

(2019) 04 DEL CK 0141

In the Delhi High Court

Case No : Civil Writ Petition No. 2329 Of 2007, Civil Miscellaneous Application
No. 46928 Of 2018

J.B. Sharma

APPELLANT

Vs

Uoi & Ors

RESPONDENT

Date of Decision : 22-04-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 5 AD(Delhi) 229

Hon'ble Judges : S. Ravindra Bhat, J; Prateek Jalan, J

Bench : Division Bench

Advocate : Shashwat Sharma

Final Decision : Dismissed

Judgement

1. The petitioner's challenge in this writ petition is to a judgment of the Central Administrative Tribunal [hereinafter, "the Tribunal"] dated 03.01.2007 in O.A. No.285/2006 by which his application was dismissed.

2. The petitioner joined the services of the Indian Council of Medical Research [hereinafter, "ICMR"] on 27.12.1971 as a Senior Stenographer by direct recruitment. He was promoted to the post of Senior Personal Assistant ["SPA"] on 18.04.1977 and was upgraded as Private Secretary ["PS"] w.e.f. 04.06.1983. By an earlier application to the Tribunal [O.A.No.1134/2005] the petitioner raised a grievance that he had been overlooked for further promotion to the post of Administrative Officer ["AO"] although a person junior to him had been promoted. In view of the fact that his statutory appeal was then pending before the ICMR, the Tribunal disposed of the petitioner's application on 27.05.2005, by directing a time bound disposal of that appeal. His appeal was disposed of on 13.08.2005, which was challenged by the petitioner in the present proceedings on merits, as well as on the ground that it had been passed by an incompetent authority, viz. Dr.N.K.Ganguly [respondent No.3 herein]. By the impugned order, the Tribunal has rejected the petitioner's claim both with regard to his seniority

and with regard to the competent disposal of his appeal.

3. The petitioner, appearing in person, contended that one Mr.Prem Singh, although junior to the petitioner, was promoted to the post of AO on ad-hoc basis w.e.f. 10.02.1988 and subsequently to the post of Senior Administrative Officer ["SAO"], also on ad-hoc basis, from 12.09.1994/31.03.1995. The petitioner's claim is that he ought to have been considered for promotion to these posts at the same time, but instead was promoted to the post of AO only on 04.04.1990 and SAO on 01.11.1996. In support of his contention that he was eligible for promotion to the post of AO in 1988, the petitioner cites a circular of ICMR dated 26.11.1981, which indicates that the feeder posts for promotion to AO are those of PS and Section Officer ["SO"]. With regard to the eligibility of a person holding the post of PS for promotion to AO, the circular provides as follows:

"If we draw an analogy from the above, then for promotion to Administrative Officers" posts only a Private Secretary can be considered along with eligible Section Officers, provided:

i) he has put in at least 8 years" service as PS. A regularly appointed SO also has to put in 8 years of service as SO for consideration for promotion as Administrative Officer. In counting 8 years of service, entire service as PS and half of service as SPA will be taken into account.

ii) before PS is considered for promotion, he should have worked for at least 2 years as Section Officer and if he has not worked as such, a specific approval of the Director General has to be obtained for the relaxation."

4. Applying this formula, the petitioner contends that in 1988, when Mr.Prem Singh was considered for promotion, the petitioner had satisfied the eligibility criteria for promotion, as he had served for over six years as SPA [of which half was to be counted] and five years as PS. The petitioner claims that having served in the feeder cadre for a longer period than Mr.Prem Singh, he ought to have been considered at that time. [In the OA before CAT, the petitioner also raised the ground that Mr.Prem Singh was ineligible for promotion. However, this was not argued before us.]

5. The second aspect of the petitioner's challenge is with respect to the competence of respondent No.3 to dispose of his appeal. Respondent No.3 served as the Director General ("DG") of ICMR and Chairman of its Executive Committee. According to the petitioner, the rejection of his appeal was actuated by malafides as he had raised complaints against the respondent No.3. He has also drawn our attention to documents which, according to him, demonstrate that at the time of disposal of the petitioner's appeal on 13.08.2005, respondent No.3 had in fact superannuated and could not have been functioning as DG or Chairman of the Executive Committee of ICMR.

