
(2013) 11 DEL CK 0053

In the Delhi High Court

Case No : Writ Petition (C) No. 3049 of 2002

Ms. Nirmal Kanta

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 27-11-2013

Acts Referred:

Citation : (2013) 139 DRJ 310

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Avnish Ahlawat, for the Appellant; Mukesh Kr. Gupta, for R-4 in W.P. (C) No. 3049/2002, Ms. Raman Oberoi, Advocate for UOI, Mr. Roshan Lal Goel, Advocate for R-1 to R-3 in W.P. (C) No. 3050/2002, for the Respondent

Judgement

V. Kameswar Rao, J.—The above captioned writ petitions, arise from order dated March 15, 2001 in Original Application No. 2520/2000 (writ petition No. 3049/2002) filed by Ms. M. Sitalakshmi (referred as respondent No. 4) and order dated November 20, 2001 in Original Application No. 1351/2001 (writ petition No. 3050/2002) filed by petitioner involving issue of inter-se seniority, accordingly the two petitions are being disposed of by a common order. The petitioner has filed W.P. (C) No. 3049/2002 impugning the order dated March 15, 2001 passed by the Central Administrative Tribunal in Original Application No. 2520/2000 wherein respondent No. 4 got the benefit of ad-hoc promotion being treated as a regular one with effect from September 10, 1997 as Junior Stenographer. In W.P. (C) No. 3050/2002 the petitioner impugns the order dated November 20, 2001 passed by the Tribunal in Original Application No. 1351/2001 wherein she was denied a similar benefit as was given to respondent No. 4 by the Tribunal which resulted in respondent No. 4 gaining seniority over and above respondent No. 4. The main relief prayed for by the petitioner in both the writ petitions is to grant her the benefit of regularization from June 25, 1996 id est from the date on which she was promoted to the post of Upper Division Clerk (UDC) on ad-hoc basis.

2. The petitioner who is a SC candidate had joined the respondent Nos. 1 to 3 as LDC/Telephone Operator in Government of India Tourist Office, New Delhi on July 07, 1987 on ad-hoc basis and was regularized to the said post w.e.f. June 13, 1988. Respondent No. 4 had joined the office of Regional Director (North), Government of India Tourist Office, New Delhi as a direct recruit LDC on June 09, 1992. The next promotional posts available to both the petitioner and respondent No. 4 were the post of UDC as well as the post of Junior Stenographer.

3. According to the relevant Recruitment Rules in vogue, a LDC in the said department is eligible for promotion to the post of Junior Stenographer as well as to the post of UDC. The recruitment rules further provides that the post of UDC is a non-selection post which is to be filled by way of promotion from amongst the LDCs in the region with the minimum period of eight years service in the said grade after their regular appointment thereto and possessing the qualifications mentioned in Column 8 of the said relevant Rules. The post of Junior Stenographer is a selection post, to be filled by promotion failing which by direct recruitment. The promotion to the said post of Junior Stenographer is available only to those LDCs who have rendered their service for a minimum period of three years and who successfully qualifies in the Departmental Examination in short hand and typing.

4. On May 28, 1996, a circular was issued by the respondents wherein all eligible LDCs in the Northern Region were invited to participate in the Departmental Examination to be held on November 06, 1996 for filling up a clear vacancy in the post of Junior Stenographer. It is evident from the pleadings of the petitioner placed on record that since she was placed at serial No. 5 in the seniority list as well as being a SC candidate believed that she would be automatically promoted to the post of Junior Stenographer and hence, did not appear in the said Departmental Examination. Respondent No. 4 who was the only candidate in the said Examination was selected and vide order dated September 10, 1997, she was promoted to the aforesaid post purely on ad-hoc basis.

5. Meanwhile, on June 25, 1996 the petitioner was promoted to the post of UDC on ad-hoc basis. It may be stated here that in terms of the seniority position in the grade of LDC/Telephone Operator, the petitioner was at serial No. 5 and respondent No. 4 was at serial No. 10.

6. The appointment of respondent No. 4 to the post of Junior Stenographer was challenged in an Original Application being No. 2269/1997 by the petitioner along with Government of India Tourist Office Staff Welfare Association seeking a direction to the respondents to fill up the post of Junior Stenographer after taking into consideration the Reservation Roster (SC candidates) and seniority and to give the petitioner all consequential benefits. The said application was opposed by the respondents wherein it was pointed out that there are 10 ad-hoc promotes including the petitioner and respondent No. 4 herein. It was further pointed out by the respondents that the petitioner who was working as Telephone Operator has been since promoted as UDC and the Grades of UDC and Junior

Stenographer are the same. It was also pointed out that both petitioner and other members of the Staff are not affected by the promotion of respondent No. 4 as Junior Stenographer on ad-hoc basis since no other official had submitted their option to appear in the Departmental Examination conducted for the purpose of promotion to the said post of Junior Stenographer. However, the said Original Application was found to be devoid of merits and dismissed by the Tribunal vide order dated May 26, 1998. The said order was challenged by way of writ and the same was dismissed as well.

