(2014) 08 DEL CK 0260

In the Delhi High Court

Case No : W.P. (C) 5433/2007 and C.M. Nos. 10069, 11732 & 17802/2007

Kamal Sharma APPELLANT

Vs

National Council of Educational Research and Training RESPONDENT

Date of Decision : 21-08-2014

Acts Referred:

Citation : (2014) 08 DEL CK 0260

Hon'ble Judges : Vipin Sanghi, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Kaanan Kapur, Y.K. Kapoor, R.K. Singh and Deepa Rai, Advocate for the Appellant; R.K. Singh, Deepa Rai, R.K. Handoo, Manish Shukla and R. Aditya, Advocate for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The writ petitioners in W.P. (C) 5433/2007 (hereafter referred to as "departmental candidates") and in W.P. (C) 5471/2011 (hereafter referred to as NCERT) challenge an order of the Central Administrative Tribunal (CAT) dated 23.04.2007 in OA 1479/2006.

2. The brief facts are that the applicant before the CAT (hereafter referred to as "Kotru") joined the NCERT on 24.07.1995, on deputation. He had joined the Department of Telecommunication, Central Government in 1982 and had subsequently joined the NCERT on deputation as a Senior Accountant. Sometime in 1995, the NCERT invited applications from amongst eligible candidates for recruitment to the post of Senior Accountant. Kotru, who was working on deputation, sought for absorption. This request was, however, declined by the NCERT on 16/18.12.1997. The ground for rejection was that there was no ''provision in the Recruitment Rules of the Council for the absorption of a deputationist. Later, however, NCERT added that "However, he may compete in the test of Senior Accountant against the post which are to be filled through open recruitment".

3. In these circumstances, Kotru applied and was granted permission from his parent department, i.e., the Central Government to compete in the direct recruitment quota in NCERT. He made the request on 23.01.1998; the Central Government permitted him to appear in the test by its letter dated 19.02.1998. At this stage, it may be mentioned that the post of Senior Accountant in the NCERT is filled up to the extent of 75% from amongst departmental candidates (departmental quota) by selection on the basis of Limited Departmental Competitive Examination. The 25% direct recruit quota is filled up through open competition. The qualification and experience prescribed for the post was that departmental quota candidates should have qualified in the examination for Junior Accountant and should have served for not less than three years as Junior Accountant in the NCERT; on the other hand, candidates applying in the 25% direct recruitment quota were required to possess a degree in Commerce or allied subjects from a recognized University and also have worked in a grade not below that of Rs. 330-560 for at least three years. It is not in dispute that the Kotru was selected as against the 25% direct recruit quota; the departmental candidates who also competed at that time were, however, unsuccessful. Kotru was already working as Senior Accountant; he submitted his resignation to the Central Government which was accepted on 2.11.1999. The departmental candidates had, in the meanwhile, qualified for the Limited Departmental Competitive Examination for the 75% quota and were selected on 14.06.1999. They were appointed on 02.08.1999 and 20.09.1999 to the post of Senior Accountant. On 13/22.03.2011, the tentative seniority list of Senior Accountant in the pay scale of Rs. 5500-9000 (pre revised Rs. 1640-60-2900, before which it was Rs. 500-900) was published. Kotru was shown junior to the departmental candidates as having been appointed w.e.f. 02.11.1999. He protested through a representation dated 12.04.2001 highlighting that since absorption had been denied in December, 1997 and he was advised to appear in the test for direct recruitment quota which he did successfully, his seniority ought not to be reckoned from 2.11.1999. In these circumstances, on 28.03.2003/22.04.2003, the NCERT issued a final seniority list, showing Kotru as senior to the departmental candidates with the remark that he was working w.e.f. 24.07.1995 in the NCERT. The Circular issued with the final seniority list (of 2003) stated inter alia as follows:-

"The request of Shri R.K. Kotru has been considered in consultation with the DoPT through the MHRD and in accordance with the advice of the DoPT, the seniority of S/Sh. S.N. Chaturvedi and Ravinder Kumar Kotru who was selected on 22.05.1998 has been fixed at Sl. No.9 & 10 in place of S/Sh. T.S. Bisht, K.L. Jain and Smt. Kamal Sharma who have now been placed at Sl. Nos.11, 12 & 13 as per their date of selection, i.e., 14.06.1999. However, the name of Deshraj has been found correctly placed at Sl. No.2 as per his position on the select list prepared by the Selection Committee".