6. The contentions of the petitioner have been vehemently disputed by counsel for the ICMR. According to the ICMR, the seniority of the petitioner had been

settled by a seniority list issued in 1974 and was challenged by the petitioner belatedly. It is pointed out that the petitioner had earlier contested his seniority vis-à-vis another officer, viz. Mr.M.V.Pillai. The petitioner's claim having been rejected in this regard, he has re-agitated the issue, as against Mr.Prem Singh, who was in fact senior to both the petitioner and Mr.Pillai. With regard to the authority of respondent No.3, learned counsel for ICMR has produced two orders dated 16.12.2003 and 10.11.2005 issued by the Ministry of Health and Family Welfare, Government of India, by which the tenure of respondent No.3 was extended for two years [w.e.f. 11.11.2003] and one year [w.e.f. 11.11.2005] respectively.

7. The points urged before the Tribunal have been disposed of by the Tribunal with the following findings:

"13. We find that the claim of the applicant that he is senior to Sh. Prem Singh has not at all been established. In the absence of formal Recruitment Rules and a combined seniority list of the feeder grades, we find substance in the argument advanced by the learned counsel for the applicant that by virtue of having served for a longer period in the feeder cadre of Section Officer, Sh. Prem Singh was bound to be considered for promotion as AO earlier than the applicant. Even in terms of joining the establishment of the respondents, Sh. Prem Singh joined in 07.02.1957, the applicant joined, albeit at a higher level, only in 1970, by which time Shri Prem Singh had already served for more than 10 years as LDC.

14. We also find merit in the averment of the learned counsel for the respondents that the applicant has not yet arrayed, as respondents, the persons who are likely to be affected by any of the decision given in this case in his favour.

15. In his MA No. 1703/2006 as well as in the written submissions made on 01.12.2006, the applicant has attempted to argue that the impugned order was signed by a person (Dr. N.K. Ganguly) who was not legally competent to do so. However, he has not been able to establish this on the basis of the records made available.

16. The applicant has also alleged mala fides against the respondents, particularly respondent No.3. In a catena of cases the Hon"ble Supreme Court has held that the burden of establishing mala fides is very heavy on the person making it and the seriousness of such allegations would require proof of a high order of credibility (E.P. Royappa v. State of Tamil Nadu, AIR 1974 SC 555; A Periakaruppan v. State of Tamil Nadu, AIR 1971 SC 2303 and Delhi Development Authority & Anr. V. M/S UEE Electricals Engg. (P) Ltd. & Anr., AIR 2004 SC 2100). The applicant has failed to establish the charge of mala fides on the basis of objective material.

17. The applicant has also alleged the Shri Prem Singh was promoted as AO on 10.02.1988, even though he has not completed 8 years of mandatory service in the feeder grade of Section Officer. Cancellation of promotion of Shri Prem Singh

is not one of the reliefs sought by the applicant, nor can we decide it in this case, when Shri Prem Singh is not a party to it.

18. We also find that this is a matter hit by delay and laches, but we shall not dwell upon it because we are deciding the case on merit.

19. Taking the totality of facts and circumstances into consideration, we come to the inevitable conclusion that the applicant has not been able to establish his claim of seniority over Sh. Prem Singh."

8. Although the petitioner originally asserted his seniority as against Mr.Pillai, his argument before the Tribunal appears to be focused on the question of whether Mr.Prem Singh was entitled to be considered for promotion before him. We find from the record that Mr.M.V.Pillai joined ICMR as a Senior Stenographer on 13.11.1972, and like the petitioner, was promoted to SPA on 18.04.1977 and upgraded as PS on 04.06.1983. He was promoted to the post of AO on 08.08.1988 and to SAO on ad-hoc basis from 01.04.1995. The Memorandum dated 18.04.1977 and 04.06.1983 by which the petitioner and Mr.Pillai were both promoted to SPA and upgraded as PS, show Mr.Pillai's name above that of the petitioner. [W.P.(C) No. 3951 of 1997 filed by him with respect to his seniority qua Mr. Pillai was dismissed on the ground of delay and laches by this Court on 22.09.1997.] In his representation dated 08.12.1995 to the DG, ICMR, the petitioner has alleged that it is by virtue of a revised seniority list issued on 02.07.1974 that he was placed junior to persons who were originally junior to him. He has drawn the attention of the DG to his eligibility at the time of the DPC in 1988 and sought a review DPC. His representation was rejected on 01.09.1997 on the ground that he had represented against the revised seniority list after a lapse of more than five years and his representation was, therefore, time barred.

