
(2017) 03 DEL CK 0018
In the Delhi High Court
Case No : Writ Petition (C) 2193 of 2017

Kripa Narain Shahi

APPELLANT

Vs

New Delhi Municipal Council

RESPONDENT

Date of Decision : 10-03-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 SLJ 44

Hon'ble Judges : Mr. Sanjiv Khanna and Mr. Chander Shekhar, JJ.

Bench : Division Bench

Advocate : Mr. Amit Kumar, Advocate, for the Petitioner; None, for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J. (Oral)—Kripa Narain Shahi and Abdul Bari Khan, in this writ petition, impugn order dated 21st April, 2016, whereby OA No.1448/2012 filed by them has been dismissed by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short). The order dated 21st September, 2016, by which Review Application No. 145/2016 was dismissed, has also been challenged.

2. Petitioners-Kripa Narain Shahi and Abdul Bari Khan came on the Temporary Muster Roll of the New Delhi Municipal Council (NDMC) with effect from 5th April, 1991 and 9th May, 1994, respectively. Both of them were brought on Regular Muster Roll with effect from 11th June, 2002. The two petitioners had earlier filed W.P. (C) Nos. 17970 and 21918 of 2005 for antedating their conversion from Temporary Muster Roll to Regular Muster Roll. These writ petitions were transferred to the Tribunal and registered as TA Nos. 1076 and 1077 of 2009. These TAs were disposed of vide order dated 14th May, 2010, giving directions to the NDMC to examine the issue after giving liberty to the petitioners to make representation and furnish documents.

3. The NDMC thereafter passed a detailed order dated 25th October, 2010, meeting out and stating that the case of discrimination as set out by the petitioners was not made out. NDMC, it was stated, has followed a uniform policy for taking on record Temporary Muster Roll as Regular Muster Roll employees. The said order is a detailed one and has been reproduced in the impugned order itself. For the sake of completeness, we would also like to reproduce the relevant portions of the order dated 25th October, 2010, which reads:-

"Hon"ble CAT vide its orders dated 14/5/2010 directed the respondent, N.D.M.C. to examine the issue raised by the applicants for ante-dating their conversion from Temporary Muster Roll to Regular Muster Roll on the basis of the records available with the respondent N.D.M.C. While examining the issue, the respondents have been directed to give an opportunity to applicants to represent and furnish documents and statement, if needed to show how the ante-dating would be possible and whether it would be admissible as per the N.D.M.C. Council's Resolution and pass a speaking order.

2. The applicants, as per directions of the Hon"ble CAT, appeared before the Chairperson, NDMC on 14.06.2010 and 21.09.2010. They also appeared before the undersigned on 25.06.2010 and again on 24.09.2010 where Deputy Director (Elect.), Section Officer (Electric Establishment-I), and Section Officer (Civil Establishment II) were also present. The applicants reiterated their claims that Para No. 1 of the Writ Petition filed before the High Court may be considered while finalizing their cases.

3. The applicant No. 1, Shri K.N. Sahai contended that Para No. 1 of the Writ Petition filed by him before Hon"ble High Court of Delhi may be read as part and parcel of the submission made by him and his case may be considered accordingly. In Para No.1 of WP (C) 17970/05 the applicant had claimed that he was brought on the roll as Regular Muster worker vide Orders dated 11.06.2002, while he was entitled to the same status from at least 09.10.1992 when his juniors, as per details given below, were converted to Regular Muster Roll workers and he is further entitled to be regularized after six years, i.e., w.e.f. 1998.

Sl No.

Name of the Candidate

Number of Days Worked as TMR

Date on Which RMR Status Granted

1

Shri Harish Assal, Card No. 2147

298

09.10.1992

2

Shri Radhesham, Card No.2153

308

09.10.1992

3

Shri Sukh Pal Singh Card No.2151

309

09.10.1992

4

Shri Deepak Assal, Card No.2146

299

09.10.1992

4. After going through the records available with the respondent N.D.M.C. and analysing the facts the position that has emerged is as under:

(i) The applicant No.1, Shri K.N. Shahi was engaged on Temporary Muster Roll as Khallassie w.e.f. 5.4.91 and applicant No.2, Shri A.B. Khan was engaged on Temporary Muster Roll on 09.05.1994.

(ii) As a welfare measure for N.D.M.C. employees, the Administrator, N.D.M.C. vide his orders dated 17.03.1992 had decided that those muster roll workers, who were wards of serving regular employees of N.D.M.C. and have rendered a minimum service of 180 days during the period 1st January 1991 to 31st December 1991 with a break not exceeding 60 days at a stretch, may be appointed on Regular Muster Roll subject to availability of vacancies. It is pertinent to mention that the applicant Shri Shahi had completed only 173 days up to 31.12.1991, and Shri Khan was appointed only on 09.05.1994.

(iii) Under Section 38 of the then Punjab Municipal Act, 1911 the Committee thorough its Administrator was empowered to appoint any person. As per orders of the then Administrator dated 09.10.1992, 40 Temporary Muster Roll Khallasies, reported to be wards of municipal employees, including the 4 person mentioned in the Para No.3 above, were placed on regular muster roll. The name of the above said officials existed at Sr. No.31, 36, 29 and 34 of the said orders. A copy of the office order dated 09.10.1992 is annexed as Annexure-I.

(iv) Since this was a scheme meant for the welfare of the employees, only wards of the employees were considered for regularization on Regular Muster Roll. The cases of the applicants were not considered accordingly.

