constitution praying for issuance of directions to the Mcd to consider him for promotion to the post of Administrative Officer from the cadre of Translators.

(2) Brief facts, which are necessary to dispose of this writ petition, are recapitulated as under :-

(3) The Petitioner and Respondent No. 2, while working with the M.C.D. (Respondent No.1) appeared in the test for selection to the post of Translator in the grade of Rs. 550-900 (pre revised) from their substantive cadre. In the test, the Petitioner obtained 99 marks while Respondent No. 2 obtained 98 marks and 478 accordingly in the merit list, issued by the Respondent Mcd, the Petitioner was shown at Serial No. 3 while the Respondent No. 2 at Serial No. 4. On the basis of the selection, mentioned above, the Petitioner and Respondent No. 2 were appointed as Hindi/Urdu Assistants/Translators by the Respondent Mcd (Respondent No. 1) w.e.f. 18th May, 1985 vide Office Order dated the 7th March, 1989. In the above said order the name of the Petitioner appeared at Sr. No. 11

and that of the Respondent No. 2 at Serial No. 12. Thus, as averred by the Petitioner, the Petitioner is senior to Respondent No. 2 in the cadre of Translators working in the M.C.D.

(4) As per the case of the Petitioner in the Recruitment Rules, as in force in the year 1986, the post of the Translator to which the Petitioner and Respondent No. 2 were appointed, was in the grade of Rs. 500-900 and the next cadre of promotion was that of the Superintendent in the grade of Rs. 550-900. The feeder cadres for promotion to the post of Superintendent were that of the Translators, Stenographers and Head Clerks, in the ratio of 15%, 20% and 65% respectively.

(5) It is alleged that as a result of the recommendations of the Fourth Pay Commission, the two grades viz. that of Translators/Stenographers/Head Clerks (Rs. 500-900) and that of the Superintendents (Rs. 550-900) were merged together and for the above said cadres a unified grade of Rs. 1640-2900 (revised) was provided and the cadres of the Translators, Senior Stenographers and Superintendents were made the feeder cadre for promotion to the cadre of Administrative Officer in the following ratio:- (i) Translators 5% (ii) Senior Stenographers 20% (iii) Superintendents 75%

(6) The Petitioner was promoted from the posts of Translator as superintendent vide order dated 21st May, 1990 on adhoc basis. He, however was regularised in the cadre of Superintendents by the Respondent Mcd vide order dated 29th November, 1991. It is alleged that the Petitioner, while working as Superintendent on regular basis requested for his reversion to the cadre of Translator after exercising his option in pursuance of Circular dated 1st June, 1992 issued by Respondent MCD. It is further alleged that the Respondent Mcd accepted the request of the Petitioner and allowed the reversion of the Petitioner from the cadre of the Superintendent to that of the Translator vide order dated 27th July, 1992. It is alleged that the petitioner has submitted representation dated 5th June, 1992, 24th December, 1992, 1st January, 1993 and 23rd February, 1994 for his promotion to the post of Administrative Officer from the cadre of Translators but the Petitioner had not been considered for promotion. It is alleged that the Respondent Mcd (Respondent No. 1) has issued a promotion order dated 1st January, 1993 promoting respondent No. 2 to the cadre of the Administrative Officer/Assistant Assessor and Collector thereby superseding the Petitioner without any reason. It has been prayed by the Petitioner that Respondent Mcd (Respondent No. 1) be directed to consider the name of the Petitioner for promotion to the cadre of Administrative Officer in the grade of Rs. 2000-3500 against 5% quota of translators. 479

(7) The Petitioner Along with the Petition has Also filed an application (C.M. 3413/94) for interim relief. Vide order dated 21st July, 1994 it was ordered that confirmation would be subject to further orders in the writ petition.

