
(2010) 02 RAJ CK 0128
In the Rajasthan High Court
Case No : Civil Writ Petition No. 265 of 1996

Madan Tolani

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 02-02-2010

Acts Referred:

Rajasthan Subordinate Offices Ministerial Staff Service Rules, 1957 — Rule 25(2), 25(3), 27, 27A, 6(2)

Citation : (2010) 2 WLN 189

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : R.C. Joshi, S.D. Khaspuria, Addl. Govt. Counsel and Sayed Jakawat Ali, for the Appellant; L.L. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.—This writ petition has been filed by the petitioner Madan Tolani challenging the order dated 11.8.1995 (Ex.16) by which date of confirmation of the petitioner was changed and the order dated 7.3.1995 (Ex.15), by which his year of promotion on the post of L.D.C. to U.D.C. was changed and seniority list dated 10.10.1994 by which the private respondent Nos. 2 to 6 were shown senior to the petitioner.

2. Shri R.C. Joshi, learned Counsel for the petitioner has argued that the name of the petitioner was shown at S. No. 10 in the provisional seniority list of L.D.C., which was issued by the respondent-Board on 4.4.1978 whereas private respondent Nos. 2 to 6 were shown respectively at S. No. 49, 14, 16, 50 and 51. The provisional seniority list of L.D.C. that was issued again on 14.6.1983 reflected the name of petitioner at S. No. 46 whereas private respondent No. 3 Satish Kumar Sharma and respondent No. 4 Meena Motwani were shown at S. No. 52 and 53. The same position was maintained in the final seniority list dated 11.1.1984, but again the provisional seniority list was issued on 4.3.1985 in which name of petitioner was shown at S. No. 40, whereas private respondent

Nos. 2 to 6 were shown respectively at S. No. 30, 31, 32, 38 & 39, to which the petitioner objected. In the final seniority list that was issued on 18.11.1987, the respondents corrected that position wherein name of petitioner was at S. No. 32 and the private respondents at S. No. 61, 39, 40, 62 and 63. Even when the name of the petitioner was twice placed above respondents in the final seniority lists, the respondent Board again issued a provisional seniority list on 17.8.1994 showing the name of petitioner at S. No. 18, whereas private respondents Nos. 2 to 6 were shown respectively at S. Nos. 13 to 17. Though the petitioner submitted objections to the provisional seniority list. His objections were however overruled and the final seniority list was issued on 10.10.1994, reiterating the same position. In between, the petitioner was promoted vide order dated 28.5.1987 (Ex.-11) on the post of U.D.C. on the basis of his higher placement in the seniority list referred to above. The respondents illegally reviewed the recommendations of the DPC and changed the year of his selection from 1987-88 to 1992-93. This was wholly illegal because date of appointment of the petitioner was 22.2.1973, which was much earlier than the date of initial appointment of private respondents. Learned Counsel referred to Rule 27-A of the Rajasthan Subordinate Offices Ministerial Staff Rules, 1957 (for short-"the Rules of 1987") and argued that prior to insertion of that Rule by amendment notification dated 31.10.1975, the Board of Revenue maintained the seniority of each of the cadres of the ministerial staff of not only the office of the Board of Revenue, but also of various District Collectorates at the State level. Despite therefore, transfer of the petitioner on his own request to the service of the Board vide order dated 15.6.1973, he would nevertheless be entitled to higher seniority than the private respondents.

3. Shri R.C. Joshi, learned Counsel for the petitioner referred to the corrigendum notification issued by RPSC on 15.10.1974 and argued that the Commission in that notification clarified that such of the adhoc LDCs, who were appointed between 1.9.1968 and 31.3.1973 would be made permanent as per the Rules and they were not required to appear in the examination conducted by the RPSC. Since the petitioner was appointed on 22.2.1973, he was not required to appear in the examination and was to be made permanent without appearing in the examination, which is why his services were regularised and he was confirmed by order dated 26.7.1978 (Ex.2).

4. Shri S.D. Khaspuria, learned Additional Government Counsel and Shri Syed Zakawat Ali, learned Deputy Government Counsel and Shri L.L. Gupta, the learned Counsel for the private respondents opposed the writ petition and submitted that when the petitioner was placed higher than the respondents and was granted promotion on the post of U.D.C., number of objections were received. Appeals were filed before the Rajasthan State Service Appellate Tribunal at the instance of private respondent No. 5 Shri Shyam Sunder Sharma wherein challenge was made to the lastly issued seniority list as well as the promotion granted to the petitioner. The Tribunal held that in determining seniority of the petitioner and Ors. the Board has omitted to consider the effect

of amend tent introduced by way of insertion of proviso (xvii) to Rule 27 of the Rules of 1957 and also did not consider the effect of proviso (xi-a) of the said Rule 27. The Tribunal therefore allowed the appeal and directed the Board of I :venue to re-draw the seniority and also review the recommendations of the DPC with respect to the promotion.