9. The petitioner's appeal dated 13.01.2003 alleged that Mr.Prem Singh was not eligible for the post of AO on the date he was promoted and also raised certain disputes regarding the seniority of Mr.Pillai. The rejection of the said appeal (by the order dated 13.08.2005) was on the following grounds:

"AND WHEREAS the Executive Committee has considered the appeal wherein Sh. J. B. Sharma has inter-alia prayed for reconsideration of his seniority position in the grade of Private Secretary in ICMR as on 30.9.1981, seniority position on 10th February, 1988 in the grade of Administrative Officer on 08.08.1988, seniority position in the grade of Senior Administrative Officer as on 12.9.1994, seniority position in the grade of Senior Administrative Officer as on 31.03.1995.

AND WHEREAS, the appeal of Sh.J.B. Sharma is disposed of in terms of the following:-

i) Hon"ble Supreme Court in a catena of cases have held that the past seniority should not be disturbed/unsettled. It has been held so by Hon"ble Supreme Court in the case of Bimlesh Tanwar Vs. State of Haryana (2003) 5 SCC 604: AIR

2003 SC 2000.

ii) That the similar grievance of Sh.J.B. Sharma was considered by the Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi. The Ministry of Health & Family Welfare vide D.O. letter dated 22nd August, 1997 from Smt. Sunila Basant, the then Joint Secretary addressed to Dr.G.V. Satyavati, the then DG, ICMR, had informed as follows:

"Shri J.B. Sharma has been representing against allegedly wrong fixation of his seniority by ICMR in the grade of Senior Stenographer as indicated in the seniority list dated 2nd July, 1974. The list was issued in suppression of the seniority list dated 5th November, 1993 and showed Sh. Sharma junior to Sh.M.V. Pillai, contrary to the position indicated in the earlier seniority lists. Sh. Sharma has been aggrieved at the revision in the seniority list.

The matter has been examined very carefully in this Ministry. A personal hearing was also given to Sh.J.B. Sharma by me. Sh. Sharma represented against the revised seniority list of July, 1974 only after a lapse of five years. In view of the comments of the Council based on the recommendations of a Committee appointed to look into the matter and the opinion of the Ministry of Law, it appears that the case is time barred and the seniority settled in 1974 cannot be reconsidered at this stage.

Sh. Sharma may please be informed accordingly. He may also please be informed that his petitions on the subject may be treated as disposed of accordingly."

iii) Sh.J.B. Sharma had also preferred a Writ Petitioner (Civil) No. 3951/1997 before Hon"ble Delhi High court and Hon"ble Court was pleased to dismiss the writ petition of the petitioner on the ground of delay and laches. A copy of the order dated 22.7.1997 passed by the Hon"ble High Court in the said W.P. is annexed (ANNEXURE R-1).

iv) Shr. J.B. Sharmaa was informed by ICMR vide OM dated 31.12.1998 that no representation in regard to seniority in the grade of Stenographer will be entertained in future. A copy of the OM dated 31.12.1998 is annexed (ANNEXURE R-2).

v) As far as, the reliance of Sh.J.B. Sharma on the decision of the Hon"ble Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 161/2002 is concerned, the effect of the same judgment can only be prospective.

In view of the above mentioned facts and circumstances, the plea of Sh.J.B. Sharma is not tenable. Accordingly, the appeal of Sh.J.B. Sharma is rejected.

