

(2013) 01 DEL CK 0022
In the Delhi High Court
Case No : Writ Petition (C) 3754 of 2001

Ganesh Chand

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-01-2013

Acts Referred:

Citation : (2013) 1 LLN 482

Hon'ble Judges : Veena Birbal, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Suman Doval and Mr. Vineet Kumar, for the Appellant; P.K. Singh, Advocate for Mr. R.V. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Respondents No. 3 and 4 filed O.A. No. 607/1999 challenging the seniority list dated May 29, 1997 as also an order dated October 30, 1998 rejecting the representation made by them to correct the seniority list which assigned to the petitioner seniority above them. The list pertains to the post of L.D.C. in the Ministry of Information and Broadcasting.

2. Relevant facts are that the petitioner, impleaded as respondent No. 3 in the O.A. was appointed as a Messenger (a Group-D post) in the Directorate of Film Festivals when it was a part of "National Film Development Corporation". By an order dated March 25, 1988, on officiating basis he was appointed as a Hindi-cum-English Typist, a Group-C post. The Directorate of Film Festival was amalgamated with the Ministry of Information and Broadcasting and as a result vide order dated July 8, 1988, the services of all staff working in the Directorate of Film Festivals, which included respondents No. 3 & 4 and the petitioner were forwarded to the Ministry of Information and Broadcasting and relevant would it be to note in the said order the designation of the writ petitioner was noted as that of a Peon. But soon thereafter the Directorate of Film Festival, a Subordinate Office which had ceased to exist, passed an order dated July 28, 1988 appointing the petitioner as a Hindi Typist on temporary/adhoc/deputation basis but without

payment of any deputation allowance.

3. On March 21, 1989, the Ministry of Information and Broadcasting notified the DFF (Group-C & Group-D posts) Recruitment Rules, 1988 and as per Rule 4, which related to initial constitution it was mandated that incumbents holding Group-C and Group-D posts whether on deputation or otherwise would be suitably appointed but as per recommendations of a Selection Committee.

4. 5 posts of L.D.C. which had to be filled up by promotion from amongst the Group-D employees on DFF were indicated, but as regards the post of Hindi Typist it was mandated in the Rules that the said post would be filled only by transfer on deputation.

5. For reasons unknown respondent No. 3 was found fit by the Selection Committee for absorption as a Hindi Typist w.e.f. June 1, 1989.

6. It is apparent that respondent No. 3 could not be permanently absorbed as a Hindi Typist for the reason the Rules in question clearly indicated that such post has to be filled up by transfer on deputation.

7. Be that as it may, on April 5, 1990 the gradation list of officials was issued in which date of continuous appointment of the petitioner was shown as March 25, 1988 but later on he was accorded seniority above respondents No. 3 and 4.

8. Needless to state, challenge by respondents No. 3 and 4 to the seniority list has succeeded before the Tribunal and the reasoning is to be found in paragraph 10 to 12 of the impugned decision, which read as under:-

10. The DFF (Group C & Group D Posts) Recruitment Rules, 1988 came into effect on 21.3.89. They were promulgated under Article 309 of the Constitution and they have to be rigidly adhered to. As per Rule 4 of those Rules relating to initial constitution, those who opted for absorption in DFF were to be adjudged for appointment to posts presently (emphasis supplied) held by them by the selection committee. When the selection committee met on/about 31.5.89 and made its recommendations R-3 was absorbed vide order dated 31.5.89 w.e.f. 1.6.89. That apart, in the aforementioned Rule, the single post of Hindi Typist and the 5 posts of LDC are clearly distinct and separate, notwithstanding that the pay scales are the same. Recruitment to the single post of Hindi Typist is through transfer on deputation while recruitment to the five posts of LDC is through promotion from amongst Group D employees. R-3 was not a Group D employee on 1.6.89 by which time the RRs had come into force who alone were eligible for consideration for promotion as LDC. In any case Rule 4 of those rules would be squarely applicable according to which R-3 was to be adjudged for absorption to the post presently held by him, and as emphasized earlier, when the selection committee met on/about 31.5.89, he was holding post of Hindi Typist and not L.D.C. in DFF.

11. Respondents both official and private have contended that the posts of Hindi Typist and LDC are interchangeable, the duties and responsibilities are the same,

and they are in the same pay scale. Certain rulings have also been cited in support of these contentions. None of those rulings specifically deal with the DFF (Group C & Group D Posts) RRs, 1988 which have been described above, and accepted respondents' arguments on the basis of those rulings which have no application to the specific facts and circumstances of the present case would be doing violence to the provisions of the aforementioned DFF (Group C & Group D posts) Recruitment Rules which have been notified under Article-309 of the Constitution.

12. Prima facie it appears that official respondents have acted in the matter they did to provide opportunity to R-3 to be considered for promotion as UDC. If so, it is open to them to amend the RRs to place the solitary post of Hindi Typist in the feeder grade for promotion as UDC. The manner in which they have sought to achieve their objective of granting opportunity to R-3 for consideration for promotion as UDC, cannot be sustained in law.

9. Learned counsel for the petitioner keeps on harping that the post of Hindi Typist and L.D.C. are interchangeable, but is unable to show any rule or office order which shows that the two posts are interchangeable.

10. After arguing for some time the counsel concedes that he has no material to show that posts are interchangeable but would urge that as per the Recruitment Rules only post of L.D.C. is the feeder cadre to the post of U.D.C. and contends that if the post of Hindi Typist is not to be treated as interchangeable with the post of L.D.C., the petitioner would not have any promotional avenue.

11. Now, this is altogether a different issue. If the post of Hindi Typist and that of L.D.C. are not interchangeable post and as per the existing Recruitment Rules promotions to the post of U.D.C. have to be made only from the post of L.D.C., the remedy of the petitioner is to make a representation to either amalgamate the post or make the post of Hindi Typist a feeder cadre to the post of U.D.C.

12. We just do not understand as to how this issue would be relevant with reference to the seniority list to the post of an L.D.C.

13. As regards the seniority list in question, firstly the petitioner cannot even be shown as an L.D.C. in the seniority list and secondly assuming the post of Hindi Typist, which is in the same scale of pay as that of L.D.C. is to be treated as an interchangeable post with that of an L.D.C., under no circumstances can the petitioner be ranked senior to respondent No. 3 & 4 on account of the reason the order promoting him as a Hindi typist is after said respondents were promoted as L.D.Cs. We highlight that promotions of respondent from Group-D post to an L.D.C. was as per the existing Recruitment Rules. Accordingly the writ petition is dismissed but without any order as to costs.