
(2004) 05 DEL CK 0066

In the Delhi High Court

Case No : Writ Petition (C) No. 2335 of 2000

Joginder Malhotra

APPELLANT

Vs

A.I.I.M.S. and Others

RESPONDENT

Date of Decision : 27-05-2004

Acts Referred:

Citation : (2004) 111 DLT 836 : (2004) 75 DRJ 282 : (2005) 1 SLJ 247

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Subhash Oberoi, for the Appellant; Mukul Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Petitioner was appointed as a Junior Engineer (C) under the All India Institute of Medical Sciences (AIIMS) vide memo dated 17.12.1982. Appointment was on a purely temporary basis for a period of three months. Appointment continued. On 24.11.1986, services of the petitioner were regularised.

2. Petitioner claims that for the purposes of seniority and computation of wages, increments and step up in the grade, benefit of service rendered by the petitioner since 1982 be granted to him.

3. As per the respondent petitioner's appointment vide memo dated 17.12.1982 was ad-hoc and de-hors the rules. Initial appointment was for three months but it was continued. Process of regular selection was commenced and finally, as per the said process of selection, petitioner was regularly appointed on 24.11.1986. As per the respondent ad-hoc appointment de-hors the rules cannot be treated as regular service, it cannot be treated as service which has to be counted for the purpose of seniority, much less for the purpose of promotion to the next higher post.

4. As per the office memo dated 30.1.1992, AIIMS adopted the Government of

India's order dated 22.3.1991 pertaining to Junior Engineers of CPWD for all conditions of service. As per the Government of India order dated 22.3.1991, Junior Engineers who were placed in the grade of Rs.1400-2300 became entitled to be placed in the grade of Rs.1640-2900 on completion of 5 years service and further, on completion of service of 15 years service, became entitled to be placed in the grade of Rs.2000-3500.

5. Grievance of the petitioner is that treating his service under it w.e.f. December,1982, vide order dated 14.9.1992, AIIMS accorded approval for placement of the petitioner in the scale of Rs.1640-2900 w.e.f. 20.12.1987. Petitioner contends that the said order shows that 5 years service was reckoned by AIIMS w.e.f. 20.12.1982.

6. Grievance of the petitioner is that when it came to reckoning his service for 15 years, AIIMS took a somersault and determined the same reckoning 15 years of service w.e.f. 24.11.1986.

7. Petitioner, Therefore, prays that he be granted pay in the scale of Rs.2000-3500 (since revised to Rs.6500-10500) on completion of 15 years service i.e. w.e.f. 20.12.1997.

8. Petitioner alleges discrimination, in that, he stated that another Junior Engineer, Shri K.K. Thareja, who was working in the Electric Department was allowed higher scale on completion of 15 years of service including ad-hoc service.

9. Another grievance of the petitioner is that respondent No.3, Shri K.G.Sharma, who is junior to the petitioner, was promoted to the post of Assistant Engineer (Civil) vide order dated 3.3.2000. Petitioner states that the Recruitment Rules for the post of Assistant Engineer (Civil) shows that promotion has to be based on seniority subject to fitness. As per the petitioner, since no adverse remarks were communicated to him, petitioner has to be promoted. Petitioner alleges that Shri K.G.Sharma happens to be the President of Karamchari Union and the respondent is, Therefore, appeasing him.

10. As per the counter affidavit filed, it is stated that the petitioner's initial appointment was ad-hoc and de-hors the rules. Pursuant to process of regular selection, petitioner was appointed on regular basis on 24.11.1986. It is stated that earlier, erroneously treating the petitioner's appointment to be on regular basis w.e.f. 20.12.1982, higher pay scale was granted to the petitioner on completion of 5 years of service. However, it is pleaded that a wrong cannot create a right in a person.

11. Pertaining to the case of Shri K.K.Thareja, it is pleaded that erroneously Shri K.K. Thareja was granted benefit of service on completion of 15 years service by including his ad-hoc service. When this was noticed by the Department, a show cause notice was issued to him and the wrong benefit granted has been withdrawn.