(v) Vide circular dated 11.05.1994 those muster roll employees who have

completed 750 days as on 31.03.1994 were considered for appointment on Regular Muster Roll. A copy of the said circular dated 11.05.1994 is annexed as Annexure-II. Grant of RMR status was not automatic. One had to apply for the same. It has not been claimed that they applied for the same & not considered. As the applicants had not put in 750 days as Temporary Muster Roll worker on 31.03.1994 they were not considered for Regular Muster Roll.

(vi) After enactment of N.D.M.C. Act, 1994, one of the Member of the Council proposed that all those who have completed 500 days as TMR be regularized. This was not accepted and the Council vide Resolution No.4 (v) dated 23.2.1996 resolved that RMR be linked with availability of vacancies. A copy of the said Resolution dated 23.2.1996 is annexed as Annexure III.

(vii) Council vide its Resolution No.3(v) dated 26.02.2002 and 3(ii) dated 24.05.2002 decided to grant Regular Muster Roll status to the Temporary Muster Roll card holders who had completed 500 days and fulfilled the prescribed conditions. The Council approved the proposal regarding 500 and above days as the criteria for conversion of TMR into RMR as on 31.12.1998. Copies of the Resolutions dated 26.02.2002 and 24.05.2002 are annexed as Annexure IV and Annexure V.

(viii) As per Council Resolution, the seniority of a muster roll worker is not determined as per date of his initial appointment, but number of days worked, as specified in Resolutions made from time to time.

(ix) The applicants having completed more than 500 days up to 31.12.1998 were granted Regular Muster Roll status vide Orders dated 11.06.2002. Their names figure at S. No.7 and 40 of the said orders, whose copy is annexed as Annexure VI.

5. In view of the position discussed here in above claim of the applicants for antedating the grant of Regular Muster Roll from an earlier date is not possible as per the extant policy and Committee's decision/Council's Resolutions and no discrimination was made against them. As such, their representations are rejected.

6. Claim for relief has been made in 2005 for a period from 9.10.1992. This is after a period of 13 years. As per Supreme Court decision in "Pan Singh & Others v. NDMC" decided on 8.3.07, such a claim cannot stand and has to be rejected.

7. The issues with the approval of the Competent Authority."

6. After the said order was received by the petitioners, they made further representations. There being no response, the petitioners had then made a complaint to the Committee for Redressal of Grievances, NDMC, who vide proceedings dated 2nd November, 2011, had observed as under:-

"The Principal Bench of CAT vide its order dated 14.05.2010 decided that the disputes raised by the applicants could not be properly clarified by the

respondent, the NDMC was directed to examine the issued raised by applicants for ante dating their conversion from TMR to RMR on the basis of the records available with the Respondent. The respondents were also directed to give an opportunity to the applicants to represent and furnish documents and statements, if needed, to show how the anti dating would be possible and whether it would be admissible as per NDMC Council Resolution. Thereafter a detailed order was issued on 25.10.2010 by Director (P) rejecting the claim of the applicants. It has been observed that the grievance of the applicants exists therefore the contention of the Personnel Department in the said order is not found convincing. It is a fact that Sh. K.N. Shahi and Sh. A.B. Khan possessed the requisite qualification at the time of their engagement on TMR basis in the year 1994 against the vacancies available. There are cases where the RMR employees have been regularised against Group "C" posts either by the directions of the Hon"ble Court or by way of settlement in the Court or by the NDMC on its own. The CGIT Cell has also recommended their regularization."

7. The petitioners on not receiving any satisfactory reply from the respondents filed the aforesaid OA, which has been dismissed by the impugned order.

8. We have deliberately reproduced the contents of the proceedings dated 2nd November, 2011 as these have been relied by the counsel for the petitioners. These proceedings do refer to the detailed order dated 25th October, 2010 passed by the Director (Personnel). However, we find that this order does not deal with or negate any specific findings recorded therein, except for stating that the order dated 25th October, 2010 was not found to be convincing. The order dated 2nd November, 2011 records that Regular Muster Roll employees have been regularized against Group "C" posts either on directions of the Court or by the NDMC. However, specific details of regularization by the NDMC at Group "C" posts have not been stated or indicated.

9. Regular appointment to Group "C" posts can be only made through selection by the Delhi Subordinate Services Selection Board. The Tribunal in the impugned order has recorded that the petitioners seek appointment to the post of Lift Operator, for which the Recruitment Rules prescribe the minimum educational qualification of Matric/Higher Secondary and technical qualification of ITI certificate in the trade of Electrician/Wireman from a recognised institution. The petitioners do not qualify and meet this qualification.

10. With regard to appointment of other employees, the Tribunal in the impugned order has referred to and distinguished the case of Rama Kant Rai, who had approached the Industrial Tribunal and orders were passed. The petitioners herein were offered regular appointment vide letter dated 2nd April, 2012 at the post of Assistant Line Mate in the Electricity Department of NDMC with effect from 2nd January, 2007 in the pay-scale of Rs. 6000-20200 plus Grade Pay of Rs. 2000. The petitioners were not satisfied with the said offer of appointment. The petitioners cannot compel and state that the respondents must appoint them at a particular post.

11. On the question of discrimination or on juniors being taken on Regular Muster Roll earlier than the petitioners, the Tribunal has affirmed the findings of the authorities as recorded in the order dated 25th October, 2010.

12. We do not find that the impugned order suffers from any infirmity which requires interference. As noticed above, the petitioners have already been offered appointment to the post of Assistant Line Mate in the Electricity Department of NDMC with effect from 2nd January, 2007. The writ petition is accordingly dismissed. No order as to costs.