After issuance of the final seniority list, the NCERT yet again on 8.8.2005 sought to revisit the issue through a Circular which mentioned that a representation had been received regarding the appointment of deputationist against direct recruit vacancies. In this list, Kotru was shown as junior to the departmental candidates even though his date of selection was properly disclosed as 22.05.1998. This tentative seniority list stated that his seniority was fixed from the date of his absorption in NCERT. Kotru made a representation against this list by letters dated 31.08.2005 and 14.09.2005; they were of no avail and on 13/19.06.2006, a second and final seniority list was issued, showing him as junior to the departmental candidates. He approached the CAT, alleging that this fresh re-fixation was arbitrary.

4. In the counter affidavit filed by the NCERT, Kotru''s initial request for absorption and the circumstances in which it was declined was not denied. However, NCERT alleged that Kotru and other deputationists did not possess the requisite eligibility conditions as they have not worked in the pay scale of Rs. 4000-6000 for at least three years. The infirmity in their applications for direct recruitment was that their applications to participate in the selection process was made much after 1995. It was urged that these irregularities came to light on account of the representations of departmental candidates; they have referred to the report of a Committee known as "Satyam Committee". The NCERT also contended that on account of the various irregularities discerned by the Satyam Committees report, the seniority in the grade of Senior Accountant was reviewed. The CAT by its impugned order noticed that Kotru had appeared in the direct recruitment quota and was selected in 1998 and that having published the final seniority list in 2003, the revision made on 19.6.2006 was without affording any opportunity to show cause with the relevant materials.

5. The petitioners, i.e., the NCERT and departmental candidates argued that revision of the seniority list in 2006 was valid and justified. It was urged that Kotru had repeatedly sought for absorption - a request that was declined. The circumstances under which he applied to appear in the direct recruitment quota in 1998, three years after the advertisement was issued in 1995 showed collusion and irregularity. In the circumstances, urged the counsel, his appointment as a direct recruit could not be considered to be from the date he cleared the exam even though he was working in the NCERT. Furthermore, submitted the counsel, the Satyam Committee report clearly showed that Kotru did not possesses the necessary experience of three years in the grade of Rs. 330-560 at the time of selection. Even though NCERT could have refused to absorb Kotru having regard to his technical resignation from the services of the Central Government w.e.f. 02.11.1999, his claim to be part of the NCERT was acceded to from that date.

6. Learned counsel for the departmental candidates argued that the NCERTs omissions by reason of its permitting Kotru to appear in the selection process for filing up the direct recruit vacancies and further conferring him seniority as if he was a direct recruit, amounted to clear violation of the rules. Learned counsel underlined the fact that Kotru did not possess the necessary experience and

besides had not even applied before the cutoff date in 1995 for the post. In the circumstances, the final list of 2006 correctly reflected his date of absorption or entry into the grade of Senior Accountant as 02.11.1999. Learned counsel relied upon the extracts of the Satyam Committees report which had been produced by the NCERT in its writ petition and urged that all these aspects were not given due consideration by the CAT which merely went by the absence of opportunity before changing the seniority and pushing him below the departmental candidates.

7. Learned counsel for Kotru argued firstly that having considered the representations of all parties after publication of the first tentative seniority list in 2001, NCERT finalized the list and published it in 2003. This was done after prior consultation with the DoPT and the Central Government. Kotru was neither afforded any opportunity of appearing, nor was furnished a copy of the Satyam Committees report before the impugned seniority list was published in 2006, which showed him as junior to the departmental candidates.

8. Learned counsel further argued that the other departmental candidates had competed for the post in 1998 like Kotru, but were unsuccessful. It was highlighted that in these circumstances they could not have questioned his substantive entry into the post almost six years later. Learned counsel submitted that departmental candidates were appointed in August and September, 1999 and could not have, under any circumstances, claimed seniority over Kotru. It was further submitted that Kotru could not be faulted for having appeared in the selection test meant for direct recruits; the NCERT itself had declined his request for absorption in December, 1997 and instead advised him to appear in the test for direct recruit quota. Having allowed him to appear (for which he even obtained prior permission from his parent department) and thereafter selected him, the NCERT could not alter his date of entry on the pretext that his technical resignation was approved on 2.11.1999. Learned counsel submitted that since Kotru was continuously working as Senior Accountant from 1995 and he stood selected to that post on 22.05.1998, his date of substantive appointment was the same as in the case of other direct recruits. Instead, the NCERT was unduly swayed by the representations of the departmental candidates and changed the date of his appointment to 02.11.1999 - an order or deeming fiction unsupported by law or rules of recruitment. Learned counsel submitted that the Satyam Committees report was neither preceded by any enquiry in which Kotru was involved or given opportunity to appear, nor was its report was furnished to him. It was argued that report contains several irregularities, such as, for instance, the assumption that Kotru did not possess three years'' experience. Learned counsel pointed out in this regard that Kotru had worked in the post of Senior Accountant in the pay scale of Rs. 500-900, later revised to Rs. 1640-2900, and subsequently revised to Rs. 5500-9000 for three years and was, therefore, eligible to appear as against the direct recruit vacancy.

