

(2010) 11 DEL CK 0036

In the Delhi High Court

Case No : Writ Petition (C) 13177 and 13615 of 2009

Mr. Ravinder Kumar Jain and Another

APPELLANT

Vs

DTC
 Smt. Durgesh Nandini Vs DTC and Others

RESPONDENT

Date of Decision : 09-11-2010

Acts Referred:

Citation : (2011) 176 DLT 30

Hon'ble Judges : Siddharth Mridul, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Jyoti Singh and Manish, in W.P. C 13177/2009 Manoj Ranjan Sinha, in W.P.C 13615/2009, for the Appellant; Uday N. Tiwary, for the Respondent

Judgement

Pradeep Nandrajog, J.—The writ petitioners secured appointment as Traffic Superintendents (re-designated as Manager Traffic) in the year 1987 and are aggrieved by the fact that seniority assigned to the 13 persons appointed as Traffic Superintendents is predicated on the date of birth with the eldest being the senior most and the youngest being the junior most. However, inter-se the petitioners, they have a conflict of interest inasmuch as the writ petitioners of W.P.(C) No. 13177/2009 pray that inter-se seniority be determined with reference to the marks obtained by the candidates at the time of initial appointment and the writ petitioners of W.P.(C) No. 13615/2009 pray that inter-se seniority be determined with reference to the marks obtained by them at a test conducted after all persons successfully completed the training period.

2. It is not in dispute that no tentative seniority list was ever circulated and none was given an opportunity to file a representation against the seniority list. In fact, strictly speaking there exists no seniority list. None has been shown to this Court. The dispute has emanated on account of a communication addressed to the writ petitioners in response to a query regarding their seniority position, informing them, that all those who were appointed as Traffic Superintendents before them would naturally be senior to them and inter-se the batch of 13 persons recruited in the year 1987, the seniority would be as per age.

3. The problem is compounded due to the reason DTC does not have any rule which guides inter-se seniority to be fixed. As per the writ petitioners of W.P.(C) No. 13177/2009 the seniority has to be in terms of the OM dated 3.7.1986 issued by the Government of India which requires seniority of direct recruits to be determined by the order of merit in which they were selected. The claim of the writ petitioners of W.P.(C) No. 13615/2009 is on the basis of the principle adopted to determine the inter-se seniority of the recruits recruited in the year 1989 when seniority was determined on the basis of the merit position at the examination held on the conclusion of the training of the period. It may be noted that the writ petitioners of W.P.(C) No. 13177/2009 also draw sustenance from a past precedent pertaining to the 1978 batch of Assistant Traffic Superintendents, whose inter-se seniority was determined with reference to the relative merit position at the time of the initial selection.

4. Learned Counsel for DTC does not dispute that the Assistant Traffic Superintendents who were appointed in the year 1978 were assigned inter-se seniority on the basis of their merit position at the time of initial appointment and not on the basis of either age or the merit position at the time of the examination conducted after training period was over. Further, learned Counsel for DTC does not dispute that the Traffic Superintendents recruited in the year 1989 were assigned inter-se seniority on the basis of the marks obtained by them at the examination held after training period was over.

5. It is thus apparent that DTC is not adopting any uniform pattern and is determining inter-se seniority within a batch as per the whims and fancies of whosoever is at the helm of affairs. This cannot be countenanced for the simple reason the situation is most chaotic and power is being exercised arbitrarily.

6. If so apparent is the absurdity, the inquisitive reader would like to know as to why has the Tribunal dismissed the original actions initiated by the writ petitioners.

7. This requires us to note a few more facts and how they have found a reflection in the reasoning of the Tribunal.

8. The selection process undertaken in the year 1987 pertained not only to appoint 13 Traffic Superintendents but persons in other disciplines such as the Accounts Department, the Mechanical Department, the Personal Administrative Department and the General Administrative Department. At the time of initial recruitment all these persons were given the designation Management Trainees, but admittedly undertook training as Trainees in different departments of DTC and on successful completion of the training were assigned duties in the different departments. The post to which they were appointed were different. Those in the Traffic Department were called Traffic Superintendents. Those in the Personnel Administrative Department were called Manager Personnel and those in the General Administration as Administrative Officers. Those assigned to the Accounts Department were designated as Manager Accounts.

9. For the reason the recruitment process was initiated simultaneously, DTC pleaded before the Tribunal that recruitment effected in the year 1986 was multi-disciplinary and all the recruits were called Management Trainees, it was thus not possible to assign seniority on the basis of the merit obtained at the time of initial recruitment and since services were confirmed after all the recruits successfully completed in-house training, seniority could not be assigned with reference to the marks obtained at the examination held post training. On this reasoning it was sought to be distinguished vis-à-vis the claim projected with reference to the seniority principle adopted in the year 1978 for Assistant Traffic Superintendents and in year 1989 for Traffic Superintendents.

10. The Tribunal has noted the facts as projected in paras 19 to 22 and has returned a finding in para 23 of the impugned decision, which paragraphs read as under:

19. Mr. Tiwari points out that the post notified was Management trainee; and not a specific post. A person with a first class degree in Mechanical Engineering, Automobile Engineering, Electrical Engineering or Civil Engineering could have responded. Likewise, a fellow of Chartered Accountancy or cost and Works Accountancy was eligible to apply. A post graduate with first class in Arts, Science or Management as well could have responded to the selection. After initial interview, they were to be taken in as trainees. On the conclusion of the training if the cleared a test, they could have been considered for appointment as management trainees. The notification, therefore, had specifically made it clear that applications were being invited for "Management Trainees" for "Repairs and Maintenance, "Material Management, Traffic Operations, "Audit and Accounts, and "General Administration".