(8) Notice of the petition was issued to the Respondents. Only Respondent Mcd

(Respondent No. 1) has filed a counter affidavit signed and sworn by Mr. O.P. Mahajan, Administrative Officer of the Respondent Mcd (Respondent No. 1). In the counter affidavit filed on behalf of respondent Mcd, it has been contended that the petitioner cannot claim to be considered for promotion to the post of Administrative Officer/Assistant Assessor and Collector from amongst the 5% quota of Translators as the Petitioner opted to remain on the post of Superintendent where he is still working in the cadre of Superintendents. It has been contended that the Petitioner can be considered amongst 75% quota of Superintendents for promotion to the above said post as per the revised Recruitment Regulations for the post of Administrative Officer/Assistant Assessor and Collector. It has been admitted in the counter filed on behalf of respondent No. 2 the Mcd that the Petitioner and Respondent No. 2, after qualifying the competitive examination were appointed to the post of Translators in the scale of Rs. 500-800 on temporary basis vide office order dated 18th May, 1995. It is further contended in the counter that at the relevant time, the pay scale of the post of Translator was lesser as compared to that of the Superintendent. The pay scale for the post of Translators was Rs. 500-800 whereas that of the Superintendent was Rs. 500-900. It is stated in the counter that the Petitioner from the post of Translator was promoted on adhoc basis to the post of Superintendent vide Officer Order dated 21st May, 1990 and ultimately was promoted to the above said post on regular basis in the revised scale of pay of Rs. 1640-29000 vide Office Order dated 29th November, 1991. It is further stated in the counter that after the amalgamation of the grades of the Translators/ Senior Stenographers and Superintendents, a number of Sr. Stenographers and Translators who were promoted to the grade of Superintendents on regular basis vide Office Order dated 29th November, 1991 sought reversion to their substantive post of Sr. Stenographer/Translator in view of the amendment in the Recruitment Regulations for the post of Administrative Officer/Assistant Assessor and Collector providing promotion from the grade of Superintendent, Sr. Stenographers and Translators in the ratio of 75%, 20% and 5% respectively. It is stated in the counter that as a result of the above amendment, the respondent Mcd also called options from the respective officials vide Curricular dated 1.6.92 to the extent as to whether they wanted to remain in the Grade of Superintendent or revert back to the grade of Sr. Stenographers/ Translators.

(9) In response to the above Circular dated the 1st June, 1992 a number of options were exercised by the respective officials belonging to the cadre of Translators and Sr. Stenographers. The petitioner amongst other also opted for reversion from the post of Superintendent to his substantive post i.e.. Translator, vide his application dated 5th June, 1992. After considering the options received from the respective officials, the respondent Mcd issued an Office Order No. F.1(i)/CED(II) 86/156/11589 dated 10th June, 1992 reverting the concerned officials from the post of Superintendents to their substantive post i.e., Sr. 480 Stenographers/Translators. The name of the Petitioner, in the above Office Order

dated 10th June, 1992 finds place at Sr. No. 8. 10. It is contended by the respondent Mcd that subsequently the Petitioner represented against the above said reversion order dated the 10th June, 1992 vide his representation dated 10th June, 1992 and 15th June, 1992 seeking withdrawal of option exercised by him vide his application dated the 5th June, 1992. It is contended that the above said representations of the Petitioner for the withdrawal of options were considered by the respondent Mcd and the request of the Petitioner was allowed vide Office Order dated 27th July, 1992 with a clear stipulation that the said withdrawal was final and no further opportunity would be granted in future for exercising any option in the matter.

(10) It is submitted in the counter by the respondent Mcd that in view of the position explained above, the petitioner ceased to have his lien on the post of Translator after exercising the option to remain on the post of Superintendent and as the Petitioner is working as a Superintendent he can be considered for promotion to the post of Administrative Officer/Assistant Assessor and Collector amongst the 75% quota of Superintendents as per the Recruitment Regulations as and when he comes within the zone of consideration and subject to availability of posts. It has been stated in the counter that the Writ Petition filed by the Petitioner is liable to be dismissed with special costs.

(11) The Petitioner filed a rejoinder to the counter controverting the contentions raised in the counter and reiterating the averments made in the petition. In addition to the rejoinder, the Petitioner also filed an additional affidavit stating that in the final seniority list of Translators issued by the Respondent Mcd on 22nd March, 1995, the Petitioner has been shown senior to respondent No. 2 in the rank of Translators. The Petitioner Along with the above said affidavit has also enclosed a copy of the said Circular dated the 22nd March, 1995, purported to have been issued by the Respondent Mcd, circulating the revised/consolidated seniority list of Translators (Hindi/Urdu).

