

(2019) 04 DEL CK 0067

In the Delhi High Court

Case No : Civil Writ Petition No. 3431 Of 2019

B. Naveen Kumar & Ors

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 05-04-2019

Acts Referred:

Citation : (2019) 4 AD(Delhi) 317

Hon'ble Judges : Vipin Sanghi, J; Rekha Palli

Bench : Division Bench

Advocate : Suhail Dutt, Ekta Kapil, Nimisha Jain, Akshay Makhija, Naresh Kaushik, Abhaya Kumar Behera, S.K.Gupta

Final Decision : Dismissed

Judgement

Vipin Sanghi, J

C.M. No.15755/2019

Exemption allowed, subject to all just exceptions.

W.P.(C) 3431/2019 & C.M. No.15754/2019

1. The petitioners assail the order dated 02.11.2018 passed by the Central Administrative Tribunal, New Delhi in O.A.No.1388/2017. The said original application preferred by the petitioners has been rejected by the Tribunal. In the said original application, they sought to assail the appointment of the respondent nos.4 to 7 on deputation/transfer basis to the post of Assistant Legal Advisers (hereinafter referred to as 'ALAs') in the Directorate of Enforcement (hereinafter referred to as 'Directorate').

2. The petitioners are also working as ALAs in the same Directorate. In the Directorate, 50% of the posts of ALAs are filled by direct recruitment and the remaining 50% are filled by deputation/transfer. In the year 2010, the petitioners were directly recruited as ALAs, and the respondent nos.4 to 7 came on deputation/transfer to the Directorate.

3. The petitioners assailed the appointment of respondent nos.4 to 7 on deputation/transfer basis in the year 2017. The delay in filing the original application is sought to be explained on the basis, that the said private respondents had challenged the seniority of the petitioners in the year 2016 and, thus, the cause of action in favour of the petitioners arose to challenge their initial appointment on deputation/transfer only in the year 2016.

4. The challenge was mounted by the petitioners on the premise that the said respondents did not meet the eligibility criteria for deputation/transfer under the Recruitment Rules. The respondent no.2/UPSC as well as the Directorate countered this submission of the petitioners and stated that the said respondents were, in fact, eligible under the Recruitment Rules.

5. The Tribunal has rejected the original application filed by the petitioners by placing reliance upon the stand taken by the UPSC, which was the concerned organisation involved in the process of selection of respondent nos.4 to 7 on deputation/transfer basis. The Tribunal also held that the petitioners, who are direct recruits, had no locus standi to challenge the selection of respondent nos.4 to 7, as the petitioners were not even contenders for the said posts.

6. Mr.Dutt, learned Senior Counsel for the petitioners has sought to draw our attention to some of the communications exchanged between the Directorate and the Department of Revenue, Ministry of Finance as also between the UPSC and the Directorate. These communications are of 2009-10 vintage. These documents only show that at one point of time before the selection of the respondent nos.4 to 7 on deputation/transfer basis, some issue arose about the eligibility of the said respondents to be appointed as ALAs on deputation/transfer basis in the Directorate. However, the said issue, obviously, attained closure, since UPSC and the Directorate were satisfied that the said respondents were qualified under the recruitment rules to be selected on deputation/transfer basis.

7. In our view, the petitioners are not entitled to raise the issue regarding the eligibility of the respondent nos.4 to 7 to be selected as ALAs on deputation/transfer basis, that too, after seven years of the said appointment, merely because an inter se seniority dispute has sprung up between ALAs appointed by way of direct recruitment on the one hand, and the respondent nos.4 to 7 - who were appointed on deputation/transfer basis. The dispute, which has arisen in the year 2016 - in relation to seniority, cannot be converted into one relating to the initial appointment on deputation/transfer basis of the respondent nos.4 to 7. The cause of action in relation to the aspect of eligibility of respondent nos.4 to 7 arose, if at all, when the respondent nos.4 to 7 were appointed in the year 2010.

8. The submission of the petitioners that they gained knowledge about the ineligibility of the said respondents only when they moved applications in the year 2016, and thereafter, under the Right to Information Act, cannot be accepted, since the petitioners are serving in the same organisation and in the same post since 2010.

