
(2002) 02 DEL CK 0070

In the Delhi High Court

Case No : Civil Writ Petition No. 783 of 2002

G. Srinivasan

APPELLANT

Vs

National Thermal Power Corporation (NTPC) Ltd.

RESPONDENT

Date of Decision : 12-02-2002

Acts Referred:

Citation : (2002) 5 AD 100 : (2002) 97 DLT 151

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Sudhir Nandrajog, for the Appellant; V.K. Rao, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, J

1. Rule.

2. With the consent of the learned counsel for the parties petition is taken up for final disposal.

3. The petitioner who is working with the respondent organisation was promoted to the post of Manager (Commercial) an E5 post vide order dated 31.3.98. The office order s as under :-

"OFFICE ORDER NO. 57/98

Shri G. Srinivasan, 029696 Dy. Manager (Commercial), CC, is hereby promoted to the post of Manager (Commercial), SRHQ, Bangalore, in the pay scale of Rs. 7500-300-9900/- with effect from 01/01/98.

The order will be effective form the above date only if he joins at the new place of posting within two months form the date of issued of this order. In case he joins the new place of posting beyond two months but within six months form the date of issue of this order, the promotion will be effective from the actual date of joining at the new place of posting. However, in case he does not join at

the new place of posting within six months from the date of issued of this order. the promotion order will stand automatically cancelled and withdrawn and his case for promotion will be considered afresh by the next CPC. as per policy.

This issues with the approval of the Competent Authority."

4. The petitioner made certain representations with a request that he be not transferred to Bangalore. The representations were considered favorably and on 29.5.98 the following office order was passed :-

"OFFICE ORDER

Shri G. Srinivasan, Emp. No. 02969, Dy. Manager (Comml.) Corporate Centre. who was promoted to the level of Manager vide Office Order No. 57/98 dated 31.03.1998 issued under Ref. No. 01/Pers/12(105). is hereby posted to Dadri instead of SRHQ, Bangalore.

other terms & conditions of the Office Order dated 31.03.1998 remain unaltered.

This issues with the approval of the Competent Authority.

5. In terms of the officer order dated 1.6.98 the petitioner was relieved from the Corporate Commercial Department w.e.f. 2.6.98. A representation was made by the petitioner thereafter on 2.6.98 to keep his release order in abeyance but the said request was rejected on 3.6.98. The petitioner joined duty in Dadri on 10.6.98.

6. The petitioner by the present petition is seeking a direction against the respondent to consider his case for promotion to the post of Senior Manager E-6 and the petitioner be treated as having been promoted to the post of a Manager w.e.f. 1.1.98. The controversy arises in the present case since if the petitioner is treated having been promoted on 1.1.98 then undisputedly the petitioner would be considered for the post of Senior Manager (E-6). However, if the petitioner is considered to have been appointed to the post of a Manager from 10.6.98, the date he joined at Dadri, then the petitioner would not be so eligible.

7. Learned counsel for the petitioner has contended that in terms of the office order dated 31.3.98 the petitioner was granted two months time to join duty. On the representation of the petitioner when the petitioner was posted to Dadri instead of Bangalore in terms of officer order dated 29.5.98 it was noted in the said office order that the terms and conditions of the office order dated 31.3.98 remain unaltered. It is thus contended that a consequence of the same would be that the petitioner would have a period of two months to join duty. It is relevant to state that in terms of the office order dated 31.3.98 on the petitioner joining within two months he would be presumed to be OBn the relevant grade of Manager w.e.f. 1.1.98. It may be also stated that in case a person joined duty beyond two months but within 6 months the promotion would be effective from the actual date of joining.

8. Learned counsel for the petitioner referred to the counter affidavit filed by the

respondent in another petition filed by the petitioner being CW 2015798. In para 2 of the said affidavit an averment to the following effect has been made It is stated here that the petitioner already stands promoted to the next higher post w.e.f. 1.1.98. Learned counsel for the petitioner contends that there is thus clear admission of the respondents that the petitioner has been promoted w.e.f. 1.1.98. This has to be appreciated in terms of Corporate Personnel Circular dated 22.3.95. In terms of clause 5.1 of the said circular it is provided that on completion of minimum period of service in the grade as prescribed in the said clause as on 30th April an Executive will become eligible for consideration for promotion to the next higher grade. Though in the case of the petitioner is that the order was issued on 31.3.98 the same was made effective from 1.1.98.

9. Learned counsel for the petitioner has also drawn my attention to a corporate personnel circular No. 323/95 dated 2.3.95 to the following effect :-

"In case the concerned executive joins at the new place of posting beyond two months but within six months from the date of issuance of the promotion order, the promotion will be effective only from the actual date of joining at the new place of posting. However, in exceptional cases promotion can be considered to be notionally effective from a date prior to the actual date of joining as may be decided by the competent authority. The financial benefits on account of promotion will be allowed only from the actual date of joining the new place of posting."

10. It is apparent from the aforesaid circular that in exceptional cases the promotion can be considered to be notionally effective from a date prior to the actual date of joining as may be decided by the competent authority. This is so done as an exception to the normal rule that were a person joins beyond two months but within 6 months from the date of promotion, the promotion would be effective only from the date of his joining. The circular however provides that the financial benefits on account of promotion would be allowed only from the actual date of joining the new post even where the exception is so made.

