
(2003) 05 DEL CK 0124

In the Delhi High Court

Case No : CW. 4656/95

Mr. Vijay Kr. Dua

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 06-05-2003

Acts Referred:

Citation : (2003) 5 AD 164 : (2003) 104 DLT 984 : (2004) 1 SLJ 44 : (2003) 6 SLR 700

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Naresh Kaushik and Shilpa Chohan, for the Appellant; C. Mohan Rao and M.M. Sudan, for respondents 7 to 10, for the Respondent

Final Decision : Dismissed

Judgement

Vijender Jain, J.—This petition has been filed by the promotees Planning Assistants working in the Planning Department Of Delhi Development Authority, inter alias praying that writ of mandamus be issued to the respondent to prepare the seniority list of the planning Assistants in DDA Planning Department on the basis of continuous length of service.

2. The basic contention which has been raised before me by the counsel appearing for the petitioner is that although vacancies were to be filled 50 per cent from direct recruitment and 50 per cent from promotion in the ratio of one direct recruit to one promotee officer, however, as per the recruitment rules the same has not been done and quota and rota rule has broken down. Therefore, the petitioners who were appointed in the year 1984 are entitled for their seniority on the basis of continuous length of service.

3. To cut short the controversy both the parties agree to the statement filed by the petitioners along with the writ petition as far as the recruitment made by the respondent/DDA from the year 1963 till 1984 in both the categories of promotees as well as direct recruits. The same is at page No. 23 of the paper

book.

4. In support of his contention counsel for the petitioner has cited the decisions of Supreme Court in *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, and *Rudra Kumar Sain & Ors. Vs. Union of India & Ors.* (2000) 8 SCC 25.

5. On the other hand it was contended by the counsel for the respondent/DDA that quota and rota rule did not break down and at best it could be stated that there was certain deviations in certain years. He has contended that if the chart at page 23 of the paper book is taken into consideration, the promotee officers have enjoyed the distinct advantage as 41 of them have been promoted, whereas, only 17 direct recruits have been appointed by the respondent authority. It is also contended that 24 posts were in excess given to the promotees. Therefore, on the basis of the said chart it is contended before me that quota-rota has not been broken down.

6. My attention has also been drawn to the decisions of Supreme Court in *Suraj Parkash Gupta and Others Vs. State of Jammu & Kashmir Others*, , *M.S.L. Patil, Asstt. Conservator of Forests, Solarpur (Maharashtra) and Others Vs. State of Maharashtra and Others*, and *Madan Gopal Garg Vs. State of Punjab and Others*, .

7. Supreme Court in *Suraj Parkash Gupta's case (Supra)*, considered the ratio of *Direct Recruits Class II Engg. Officer's Assn. Vs. State of Maharashtra* in which the following propositions was laid down:

" (D) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down.

(E) When the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date."

8. The Supreme Court in the said case held that the question of breakdown of quota rule was attributable to the lethargy of the State Government and its inaction and not asking the Service Commission to make direct recruits and no other cause was visible. The delay on the part of the Government appears to be motivated for the purpose of blocking the quota of the direct recruits and giving a part of it to the promotees. Noting delay in making decision for making direct recruitment, Supreme Court also held that the quota rule has not been broken down.

9. I have been shown a circular dated 22.11.83 issued by Delhi Development Authority, wherein, it has been mentioned that interview for appointment to the

post of planning assistant will be held shortly. That circular is dated 22.11.83 that means that advertisement for the same must have been issued prior to that. There is another cyclostyled letter of October, 1984, addressed to one of the respondents, Mr. Anand Prakash, respondent No. 7, wherein, respondent/DDA has offered the post of Planning Assistant in the direct recruit quota, was sent to respondent No. 7 on 9.1.85. In the counter affidavit it has been stated by respondent No. 7 that respondent No. 7 was interviewed sometimes in September-October, 1984. If that is the position, then it seems that there were certain vested interest in the office of respondent No. 1 who never wanted that the recruitment should be made by direct recruitment and to allow the promotees to be appointed first in the quota of the direct recruit so as to enable them to claim their seniority on the basis of length of service. This is not the intention of fixing quota and rota in the matter of appointment as per the recruitment rules. In *M.S. L. Patil (Supra)*, Supreme Court held as under:

" It is not in dispute that there is a ratio prescribed for the direct recruits and the promotees, namely, 1:1. In other words, for every 100 vacancies the promotees are entitled only to 50 vacancies. It is not in dispute that these promotees have been promoted in excess of the quota. Under those circumstances, it is settled law that the promotees who are appointed in excess of the quota cannot get the entire length of service. Therefore, they are required to be fitted into seniority according to the rules. As to what is the date on which the promotees or the direct recruits came to be appointed into the respective quota is a matter of record and the seniority is required to be determined according to the law laid down by this Court. In several judgments of this Court, it is now firmly settled that merely because of the fact that the State Government could not make direct recruitment due to its inaction, it cannot be said that the rule of quota has been broken down. Therefore, as and when the direct recruitment has been made, the direct recruits are entitled to placement of their seniority into the vacancies reserved for them as per the ratio and the seniority determined as per the rules within the respective quota. Similarly, when the promotees came to be promoted in accordance with the rules in excess of their quota, this Court stated in *Keshav Chander Joshi Vs. Union of India* through a Bench of three Hon'ble Judges, that the promotees in excess of the quota cannot be given seniority from the respective dates of their promotions. They have to be considered only from the respective dates on which their respective quota is available. The same decision was followed and reiterated in *A.N. Sehgal Vs. Raje Ram Sheoran*. Under these circumstances, we do not think that the judgment of this Court is vitiated by any error of law for reconsideration."

10. Similar view was taken in *Madan Gopal Garg's case (Supra)*. The Supreme Court in the said case held as under:

" The High Court has held that the State Government had been consistently and persistently making efforts to fill in the posts meant for direct recruits and that the posts meant for direct recruits could not be filled at the proper time only

because of the cumbersome procedure of selection of direct recruits and that from the pleadings and facts and circumstances of the case, it was patent that there was no inaction or inertia on the part of the Government and that there had been no deviation in the implementation of the Rules. We are in agreement with the said view of the High Court. The decisions of this Court in G.S. Lamba Vs. Union of India and Narender Chadha Vs. Union of India on which reliance has been placed by Shri Venkataramani, have, in our opinion, no application to the facts of the present case."

11. In the instant case also it seems that there has been an effort to delay the appointment of direct recruits although advertisement was issued in 1983 and interviews were held in September 1984, still appointment letters were issued in January 1985. Therefore, I hold that at best it can be a case of deviation in the implementation of quota and rota rules. There was no breakdown of quota and rota.

12. In the circumstances, I do not see any infirmity with the assigning of seniority on the basis of principle of quota and rota by the respondent. There is no merit in the writ petition. The writ petition stands dismissed. There is no order as to costs.