20. As interview was to precede the preliminary selection. The traits to be assessed with respect to different groups were dissimilar, thus making it impossible to apply a general standard/norms or yard stick. Four hundred candidates were to be interviewed over a period of a couple of weeks. The interviewing Board was also not always the same; exigencies required that persons who were to interview the candidate at times changed. Therefore, the marks secured by the candidates, could not at all have been a measure vis-à-vis their caliber and merit. Further, at that point of time, there was no requirement for assigning seniority, as they were to be accommodated for training, and their entry to the organization was contingent on other factors.

21. These features as presented are not disputed. At this distance of time, what is expected of us is only to see whether there were violent violations of any specifically laid down norms. It has to be that the methodology to be employed for assessing the suitability of the candidates might have been discussed earlier, by the Committee, and before the selection. Perhaps as between engineering hands, there could have been assessment of merit possible with some common parameters, but the same would not have been basically applicable to an accounts person, or management graduates, who might have been looking

forward to a post of general administration.

22. Therefore, the selection might have been of the best persons from the respective faculties, and twenty two persons were earmarked for training. Ultimately only 12 or 13 persons had completed the training, and came out successful after the test. It was only after these processes that all of them by a common order had been conferred appointment from 5.10.1987.

23. Although supporting papers have not forth come the preliminary steps and the appointment order indicate that there was a conscious decision to treat the senior most in age, as the first person in the table of seniority. Even if it is suggested that it is madness, we have to observe that there is a method in the madness, so as not to hurt anybody or block the chances of promotion by favoring the junior most to come to the first position. On the available materials, and taking note of the diversity of candidates to be selected, this, we feel was an acceptable, as well as reasonable, method employed by the DPC. Therefore, we hold that the assignment of seniority is not hit by arbitrariness.

11. Suffice would it be to state that the Tribunal has over-simplified the facts. The Tribunal has ignored that though loosely called Management Trainees, recruitment effected was multi-disciplinary and 13 persons were recruited as Management Trainees to be finally absorbed as Traffic Superintendents. Petitioners are a part of said 13 persons. The remaining persons appointed as Management Trainees, were absorbed in other Departments and were designated as Manager Accounts, Manager Personnel, Manager Engineering etc. The distinction in the Divisions was at the time of recruitment and thus a factually common recruitment was conceptually separate and different recruitment pertaining to different disciplines. Thus, the reasoning of the Tribunal that there was a method in the madness; the madness being a common recruitment for multi-disciplinary posts and the method out of the madness being the inability to standardize the recruitment with reference to the merit; requiring age to be the determinative factor is obviously premised on a wrong foundation. The Tribunal has proceeded on the assumption that inter-se seniority of all persons recruited as Management Trainees in the year 1987 was in issue. The Tribunal lost sight of the fact that of the 24 persons recruited, 13 were appointed as Traffic Superintendents and the remaining against different posts and the issue of seniority was concerning only the Traffic Superintendents.

12. We do not know the marks assigned to the 13 persons appointed as Traffic Superintendents in the year 1987; in fact, we do not even know whether the select panel was drawn up with reference to the marks obtained. But, commonsense tells us that being appointed as a result of direct selection, marks had to be assigned to the various persons who had applied in response to the advertisements inviting applications and we are given to understand that there were 400 applicants in the various disciplines. How many of them pertained to Traffic Superintendents is not known. But since 13 were appointed, it is apparent that the said 13 obtained more marks than the others. This guides us that the

department would have the relative merit of the 13 persons appointed as Traffic Superintendents.

13. But, in the absence of any statutory rule and noting that the past precedents and the future precedents adopted by DTC, as noted hereinabove, show no consistent pattern; we repeat that for the Assistant Traffic Superintendents recruited in the year 1978 seniority assigned was on the merit position as per the select list and for the appointments made as Traffic Superintendents in the year 1989, seniority assigned was on the merit position after training period was over and a departmental exam was conducted, it may be difficult for us to issue any specific direction, save and except at least one: DTC being obliged to follow one uniform criteria to determine the inter-se seniority of directly recruited candidates at the same selection process. Further, while identifying the uniform criteria, since DTC has been adopting the guideline issued by the Government of India, to follow the applicable guideline issued by the Government of India.

14. Since the undisputed position is that no draft seniority list was prepared and none was given an opportunity to file representation against the draft seniority list; noting that assignment of seniority position affects the promotional prospects of an employee, law requires an opportunity to be granted to an employee to make a representation against a draft seniority list, we dispose of the two writ petitions issuing a mandamus to DTC to draw up a draft seniority list of Traffic Superintendents (re-designated as Manager Traffic) and after hearing all those who filed objections against the draft seniority list to finalize the same within a period of 6 months from today. Needless to state DTC would take into account the fact that appointments in question are by way of direct recruitment and since DTC has been adopting guidelines issued by the Government of India and neither has DTC framed rules nor guidelines on basis whereof inter-se seniority has to be determined, guidelines issued by the Government of India on the subject would be followed.

15. No costs.