9. The sequence of events would show that Kotru joined the NCERT in 1995 as a

Senior Accountant. He made a representation to the NCERT for permanent absorption in the organization. This was declined; however, the NCERT stated that Kotru could compete for the direct recruit vacancy which had been advertised by them. He, therefore, applied and was permitted by the NCERT to participate in the selection process in which he was successful. The results were declared on 22.05.1998. The departmental candidates who were working in the lower grade as Accountants, also competed but were unsuccessful. They later cleared the LDCE and were appointed in the 75% quota for promotion in August and September, 1999. The seniority list first finalized after consultation with the DoPT on 22.04.2003 reflected that Kotrus entry into the grade of Senior Accountant was to a direct recruit vacancy, and that the selection had taken place on 22.05.1998. In these circumstances, apparently, some departmental candidates represented stating that they ought to have been shown as senior to Kotru. After publishing a tentative seniority list proposing to show Kotru as junior to these departmental candidates, which led to his protesting against the move, the final seniority list was published on 13/19.06.2006. In this seniority list, Kotru was shown junior to the departmental candidates. His date of appointment was shown to be 2.11.1999, i.e., the date on which the Central Government had communicated acceptance of his technical resignation. The position of NCERT before the CAT as well as this Court is that Kotru could not be treated as regular appointee before 2.11.1999 and that his participation in the direct recruitment process was irregular. It also alleges that he did not have the requisite three years experience in that regard.

10. From the sequence of events, it is clear that Kotrus request for permanent absorption was declined in 1997. At that time, NCERT asked him to compete and participate in the selection to fill the direct recruit quota. It is, therefore, clear that his appointment, which eventually matured, was against the direct recruit vacancy. Apart from Kotru, there were three others shown as direct recruits; the records would reveal that their appointments were shown to have been made with effect from the different dates in 1998. In this background of circumstances, the NCERT seems to have revisited the issue of seniority on the basis of the departmental candidates representations. The report of Satyam Committee, which is being relied upon, to the extent it is relevant, reads as follows:-

"Observations:

(i) All the three persons named were on deputation. Their request for ''absorption was not accepted because there were no provision in the Recruitment Rule for ''absorption. They were, therefore, asked to appear in the open competition under the Direct Recruitment quota. That being so, their cases have to be dealt with for all purposes in the same manner as any other candidate for Direct Recruitment. Notwithstanding the fact that they were already on deputation as Senior Accountants, they will be deemed to have joined the NCERT only w.e.f. the dates of their absorption after acceptance by their parent offices after their technical resignations. Giving them seniority w.e.f. the date of selection or any other date prior to the date of actual absorption will amount to nullifying the logic of the earlier rejection of their request for ''absorption. The rule position in this regard is also unambiguous. In any case, how can they be given seniority from a date on which they were not even borne on the cadre of Sr. Accountants of the NCERT?

(ii) In the case of Shri R.K. Kotru, it is also to be recognized that on the date of selection he did not have the required essential qualification of ''having worked in the Rs.4000-6000 grade (revised for a period of not less than three years. This is a major disqualification which can even nullify his selection. (iii) Since all the three case are to be treated as ''direct recruitment cases, the age limit (18-30 years) as stated in the advertisement must apply. In the absence of any valid age relaxation order, the age-bar-disqualification will hit these cases as contended by Smt. Kamal Sharma.

