
(2002) 09 DEL CK 0047
In the Delhi High Court
Case No : CWP 4458 of 1999

Mr. Jachi Ram

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 09 DEL CK 0047

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

Bench : Division Bench

Advocate : S.D. Singh, for the Appellant; H.K. Gangwani, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—The Original Applicant before the Central Administrative Tribunal is the writ petitioner herein. He is aggrieved by and dissatisfied with a judgment and order dated 20th May 1998 dismissing his application wherein the following reliefs were prayed for:

"(i) That the petitioner be allowed to retire as Hindi Translator and not LDC/UDC (Notional)

(ii) That the PPO giving him pensionary benefit as UDC (Notional) be amended and revised granting him the benefit of retirement as Hindi Translator.

(iii) That recovery so made as having fixed his pay notionally in the grade of UDC be repaid to him with existing rate of interest.

(iv) Arrears of pension be also paid to him with interest @ 18% p.a.

(v) Any other relief which this Hon"ble Tribunal deem fit and proper be also passed in his favor."

2. The basic fact of the matter is not in dispute. The petitioner was appointed as a Lower Division Clerk. He was attached with the respondent No. 2. He allegedly

had applied for the post of Hindi Translator. He, however, was transferred on deputation to the said post. In the year 1994, he filed a representation for regularizing his services in the said post and to absorb him therein but the same had not been considered. On the other hand, it was urged that the respondent arbitrarily re-fixed his pay and rendered an order for recovery of Rs. 2700/- for the period April 1992 to 1994. His subsequent representations in this behalf also went unheeded.

3. On or about 4th December 1995, an advertisement was published for filling up the post. Being aggrieved by and dissatisfied therewith, he filed an Original Application before the Central Administrative Tribunal which was marked as OA No. 318/96. In the said application, the petitioner had, inter alia, prayed for the following reliefs:

"(i) To issue a writ /direction / order in the nature of mandamus commanding respondents to stay further proceedings on the filling up of the post of Hindi Translator vide Notification dt. 4.12.1995 during the pendency of the proceedings of present application or till the date of retirement of the applicant, whichever is later.

(ii) To command the respondents, restraining them from passing any order of reversion of the applicant from the post of Hindi Translator to L.D.C. which is expected likely on 10.2.1995 and to treat him as regularly appointed on promotion to the single vacancy of Hindi Translator with all consequential benefits instead of treating him on deputation in view of Ministry of Personnel Public Grievances and Pension Letter A-1."

4. The said Original Application was disposed of by the learned Tribunal holding that the petitioner had no legally enforceable right to continue and be absorbed in the said post. It was, however, observed:

"3. We were however, informed by applicants counsel during hearing that the applicant will be retiring on superannuation shortly and prays that he be not disturbed at the very fag end of his career. It is open to the applicant to make this prayer to the respondents through a self contained representation within 2 weeks from the date of receipt of a copy of this judgment on receipt of which the respondents should dispose of the same in accordance with extant rules."

5. The petitioner filed a Review Application there against which was also dismissed. Pursuant to or in furtherance of the said observations, however, the petitioner made a representation before the respondents on 3rd December 1997. As the representation of the petitioner had not been decided and he had been given retiral benefits, he filed the Original Application which was dismissed by reason of the impugned order.

6. Mr. S.D. Singh, learned counsel appearing on behalf of the petitioner would, inter alia, submit that the learned Tribunal failed to take into consideration the salient features of the case in so far as the petitioner could not have been

deputed in his own Department on a higher post. According to the learned counsel, such a matter was to be governed by an order dated 3rd October 1989 issued by the Ministry of Public Grievances, which is to the following effect:

"1.2. In cases where the field of promotion consists of only one post, the method of recruitment by Transfer on deputation (including short term contract) / Promotion is prescribed so that the departmental officer holding the feeder post is considered along with outsiders who have applied for appointment by transfer on deputation. This method is also known as the "composite method." If the departmental candidate is selected for appointment to the post, it is to be treated, as having been filed by promotion; otherwise, the post is filed by deputation/contract for the prescribed period of deputation/contract at the end of which the departmental officer will again be afforded an opportunity to be considered for appointment to the post;"

According to the learned counsel, the learned Tribunal, in the aforementioned situation, misdirected itself in holding that the petitioner had no right to continue on the said post.

7. Mr. H.K. Gangwani, The learned counsel appearing on behalf of the respondents, on the other hand, would contend that the petitioner was wrongly granted the scale and the salary payable to the Hindi Translator. Our attention has been drawn to the fact that from the post of Lower Division Clerk, he was to be promoted to the post of Upper Division Clerk and having regard to the facts and circumstances of this case, he had already been given notional promotion to the post of Upper Division Clerk.

8. The short question which arises for consideration in this writ petition is as to whether the learned Tribunal erred in passing the impugned judgment.

9. The fact that the petitioner had, at all material points of time, was working as a Lower Division Clerk, is not disputed. He could have been only promoted to a higher post. He, in his own turn, was promoted to the post of UDC, albeit notionally. The earlier Original Application filed by the petitioner contained almost the same relief as had been prayed for in OA No. 984/98. Therein, as noticed hereinbefore, the learned Tribunal has clearly held that the petitioner does not have any legal right in relation thereto. The said finding admittedly has attained finality. In view of the afore-mentioned finding, the subsequent proceedings initiated by the petitioner, in our considered opinion, would be barred under the principles of *res judicata*. It may be that the earlier order passed by the learned Tribunal was wrong but the same would not mean that the principles of *res judicata* would not apply.

10. In the counter-affidavit, it has been contended that the petitioner was not appointed on the post of Hindi Translator on regular basis. He, Therefore, had no legal right to continue on the said post. It is true that the learned Tribunal in its order dated 7 the May 1996 made certain observations. The said observations must have been made only at the instance of the petitioner that he would be

retiring shortly. By reason of such an order, the petitioner does not derive any enforceable right. Any observations made after the said finding, by itself would not confer upon the petitioner any new right. It may be that it is a hard case but this court in exercise of its power of judicial review under Article 226 of the Constitution of India is required to consider as to whether the judgment of the learned Tribunal suffer from any illegality, irrationality or procedural impropriety in the decision-making process.

11. Having regard to the findings afore-mentioned, we have no other option but to hold that the said judgment cannot be faulted.

12. For the reasons afore-mentioned, there is no merit in this writ petition which is dismissed accordingly, but there shall be no order as to costs.