11. The last aspect which was emphasised by the learned counsel for the petitioner is that in terms of the office order dated 1.6.98 the petitioner was relieved from date with effect from 2.6.98. It was thus contended that if the office order dated 31.3.98 was to imply that the petitioner was to join within 2 months then the petitioner was required to join on or before 31.5.98 even though he was released on 2.6.98. This anomaly is shown only to emphasise that it could never be the intent of the order dated 1.6.98 that the petitioner would join prior to that date and the logical interpretation would be that the office order dated 31.3.98 had to be given effect to providing for a 2 months joining period.

12. Mr. Rao, learned counsel for the respondent on the other hand, has contended that Dadri was adjacent to Delhi and yet the petitioner took 8 days time to join. It is also contended that initially the petitioner was posted to Bangalore but on his request the same was modified to Dadri and even then the

petitioner was not satisfied and addressed a Communication dated 2.6.98 which was rejected on 3.6.98. It is thus contended that in view of the conduct of the petitioner this is not a case where any indulgence should be shown and thus there would be no question of the respondents applying the rule of exceptional cases as contained in the circular No. 323/95 dated 2.3.95.

13. Mr. Rao has also contended that the petitioner was given emoluments effective only from the date of his joining on 10.6.98 and the petitioner never made a grievance of the same. It is thus contended that the petitioner had full knowledge of the fact that the benefit of promotion was being given to him only from 10.6.98 and acquiesced in the same since the petitioner has not challenged it. Learned counsel for the respondent contends that it is not open for the petitioner now at this stage to contend that he is entitled to be considered for promotion by the Corporate Promotional Committee (CPC). The defense of delay and laches is also being raised in view of the prayer made by the petitioner that it be held that the petitioner has been promoted w.e.f. 1.1.98.

14. I have heard the learned counsel for the parties. The office order dated 31.3.98 makes it abundantly clear that a period of two months is granted as a joining time. On the representation of the petitioner the respondents themselves issued the modified order dated 29.5.98 posting the petitioner to Dadri. The said office order also stipulates that other terms and conditions of the office order dated 31.3.98 remained unaltered. In terms of the letter dated 1.6.98 the petitioner was released from the corporate commercial department w.e.f. 2.6.98. The petitioner has admittedly joined on 10.6.98 within 8 days of being relieved from his earlier posting. It can hardly be imagined that an order dated 25.5.98 would require him to join before 31.5.98 at Dadri though he was released on 2.6.98. I do not find any force in the contention of the learned counsel for the respondent that in view of the fact that the petitioner was seeking the order dated 1.6.98 to be kept in abeyance the petitioner should not be entitled to any relief. Respondents had rejected the representation of the petitioner dated 3.6.98 and the petitioner joined on 10.6.98. If the petitioner on the pretext of the said representation had failed to join within the stipulated time then the petitioner would have suffered consequences of the same. This has not happened.

15. The office order dated 31.3.98 makes it clear that the same is effective from 1.1.98. In terms of modified order dated 29.5.98 petitioner was asked to join at Dadri, other terms and conditions of letter dated 31.3.98 remaining unaltered. The order dated 31.3.98 gave two months' joining time and made the promotion effective from 1.1.98. In view of the petitioner having joined on 10.6.98 I am of the considered view that the net effect of these orders is that the petitioner shall be treated as having been promoted to the post of Manager (Commercial) in the pay scale of Rs. 7500-300-9900 with effect from 1.1.98.

16. The relevance of the circular dated 2.9.95 is that it provides that in exceptional cases the promotion can be considered to be effective from a date prior to the date of joining. In fact there is no occasion for the application of the

said circular in view of the fact that the petitioner has joined within the stipulated time. The fact that the petitioner has been given financial benefits only from 10.6.98 would imply that the petitioner must have presumed that the same applies in so far his financial emoluments are concerned but would not deprive him of the promotion order which was to take effect from 1.1.98. The occasion for doubting the same arose only when the petitioner came to know that he was not likely to be considered by the CPC. In view of the above, I am of the considered view that there has been no delay in approaching this court.

17. Another material fact is that these office orders have also been so understood by the respondent as they have categorically stated in their counter affidavit in CWP No. 2015/98 filed by the petitioner that the petitioner stands promoted to the next higher post w.e.f. 1.1.98. This counter affidavit was filed some time in December, 1998. Thus for the respondents now to contend that the petitioner was not so promoted w.e.f. 1.1.98 would clearly amount to re-siling from their admission in the aforesaid counter affidavit and take a different stand from the circulars of the respondent.

18. I am thus of the considered view that the petitioner cannot be denied consideration for promotion to the post of Senior Manager (E-6 post) by the CPC since admittedly he would be eligible if he is taken to have joined on 1.1.98. A writ of mandamus is thus issued to the respondents to consider the petitioner for promotion to the post of Senior Manager (E-6) in accordance with the rules and regulations of the respondents by placing his case below the CPC taking the petitioner to be promoted as Manager (E-5) post w.e.f. 9.1.98.

19. The writ petition is allowed in the afore-said terms. The petitioner shall also be entitled to costs of Rs. 5,000/-.