
(2002) 03 DEL CK 0119
In the Delhi High Court
Case No : C.W.P. No. 3818 of 1998

K.P. Dubey

APPELLANT

Vs

The Chairman, CAT and Others

RESPONDENT

Date of Decision : 22-03-2002

Acts Referred:

Central Service Rules — Rule 4

Citation : (2002) 03 DEL CK 0119

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : G.D. Gupta, for the Appellant; Maninder Singh and Nishakant Pandey, for the Respondent

Judgement

S.B. Sinha, C.J.—An order an judgment dated 30.07.1997 passed in O.A. No. 780 of 1995 by the Central Administration Tribunal, Principal Bench, New Delhi (hereinafter referred to as, "the Tribunal") is in question in this writ petition.

2. The petitioner herein filed the said original application before the Tribunal claiming seniority in terms of General Principles for Determination of Seniority in the Central Services (in short, "the Rules"). Rule 4 of the Rules, which is relevant for this case, reads thus :-

"4. Direct Recruits. - Notwithstanding the provisions of para 3 above, the relative seniority of all direct recruits shall be determined by the order of merit in which they are selected for such appointment, on the recommendations of the UPSC or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection :

Provided that where persons recruited initially on temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment seniority shall follow the order of confirmation and not the original order of merit."

3. The petitioner has been denied the benefit of the aforesaid Rule inter alias on

the ground that he failed to join his duties in terms of the Government of India, Ministry of Home Affairs, Department of Personnel and Administration Reforms Office Memorandum No. 9/23/71-EST dated 06.06.1978.

4. The respondents before the learned Tribunal although had raised a contention to the effect that for the purpose of determination of seniority, the doctrine of continuous officiation was followed but before this Court a supplementary affidavit has been filed wherein inter alias it has been contended that in terms of the said Office Memorandum dated 05.06.1978, the petitioner having not applied for extension of time for joining his duties within the prescribed period, he was not entitled to the seniority in terms of the said Rules.

5. It is contended that in terms of the offer of appointment, the petitioner was directed :-

"2. The appointment will take effect from the date of his/her joining duty and will continue upto further orders."

6. According to the respondents, the following principles as regards seniority are required to be observed in terms of the said Office Memorandum dated 18.07.1983 :-

"23. In case he/she accepts the offer on the terms given above, he/she should report for duty to the Hort. West Divn. of C.P.W.D., I.P. Bhawan, New Delhi (2) on the forenoon of 1.8.1983. If he/she fails to report for duty latest by 10.8.1983, the offer shall stand cancelled."

7. In terms of the offer of appointment, the petitioner was, thus, to join on 01.08.1983 or latest by 10.08.1983. He, however, sought for an extension allegedly on the ground of his having received the offer of appointment late as he was out of Delhi. By reason of a letter dated 20.08.1983, it was stated :-

"DIRECTORATE OF HORTICULTURE CENTRAL PUBLIC WORKS DEPARTMENT No. 8(2)/83-DH/Estt./6 18 4-86. New Delhi, dated the 20th August 1983

To,

Shri Kesho Prashad Dubey,

Quarter No. G-726, Srinivaspuri,

NEW DELHI.

Sub : Recruitment of Sectional Officers (Hort.) - Extension of Joining time.

Ref. : Your letter dated 19.8.83.

Please refer to this office Memo No. 8(2)/83-DH/Estt./5341, dated 18-7-83. Instead of joining on 1-8-83 or latest by 10-8-83, you are hereby allowed to join duty as Sectional Officer (Hort.) in the Office of Deputy Director of Horticulture, West Division, I.P. Bhawan, C.P.W.D., New Delhi on or before 23-8-83 failing

which the vacancy will be allotted elsewhere.

Other terms and conditions of the offer of appointment will remain unaltered.

Sd/

K. SADDY

DIRECTOR OF HORTICULTURE

C.P.W.D. C-117, I.P. BHAWAN,

NEW DELHI - 110002

8. He, Therefore, was allowed to join his duties by 23.08.1983 without imposing any condition therefore.

9. The learned Tribunal in the original application filed by the writ petitioner herein proceeded on the basis that the petitioner was not entitled to seniority on the basis of his merit position, but only on the basis of continuous officiation.