(iv) There is also the point to reckon with about the period of deputation. At the time of recruitment, these deputationists had overstayed on deputation (i.e. beyond five years) without any valid permission." The first irregularity pointed out by the Satyam Committee pertains to Kotrus lack of experience. It was argued during the hearing on behalf of Kotru that this finding was a mere assumption, because Kotru was working in a grade higher than that of a Senior Accountant (i.e., Rs. 500-900, revised to Rs. 1640-2900 and later revised to Rs. 5500-9000) from 1995 itself. In these circumstances, the observations that Kotru, on the date of selection, did not possess the qualification of having worked in the grade of Rs. 4000-6000 is utterly unfounded. We also noticed that when Kotru was appointed in 1995, the letter written by NCERT to the Assistant Post Master General, J&K Circle showed that he was selected for the post of Senior Accountant in the scale of Rs. 1640-2900 and that an officer holding the scale of Rs. 2000-3200 could be allowed that scale "as personal to him on his appointment as Senior Accountant in the Council". In these circumstances, having regard to the previous pay scale of Kotru before he joined NCERT and his fixation in the scale of Rs. 1640-2900, it cannot be said that he lacked the requisite experience.

11. The second irregularity in Kotrus appointment which constituted the basis for his down-gradation in seniority list was that the vacancies for Senior Accountant were advertised in 1995 and that he applied long after the expiry of the last date. In this regard, apart from the observations of the Satyam Committee and the NCERTs stand before CAT, no details are forthcoming. Furthermore, the NCERT does not deny that at the time of turning down Kotrus request for permanent absorption, he was told that absorption was not a method of recruitment, and more importantly, that he could compete for the post in the direct recruit quota. It was in these circumstances that Kotru applied through appropriate channel - routing his application through his parent department - which granted permission on 16.2.1998. His letters requesting the permission of the parent department and that of the Central Government, dated 23.1.1998 and

16.2.1998, were both marked to the NCERT, which acted on it and permitted him to appear for the selection test. Kotru succeeded and was apparently adjusted against the direct recruitment vacancy; significantly, the departmental candidates were not selected. At that stage no one protested. Since, under the NCERTs rules and regulations as well as the rules governing the Central Government Department of Posts and Telecommunication, Kotru had to resign from his parent department, he applied in that regard. Acceptance was, however, communicated on 2.11.1999. This later event cannot obscure the fact that having rejected the initial request for absorption and informed Kotru that he ought to compete for the direct recruit vacancies and allowed him to do so, the NCERT cannot then turn around and state that by some unknown process he stood ''absorbed on the date his technical resignation was accepted, i.e., 2.11.1999. The fortuitous circumstance of acceptance by the former or parent employer, in the background of such circumstances, cannot determine the fate of a direct recruit who is otherwise selected against the substantive vacancy. His date of entry into the cadre has to be with effect from the date he joins or takes charge of the post. In this case, Kotru was continuously working as Senior Accountant from 1995; his date of substantive entry would have to be reckoned from 25.5.1998 when the other direct recruits were appointed. The NCERTs stand that the later date of acceptance of technical resignation would be the deemed date of appointment is neither supported by rules nor by any other documentary evidence on its part. This Court is of the opinion that even though the CATs findings are confined to the question of absence of opportunity to Kotru before revision of the seniority list, since all the materials which went into the revision of the seniority were before the CAT and are also before this Court, it would be appropriate to render findings on all aspects. In the circumstances, it is held that Kotru in fact entered the service of NCERT as a Senior Accountant on a substantive basis in May, 1998 itself and was entitled to have his seniority reckoned from that date.

12. Similarly, the contention with regard to the alleged irregularity in his responding to the advertisement much later has to be rejected. The NCERT does not answer why, having in the first place asked Kotru to appear in the examination - for the vacancies advertised in 1995 and allowed him to do so - it can now argue that his action was irregular or illegal. Furthermore, the inordinate delay on the part of the departmental candidates in questioning this in an oblique manner (i.e. after a lapse of six years, even after finalization of seniority in 2003) cannot be overlooked. The NCERT instead chose to reopen the entire issue and carried on a clandestine enquiry without involving Kotru, and reversed his settled seniority on the basis of a report which was never put to him. We are of the opinion that this process is unknown to law and utterly arbitrary.

13. In view of this discussion, it is held that the CATs impugned order cannot be faulted. The pleadings on the record suggest that disregarding the CATs order, the NCERT proceeded to grant promotions to the departmental candidates based

upon the quashed seniority list. As a result of the above discussion, the CATs findings are affirmed; the final seniority list of 2006 is hereby quashed. The final seniority list of 2003 is deemed to be restored. The consequential DPC review shall be held to consider the case of Kotru and grant him promotions to the higher grades from the date or dates his juniors, i.e., the departmental candidates were promoted to the higher post or posts.

14. The writ petitions accordingly fail and are dismissed subject to the above directions; the costs of both petitions are fixed @ Rs. 25,000/- each; they shall be paid to Shri Kotru within four weeks.