10. At the outset, it is clear that the revised seniority list of 1974 was agitated before the Tribunal for the first time only in 2002. The promotion of the petitioner's alleged juniors, superseding him, had also occurred in 1988, seven years after which he had made the aforesaid representation dated 08.12.1995 to

the DG, ICMR. The petitioner has not produced any evidence of an earlier challenge. The legal position is clear: a settled seniority position cannot be disturbed after the passage of several years when others have already been granted the benefit of the seniority determined by the employing agency. A four-judge bench of the Supreme Court laid down the following principle in *Malcom Lawrence Cecil D'Souza v. Union of India* (1976) 1 SCC 599 :-

"8. The matter can also be looked at from another angle. The seniority of the petitioner qua Respondents 4 to 26 was determined as long ago as 1956 in accordance with 1952 Rules. The said seniority was reiterated in the seniority list issued in 1958. The present writ petition was filed in 1971. The petitioner, in our opinion, cannot be allowed to challenge the seniority list after lapse of so many years. The fact that a seniority list was issued in 1971, in pursuance of the decision of this Court in *Karnik* case would not clothe the petitioner with a fresh right to challenge the fixation of his seniority qua Respondents 4 to 26 as the seniority list of 1971 merely reflected the seniority of the petitioner qua those respondents as already determined in 1956. Satisfactory service conditions postulate that there should be no sense of uncertainty amongst public servants because of stale claims made after lapse of 14 or 15 years. It is essential that anyone who feels aggrieved with an administrative decision affecting one seniority should act with due diligence and promptitude and not sleep over the matter. No satisfactory explanation has been furnished by the petitioner before us for the inordinate delay in approaching the Court. It is no doubt true that he made a representation against the seniority list issued in 1956 and 1958 but that representation was rejected in 1961. No cogent ground has been shown as to why the petitioner became quiescent and took no diligent steps to obtain redress."

In *B.S. Bajwa v. State of Punjab* (1998) 2 SCC 523, the Supreme Court held as under:-

"7. ...It is well settled that in service matters the question of seniority should not be reopened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This alone was sufficient to decline interference under Article 226 and to reject the writ petition."

The impugned judgement of the Tribunal refers to *Bimlesh Tanwar v. State of Haryana* (2003) 5 SCC 604, wherein a delay of 5 years was held to disentitle the petitioner to any relief. The Court made the following observations :-

"54. Furthermore, it is now well settled that a settled seniority position should not be unsettled. The respondents had already been posted to the post of Additional District Judge. As would appear from the report of the Sub-Committee that the seniority list was published in the year 1992. Representations were, however, made only in the year 1997 which was rejected by the High Court on 22-8-1997. The writ petition was filed in March 1998 which was dismissed by

reason of the impugned judgment dated 18-8-1999."

The recent decision in *Akshya Bisoi v. AIIMS* (2018) 3 SCC 39, follows the same line of reasoning:-

"20. In holding that an unexpected delay on the part of the petitioners would disentitle them to relief, we place reliance on a judgment of this Court in *State of Uttaranchal v. Shiv Charan Singh Bhandari* [*State of Uttaranchal v. Shiv Charan Singh Bhandari*, (2013) 12 SCC 179 : (2014) 3 SCC (L&S) 32]. The learned Chief Justice, after adverting to the settled position of law in that regard, observed thus: (SCC pp. 185-86, paras 27-28)

"27. We are absolutely conscious that in the case at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. ... the respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Anyone who sleeps over his right is bound to suffer. ...

28. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the Tribunal and accepted by the High Court."

There has to be an element of repose and a stale claim cannot be resuscitated."

11. Further, the petitioner has wavered in his stand with regard to Mr.Prem Singh and Mr.Pillai. Although his original grievance was in respect of Mr.Pillai, he was unable to establish his claim. It is only thereafter that he has aired his grievance with respect to Mr.Prem Singh. Factually, the record of the respondents shows that Mr.Prem Singh had more than eight years service as SO prior to his promotion as AO. In fact, he was senior to Mr.Pillai, against whom the petitioner has already failed in establishing his seniority. The petitioner has not been able to controvert these factual contentions of the respondents with any documentary support. Consequently, we do not find any ground to disturb the Tribunal's finding that the petitioner has failed to establish that he was senior to Mr.Prem Singh.