9. The stand taken by the UPSC before the Tribunal in relation to the eligibility of the respondent nos.4 to 7 reads as under:-

"19. That from above, it is evident that for a candidate to be eligible for consideration under criteria for qualification and experience, he must fulfil the eligibility criteria under (a)(i) and (a)(ii) or (b). As against above criteria, the educational qualification and experience possessed by the Respondent No.4-7 is as under:

(a) Respondent no.4 i.e. Shri G.Suresh Babu- As per Bio-date, he is Bachelor of Law from the University of Madras and possessed more than 10 years of experience in legal affairs of the Directorate of Enforcement.

(b) Respondent no.5 i.e. Shri Satya Prakash-As per Bio-date, he is LLB and possessed 20 years experience in dealing with legal matters in the office of Central Government.

(c) Respondent no.6 i.e. Shri Aswini Kumar Panda-As per Bio-data, he is LLB and possessed more than seven years of experience as a Assistant Enforcement Officer dealing with court matters in Metropolitan, Session & High Courts, COFEPOSA Advisory Board, Appellate Tribunal for Foreign Exchange since 19.12.1988

(d) Respondent no.7 i.e. Shri A.B.Ravvi-As per Bio-data, he is LLB and LLM and had possessed more than seven years of experience as Gazetted Officer dealing with legal matters in various capacities in RBI, in Govt. of India since 1997.

20. That from above, it is evident that all the above candidates had possessed Educational Qualification of Degree of Law as required under (a)(i) and seven years' of experience in legal affairs in a Central Government organization as required under condition (a)(ii) of the RRs. There is no requirement of enrolment in any State Bar Council or experience of having practised as a Advocate in any court of law for a candidate to be eligible under clause No. (a)(i) and (a)(ii) of RRs as reproduced above. Such an enrolment in any State Bar Council and experience of having practised as a Advocate would have been necessary had the Respondents been considered under criteria (b). Therefore, the allegations of the applicants that Respondent no.4 to 7 lacks EQ and experience are baseless, malicious and misleading." (emphasis supplied)

10. Pertinently, the competent authority in the Department of Revenue also accepted the recommendations of the UPSC, as disclosed in the reply filed on behalf of the Directorate. Thus, it is clear that the communications referred to and relied upon by Mr.Dutt - wherein initial doubts were raised about the eligibility of respondent nos.4 to 7, to be appointed as ALAs on deputation/transfer basis, is a mere red herring. It is clear that the said issue was duly considered and settled even before their appointment.

11. Mr.Dutt has sought to place reliance on the decision of the Supreme Court in Bhupendra Nath Hazarika & Anr. v. State of Assam & Ors. [(2013) 2 SCC 516] to

advance his submission that if the appointment is dehors the recruitment rules, the same is illegal and cannot be cured. He has specifically referred to para 55 of the said decision, which reads as under:-

"55. The aforesaid authorities clearly lay down the principle that when there is violation of the recruitment rules, the recruitment is unsustainable. Whether any active part is played by a selectee or not has nothing to do with the appointment made in contravention of the rules. In the case at hand, the special batch recruits have encroached into the quota of the direct recruits. The whole selection process is in violation of the rules and, therefore, we are inclined to concur with the opinion expressed by the learned Single Judge that the selection was made dehors the rules. The Division Bench was not justified in stating that the selection could not be said to be dehors the rules. However, we accept the conclusion of the Tribunal as well as the High Court that as there had been long delay in challenging the selection of the special batch recruits and some of them have already retired, it would not be apposite to annul their appointments."

12. In our view, this decision does not support the submissions of the petitioners. Firstly, we cannot accept the submission of the petitioners with regard to the alleged disqualification of the respondent nos.4 to 7, in the light of the stand taken by the UPSC and the Directorate. Secondly, the said decision itself shows that the Supreme Court accepted the conclusion of the Tribunal, as well as of the High Court, that as there had been a long delay in challenging the selection-which was stated to be contrary to the recruitment rules, it would not be apposite to annul the appointment.

13. The next submission of Mr.Dutt is that the aforesaid alleged ineligibility of the respondent nos.4 to 7 - even if it is not a reason to annul their initial appointment of deputation/transfer basis as ALAs in the Directorate, the same should at least have a bearing on their inter se seniority qua the petitioners. We cannot accept this submission either we may observe that the dispute in relation to seniority is already pending in other proceedings, and the same would be decided in such other proceedings and, therefore, in the present petition, we are not concerned with the same. Normally, a person who is recruited/appointed on regular basis, begins to count his seniority from the date of his initial appointment, subject to interpolation of the appointees as per the quota prescribed.

14. In view of the aforesaid, we find no merit in the petition and the same is dismissed.