10. The learned Tribunal, however, neither referred to the impugned rule nor took into consideration the contentions raised in the original application.

11. It is not now in dispute that the seniority is required to be determined in order of merit. In the merit list, the name of the petitioner appears at Serial No.

12. The said merit list although had not been produced before the learned Tribunal, the same has been produced before us by the respondents herein by way of an additional affidavit. However, in the earlier seniority list, the name of the petitioner was at Serial No. 77.

12. Having regard to the aforementioned seniority rule, there cannot, in our considered opinion, by any doubt whatsoever that the seniority has to be determined in order of merit.

13. The only question, which arises for consideration, is as to whether having regard to the fact that the petitioner did not apply for extension of time before expiry of 10.08.1983, would he lose his seniority? The answer to the aforementioned question must be rendered in negative.

14. The relevant clauses of the said Office Memorandum dated 06.06.1978 read thus :-

"(i) In the offers of appointment issued by different Ministries/Departments, it should be clearly indicated that the offer would lapse if the candidates did not join within a specified period not exceeding two or three months.

(ii) If, however, within the period stipulated, a request is received from the candidates for extension of time, it may be considered by the Ministries/Departments and if they are satisfied, an extension for a limited period may be granted but the total period granted including the extension during which the offer of appointment will be kept open, should not exceed a period of nine

months. The candidates who join within the above period of nine months will have their seniority fixed under the seniority rules application to the service/post concerned to which they are appointed, without any depression of seniority."

15. By reason of the Office Memorandum, the statutory rules of seniority cannot be altered. The said Office Memorandum primarily relates to the matter relating to extension of joining. A bare perusal of the said Office Memorandum would show that in the event such extension is granted, which may be even for a period of 9 months, the seniority would be maintained.

16. It is now trite that normally when a statutory functionary is required to take an action within stipulated time unless the same is against public interest, the same would be treated to be directory in nature.

17. If the office Memorandum dated 06.06.1978 is to be given its full effect, no order of extension at all could have been passed. Once the authorities have passed such an order, despite the fact that the request Therefore was made after the stipulated period, in our opinion, it does not now lie in the mouth of the respondents herein to contend that the petitioner herein would lose seniority thereby.

18. If the said Office Memorandum dated 06.06.1978 is construed otherwise, the petitioner's appointment would become illegal, which was not the intention of the respondents.

19. In *Chairman, Puri Gramya Bank & Anr. v. Ananda Chandra Das & Ors.*, 1994 (5) SLR 615 the Apex Court held :-

"..It is settled law that if more than one are selected, the seniority is as per ranking of the direct recruits subject to the adjustment of the candidates selected on applying the rule of reservation and the roster. By more fortuitous chance of reporting to duty earlier would not alter the ranking given by the Selection Board and the arranged one as per roster."

20. Yet again in *G. Deendayalan Ambedkar v. Union of India & Ors.*, 1996 (6) SLR 612 it has been held :-

"...It is not in dispute that the respondent Nos. 6 and 7 were selected in the same batch and rank; in the order of merit they were seniors to the appellant. Under these circumstances, since they had not been sent for training, necessarily their ranking given in the list of candidates selected in the order of merit by the Recruitment Board cannot be given a go-by and they cannot be given accelerated seniority to the appellant and the like by picking and choosing the persons as per the whim of the authorities empowered to send them for training. It is settled legal position that the order of merit and ranking given by the Recruitment Board should be maintained when more than one persons are selected, the same inter se seniority should be maintained for future promotions unless Rules prescribe for confirmation but was not passed as a condition for confirmation but was not passed as on the date of determining of inter se seniority. Under these

circumstances, the Tribunal was justified and right in not directing the respondent to give seniority to the appellant over the respondents."

21. In a case of this nature, it is trite where the matter of seniority of governed by the statutory rules, the doctrine of continuous officiation would not apply.

22. For the reasons aforementioned, the impugned judgment cannot be sustained, which is set aside accordingly. The respondents in the facts and circumstances of this case are directed to consider the case of the petitioner for his promotion along with the other eligible candidates.

23. This writ petition is disposed of accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.