12. Pertaining to the promotion effected in favor of Shri K.G. Sharma respondent No.3, it is pleaded that he was appointed on regular basis as Junior Engineer w.e.f. 8.3.1984. Petitioner was appointed on regular basis w.e.f. 25.11.1986. Further, the Recruitment Rules show that the post of Assistant Engineer has to be filled by promotion from Junior Engineer, criteria for promotion being "merit-cum-seniority".

13. Matter was heard on 22.5.2004. Records were directed to be produced. Respondent has produced the record pertaining to DPC which met in the month of February, 2000 which recommended the select panel pursuant where to Shri K.G. Sharma, respondent No.3 was promoted as Assistant Engineer (Civil). Respondent has also produced the record showing the initial appointment of the petitioner, its continuation till his regular appointment and thereafter.

14. Record would reveal that there were two posts of Junior Engineer reserved for SC candidates and two posts in the unreserved category which had to be filled in the year 1983. Pending regular selection, petitioner was appointed de hors the rules. In the appointment letter, it was duly intimated to the petitioner that the appointment offered was on a purely temporary basis for a period of three months and that the appointment would not entitle him to any regular appointment unless he is selected for appointment on regular basis. Request was sent to the Employment Exchange to forward the names of persons registered with the Employment Exchange having necessary qualifications. Employment Exchange forwarded the names of 20 candidates. Petitioner's name was not sent. The process of selection was put into motion. Only two candidates attended the interview. Only one candidate Shri Davinder Singh Yadav was recommended for appointment in December, 1983. One post in the unreserved category remained unfilled. Petitioner continued to work on ad-hoc basis. More names were requisitioned from the Employment Exchange. 22 names were forwarded. The petitioner's name was not forwarded. The Selection Committee met on 23.1.1984. Shri K.G. Sharma, respondent No.3 was empanelled. Letter of appointment was issued to him on 8.3.1984 and he joined. More posts fell vacant. Another request was sent to the Employment Exchange. 29 names were sponsored. Petitioner was one of them. Five candidates attended the interview. Petitioner was selected. Letter of offer was issued to him in November, 1986.

15. Petitioner's initial appointment is fortuitous and de hors the Recruitment Rules. It is not a case where the Recruitment Rules were relaxed while effecting initial appointment. Petitioner's claim for benefit of service w.e.f. 17.12.1982 cannot be accepted. Petitioner can claim benefit of service w.e.f. 24.11.1986, the date of his regular appointment.

16. In State of W.B. and Others Vs. Aghore Nath Dey and Others, , it was held :

"21. We shall now deal with conclusions (A) and (B) of the Constitution Bench in the Maharashtra Engineers case quoted above.

22. There can be no doubt that these two conclusions have to be read

harmoniously, and conclusion (B) cannot cover cases which are expressly excluded by conclusion (A). We may, Therefore, first refer to conclusion (A). It is clear from conclusion (A) that to enable seniority to be counted from the date of initial appointment and not according to the date of confirmation, the incumbent of the post has to be initially appointed "according to rules". The corollary set out in conclusion (A), then is, that "where the initial appointment is only ad hoc and not according to rules and made as a stopgap arrangement, the officiation in such posts cannot be taken into account for considering the seniority". Thus, the corollary in conclusion (A) expressly excludes the category of cases where the initial appointment is only ad hoc and not according to rules, being made only as a stopgap arrangement. The case of the writ petitioners squarely falls within this corollary in conclusion (A), which says that the officiation in such posts cannot be taken into account for counting the seniority.

23. This being the obvious inference from conclusion (A), the question is whether the present case can also fall within conclusion (B) which deals with cases in which period of officiating service will be counted for seniority. We have no doubt that conclusion (B) cannot include, within its ambit, those cases which are expressly covered by the corollary in conclusion (A), since the two conclusions cannot be read in conflict with each other.

24. The question, Therefore, is of the category which would be covered by conclusion (B) excluding there from the cases covered by the corollary in conclusion (A).