(12) We have heard, the learned Counsel for the parties at length and have also carefully gone through the documents/material on record. Admittedly as per the Recruitment Regulations for the post of Administrative Officer/Assistant Assessor and Collector on the establishment of the respondent Mcd for promotion to the above said post (Administrative Officer/Assistant Assessor and Collector), the feeder cadres are Superintendents, 5r. Stenographers and Translators in the ratio of 75%, 20% and 5% respectively. The case of the Petitioner is that he deserves to be considered for promotion to the above said post of Administrative Officer/Assistant Assessor and Collector from the post of Translator against 5% quota of Translators. The Respondent Mcd disputes the above contention of the petitioner on the ground that the Petitioner who is a Superintendent cannot claim to be considered for promotion to the above said post from amongst the 5 per cent quota of Translators and that being a Superintendent, can be considered for promotion, to the above said post amongst 75% quota of Superintendents within the zone of consideration and subject to the availability of post. The question of

requiring consideration by this Court is as to whether the Petitioner is working as a Translator or he is working in the cadre of Superintendent on the establishment of Mcd (Respondent No. 1). 481

(13) From a perusal of documents on record, it is apparent that the Petitioner along with Respondent No. 2 was initially appointed as Translator and thereafter he was promoted to the next higher grade that of the Superintendent. However, on revision/amendment of the Recruitment Regulations for the post of Administrative Officer/Assistant Assessor and Collector, the Respondent Mcd called for the options vide Circular dated 1st June, 1992. The Petitioner initially opted for reversion to his substantive cadre i.e., of Translator which was taken into consideration by the Respondent Mcd who issued Office Order dated the 10th June, 1992 acceding to the request of the Petitioner. The Petitioner vide representation dated the 10th June, 1992 and 15th June, 1992 requested the authorities of respondent Mcd to permit him to withdraw the option exercised by him vide his application dated 5th June, 1992 on the basis of which the Respondent Mcd had issued the above said Office Order dated 10th June, 1992. The above request of the Petitioner, for withdrawal of his option, was also acceded to and the Petitioner was allowed to continue in the Grade of Superintendent vide Order dated the 27th July, 1992. In the above said Order dated the 27th July, 1992 (copy annexed with the counter as Annexure "R"), the correctness of which is not disputed even by the Petitioner, it has been clearly stated that the Petitioner would continue "in the Grade of Superintendent". The learned Counsel for the Petitioner, during the course of the arguments, laid a lot of emphasis on Circular No. HC(RR)/CED(C)/Translator/SRTY/95/RK/31 dated the 22nd March, 1995 (copy annexed with the affidavit dated the 7th April, 1995 and marked as Annexure 1). It has been submitted by him that in the above said document which is dated the 22nd March, 1995, issued by Respondent Mcd, the name of Petitioner has been shown senior to Respondent No. 2 in the revised Final Seniority list of Translators (Hindi/Urdu). In our opinion, the above said document in no way helps the case of the Petitioner because in the heading of the above said Circular, it has been specifically mentioned that the Respondent Mcd vide above mentioned Circular has circulated a revised/consolidated seniority list of Translators (Urdu/Hindi) appointed from 17th May, 1985 to 1st February, 1991. On the basis of the above said documents it cannot be stated that either on the relevant date or at present the Petitioner is in the cadre of Translators on the establishment of Respondent MCD.

(14) Above all, in this connection the three documents i.e., the representation dated the 24th December, 1992, 11th January, 1993 and 23rd February, 1994, reference of which find place in para 3 Clause (g) at page 4 of the petition and copies of which have also been annexed with the petition, are of utmost importance which clinch the issue finally. The above said three documents are the three representations made by the Petitioner to the Respondent MCD. All the above said representations have been signed by the Petitioners as "Superintendent". The above fact not only supports the contention of the

Respondent Mcd that the Petitioner is working in the cadre of the Superintendent but virtually takes the bottom out of the case of the Petitioner.

(15) On a consideration of the above mentioned factors, the conclusion is irresistible that the Petitioner at the relevant time did not belong to the cadre of the Translators and was a part of the cadre of the Superintendents and thus cannot claim to be considered for promotion to the post of Administrative Officer/ Assistant Assessor and Collector from amongst the 5% quota of Translators. The Writ Petition is accordingly dismissed. However, in the facts and circumstances of the case, the parties are directed to bear their own costs.