12. In addition to his submission on merits, the petitioner has raised two somewhat distinct grounds to challenge the authority of Dr.Ganguly. These are dealt with as follows:

a. The first allegation is of animus on the ground that the petitioner had raised certain allegations against Dr.Ganguly and was subjected to a notice issued by the ICMR contemplating disciplinary action against him. The documents placed on record do not establish the petitioner's allegations. As stated hereinabove, the petitioner's appeal was pending before the Executive Committee since

13.01.2003. At the petitioner's instance, the Tribunal had passed an order dated 27.05.2005 requiring disposal of the said appeal by 30.06.2005. The petitioner filed a Contempt Petition (C.P. No. 290 of 2005) before the Tribunal on 21.07.2005 alleging non-implementation of the order dated 27.05.2005. After the notice was issued, the order dated 13.08.2005 was passed and the contempt proceedings were ultimately dropped by the Tribunal on 19.12.2005. It is prior to these orders that, in February-March, 2005, that the Petitioner had started raising certain allegations against Dr. Ganguly. Despite that situation, he moved the Tribunal for disposal of his appeal and the Tribunal directed accordingly. The petitioner was well aware that his appeal was pending before a committee chaired by Dr. Ganguly, yet he pressed for its disposal without raising the grounds he now seeks to agitate. In the circumstances, it is clear that the petitioner did not regard his allegations against Dr. Ganguly as being of material significance to his appeal. In any event, in our view, there can be no absolute rule that an authority should not exercise its powers if allegations are made against it by one of the parties. Such a general principle would enable any party to avoid an inconvenient forum (or even influence its ultimate decision) by raising allegations against the concerned person.

b. The second aspect agitated by the petitioner is that, according to him, Dr. Ganguly had in fact retired prior to the order dated 13.08.2005 and thus, had no authority to issue the same. We find that while disposing of the petitioner's contempt petition on 19.12.2005, the Tribunal had noted this allegation and the respondent's contention that Dr. Ganguly had been granted an extension. The orders of extension dated 16.12.2003 and 10.11.2005 have also been produced before us. In support of this contention, the petitioner has relied upon documents of Post Graduate Institute of Medical Education and Research, Chandigarh (PGIMER) (where Dr. Ganguly had been employed) determining his date of superannuation as 30.11.2003. In our view, those documents cannot negate the effect of the orders produced by the respondents. Protracted correspondence between the petitioner, the Government of India, PGIMER and the ICMR regarding Dr. Ganguly's conditions of service, remuneration etc. have been filed in these proceedings. This exchange of correspondence, almost all of it well after the order dated 13.08.2005 was passed, do not take the petitioner's case any further. If anything, the petitioner's dogged pursuit of this issue may lead to a conclusion that the petitioner bares some animus to Dr. Ganguly. However, that in itself does not affect the position that Dr. Ganguly's services had been extended. The validity of that extension, the terms and conditions of his appointment, the tenure of his lien in his parent institution (PGIMER) are not issues that the petitioner could have raised collaterally, while seeking a determination of his own service dispute by the Tribunal. In his written submissions before us, the petitioner has in fact taken the stand that Dr. Ganguly's original appointment as DG ICMR was itself void, and has challenged the extensions on that basis as well as on the basis of alleged misinformation given to the authorities in order to obtain approval of the proposed extension.

Significantly, this was not the ground upon which the Petitioner had approached the Tribunal in the present proceedings. Even in his rejoinder before the Tribunal and applications made therein, the petitioner's contention is about Dr.Ganguly's continued employment after retiring from the parent institution and not about his original employment. We therefore affirm the Tribunal's findings on this aspect as well. In any event, the Tribunal has itself examined the petitioner's case on merits, and we have also upheld those findings of the Tribunal.

13. For the reasons aforesaid, the writ petition is dismissed. Pending applications also stand disposed of.