5. Shri S.D. Khaspuria, the learned Additional Government Counsel invited attention of the Court towards the pleadings in para 23 of the reply of the State wherein it has been clarified that Shri Om Prakash Sharma joined on the post of L.D.C. In the Board of Revenue on 12.4.1973, therefore, his name was correctly shown at S. No. 13 in the seniority list dated 10.10.1994. Respondent No. 3 Shri Satish Kumar Sharma and respondent No. 4 Smt. Meena Motwani passed the examination held by the RPSC in the year 1973 and therefore they were liable to be placed above the petitioner by virtue of amendment notification dated 5.5.1984 i.e. proviso (xvii) to Rule 27, therefore, they were rightly shown at S. No. 14 and 15 above the petitioner who was at S. No. 18. Respondent Nos. 5 and 6 namely Shyam Sunder and Vinay Chand were appointed in the service of the Board on 19.5.1973 and 14.6.1974 respectively, therefore, they were also rightly shown at S. No. 16 and 17 above the petitioner as per the above referred to proviso (xvii) to Rule 27. Even though the petitioner was appointed on ad hoc basis initially in the services of the Collector, Sirohi by order dated 22.2.1973, but he was transferred to Board of Revenue on his own request by order dated 12.6.1973 and joined the services in the Board on 15.6.1973. As per proviso (xi-a) to Rule 27 of the Rules of 1957, he was entitled to reckon his seniority from the date of service in the Board. It was denied that the seniority of LDC was maintained at state level at any point of time by the Board of Revenue, even if such incumbents were working in different Collectorates of the State of Rajasthan.

6. Having heard the learned Counsel for the parties and perused the material on record, I find that the petitioner was indeed transferred to the service of the Board of Revenue by order dated 12.6.1973. There is clear stipulation in that order (Ex.1-A) that he shall be entitled to reckon his seniority from the date of service in the Board.

7. Proviso (xi-a) to Rule 27 clearly provides that notwithstanding anything contained to the contrary in substantive part of Rule 27, in case of a person holding a post mentioned in Sub-rule (2) of Rule 6 of these rules in a Department has been transferred from one Department to another on the corresponding post in the cadre concerned at his own request in accordance with proviso (I) to Sub-rule (1) of rule 7, the inter-se seniority of such person vis-a-vis persons of the Department in which such person has been taken on transfer at his own request, shall be determined from the date he joins the new department on the post concerned.

8. Having himself requested for transfer in the services of the Board, the petitioner is now precluded from challenging the correctness of the action taken

by the respondents by assigning him seniority from the date of joining in the services of the Board i.e. on 15.6.1973. In so far as respondent No. 3 to 6 are concerned, they admittedly, even as per the schedule appended to the writ petition were appointed respectively on 30.1.1976, 19.3.76, 19.5.73 and 14.6.73 before the date of joining of the petitioner and therefore were entitled to higher placement in seniority than him. Apart from this, the Government has rightly clarified and which view has found favour with the Tribunal also that Satish Kumar and Meera Motwani passed the examination held by the RPSC in 1973 and Shyam Sunder Sharma and Vinay Chand were appointed by the Board of Revenue on 19.5.1973 and 14.6.1974. The proviso (xvii) to Rule 27 would come in their support in so far as their higher placement in the seniority than the petitioner is concerned. In the said proviso, it is provided that notwithstanding anything contained to the contrary in substantive part of Rule-27, the persons appointed as Lower Division Clerk on ad hoc basis during the period 1.4.1973 to 7.11.1975 by the Head of the Department concerned shall rank senior to the persons appointed regularly as a result of passing the examination conducted by the Commission in the year 1976 and the inter se seniority of persons appointed during the period from 1.4.1973 to 7.11.1995 shall be determined on the basis of the length of continuous service and the persons covered under Sub-rule (3) of Rule 25 appointed as LDC as a result of passing the Performance Test conducted by the Head of the Department concerned in accordance with the syllabus prescribed in Part IV of Schedule-I, shall rank junior to the persons appointed regularly as a result of passing the examination conducted by the Commission in the year, 1976 and also to the persons who have been appointed regularly upto 31.3.1973 under Sub-rule (2) of Rule 25 inserted vide notification dated 24.10.1974. Since the petitioner was subsequently subjected to a performance test and was appointed in the services of the Board by way of transfer vide order dated 12.6.1973 and joined there on 15.6.1973, which is a date which falls between the aforesaid period of 1.4.1973 and 7.11.1973, he even otherwise was liable to be ranked junior to the private respondents. The petitioner was confirmed by order dated 26.7.1978. The confirmation granted to him on the post of UDC was based on misappreciation of Rules and their misconstruction by the Board of Revenue and when subjected to scrutiny before the Service Tribunal, it was held to be as such and the Government has also clarified that position to the Board of Revenue which is why in the lastly issued provisional seniority list dated 17.8.1994, the name of the petitioner was shown at S. No. 18. After overruling his objections, he was reiterated at the same place when the final seniority list was issued on 10.10.1994.

9. I therefore do not find any merit in this writ petition, which is accordingly dismissed.