25. In our opinion, the conclusion (B) was added to cover a different kind of situation, wherein the appointments are otherwise regular, except for the deficiency of certain procedural requirements laid down by the rules. This is clear from the opening words of the conclusion (B), namely, if the initial appointment is not made by following the procedure laid down by the rules" and the later expression "till the regularisation of his service in accordance with the rules". We read conclusion (B), and it must be so read to reconcile with conclusion (A), to cover the cases where the initial appointment is made against an existing vacancy, not limited to a fixed period of time or purpose by the appointment order itself, and is made subject to the deficiency in the procedural requirements prescribed by the rules for adjudging suitability of the appointee for the post being cured at the time of regularisation, the appointee being eligible and qualified in every manner for a regular appointment on the date of initial appointment in such cases. Decision about the nature of the appointment, for determining whether it falls in this category, has to be made on the basis of the terms of the initial appointment itself and the provisions in the rules. In such cases, the deficiency in the procedural requirements laid down by the rules has to be cured at the first available opportunity, without any default of the employee, and the appointee must continue in the post uninterruptedly till the regularisation of his service, in accordance with the rules. In such cases, the appointee is not to blame for the deficiency in the procedural requirements under

the rules at the time of his initial appointment, and the appointment not being limited to a fixed period of time is intended to be a regular appointment, subject to the remaining procedural requirements of the rules being fulfilled at the earliest. In such cases also, if there be any delay in curing the defects on account of any fault of the appointee, the appointee would not get the full benefit of the earlier period on account of his default, the benefit being confined only to the period for which he is not to blame. This category of cases is different from those covered by the corollary in conclusion (A) which relates to appointment only on ad hoc basis as a stopgap arrangement and not according to rules. It is, Therefore, not correct to say that the present cases can fall within the ambit of conclusion (B), even though they are squarely covered by the corollary in conclusion (A)."

17. Petitioner, Therefore, is entitled to be placed in the next higher grade after 15 years of service in the entry grade i.e. 15 years service had to be reckoned w.e.f. 24.11.1986. Two wrongs do not make a right. In the past, respondent has committed an error but it cannot become an albatross around the neck of the respondent.

18. There is no discrimination vis-a-vis the petitioner and Shri K.K. Thareja, as the respondent has brought on record that when it realised that Shri K.K. Thareja was wrongly granted the benefit, same was withdrawn.

19. Shri K.G. Sharma, Respondent No.3 joined as a Junior Engineer on regular basis w.e.f. 8.3.1984. He is, Therefore, senior to the petitioner who joined service on regular basis w.e.f. 25.11.1986.

20. Minutes of the DPC which met in the month of February, 2000 have been produced. Record of the DPC would reveal that five vacant posts of Assistant Engineers had to be filled up. Eligible candidates including the petitioner were considered. Select panel was prepared of five persons. All the five persons are senior to the petitioner. Shri K.G. Sharma finds place at Serial No.5 of the merit list.

21. Recruitment Rules for the post of Assistant Engineer, as noted above, show that the method of recruitment is "merit-cum-seniority". ACR dossier of the petitioner and respondent No.3 reveal the following grading:-

	YEAR	RATING	Petitioner
Respondent No.3	1993-94	Good V. Good	1994-95 V. Good
	1995-96	V. Good	1995-96 V. Good
	1996-97	V. Good	1996-97 V. Good
	1997-98	Outstanding	1997-98 V. Good
	1998-99	Outstanding	1998-99 Outstanding

22. Criteria of promotion is "merit-cum-seniority". The ACR rating would reveal that in the last six years, petitioner had 2 ratings outstanding, 3 Very Good and Good. Shri K.G. Sharma had ratings of 1 Outstanding and 5 Very Good. Merit position of the two is similar. As per criteria for promotion being "merit-cum-seniority", respondent No.3 being senior, was rightly empanelled above the

petitioner.

23. The writ petition is accordingly dismissed. No costs.