7. It has been stated by the petitioner in the instant writ petition at paragraph 10 that a number of representations were made by the Government of India Tourist Office Staff Welfare Association to the Scheduled Caste and Scheduled Tribes Commission bringing to their notice that post of Junior Stenographer should be filled up from amongst the candidates belonging to the Scheduled Caste but till date the said post has been filled by up candidates belonging to the unreserved category. The effect of such representations, as implied by the petitioner, was that Under Secretary to the Government of India in a correspondence dated September 11, 2000, addressed to the Assistant Director wherein it was, inter alia, stated that the post of Junior Stenographer would be filled up on a regular basis by a SC candidate through Sub-ordinate Staff Commission. Thereafter, the respondents sent a requisition to DOP&T stating that a regular post of Junior Stenographer is vacant and thus requested to nominate a SC candidate possessing the requisite qualifications as per the Recruitment Rules in vogue for the aforesaid post.

8. Vide order dated March 14, 2001, both the petitioner and respondent No. 4 were promoted to the posts of UDC and Junior Stenographer respectively on regular basis w.e.f. March 13, 2001 till further orders. It shall be pertinent to mention that in order to accommodate respondent No. 4 on the said post of Junior Stenographer along with the SC candidate to be appointed in the said post, one post of Senior Stenographer was downgraded to the post of Junior Stenographer in which the respondent No. 4 was appointed on a regular basis from the aforementioned date.

9. However, the respondent No. 4 being aggrieved by the endeavor of the respondents Nos. 1 to 3 to fill up the vacant post of Junior Stenographer from SC category and further in order to seek regularization of her appointment as Junior Stenographer with effect from the date of her ad-hoc appointment to the same id est September 10, 1997, filed an Original Application being No. 2520/2000 before the Tribunal.

10. The Tribunal vide its order dated March 15, 2001 allowed the said Original Application filed by the respondent No. 4. The Tribunal at paragraph 6 of the said order held as under:

...It is clearly a matter of record that the applicant was selected against a clear vacancy, through a proper selection process, in accordance with the relevant

Recruitment Rules and therefore, she is correctly entitled for getting the benefit of regularization from the date of her ad-hoc appointment as laid down by the Hon"ble Supreme Court in the decisions cited by the applicant. Respondents' action by their proceedings dated 14.3.2001, giving her the benefit of regularization w.e.f. 13.3.2001, does not meet with legal requirement and calls for modification.

11. As an immediate effect of the aforesaid order of the Tribunal, the petitioner also claimed regularization of her appointment as UDC with effect from June 25, 1996 along with all consequential benefits and thus, filed an Original Application being No. 1351/2001. The case of the petitioner before the Tribunal in a nutshell was that she was promoted from the post of LDC to the post of UDC against a clear vacancy and therefore, she should have been regularized with all consequential benefit from the date of her ad-hoc appointment id est June 25, 1996 and not from the later date of January 11, 2001. Per contra, it was argued by the respondents that the petitioner was promoted against an ad-hoc vacancy created by the promotion of the previous occupant's ad-hoc promotion. When the said person was regularly promoted on January 10, 2001 a regular vacancy of UDC was released wherein the petitioner was appointed on a regular basis. Thus, it was for the aforementioned reasons, the petitioner's appointment was not regularized with effect from the date of the ad-hoc appointment.

12. The Tribunal found substance in the contention of the respondents when it noted the fact that the petitioner's promotion as UDC was not against a clear cut regular vacancy but only against an ad-hoc vacancy following the promotion of one Smt. Shashi Khera, who was given ad-hoc promotion to the higher grade of Information Assistant and such appointment was regularized only in 2001 thereby releasing the vacancy of UDC on a regular basis. Therefore, while holding that the petitioner could not have been promoted on a regular basis against an ad-hoc vacancy and she has no claim for such promotion and such claim cannot be entertained, the Tribunal in its concluding paragraph of the impugned order dated November 20, 2001 held as under:

...The benefit of ad hoc service would be considered for the purpose of seniority and regularization only if such promotion was against a regular and clear cut vacancy and the promotion was in accordance with law. Vacancy of UDC, to which the applicant was promoted in 1996 was only ad hoc vacancy and, therefore, the applicant could not have been promoted on a regular basis to that post. The respondents have, in the circumstances, correctly acted and their action cannot be assailed in law.

13. Ms. Avnish Ahlawat, learned counsel for the petitioner would submit that the effect of the orders of the Tribunal in both the Original Applications is that the respondent No. 4 who was junior to her in the grade of LDC has marched over the petitioner in seniority without her being a party in the litigation. She would submit that even though the respondent No. 4 got the benefit of ad-hoc service on the post of Junior Stenographer for the purpose of eligibility to the promotion

post of Information Assistant. She would also submit that the denial of similar benefit of treating the promotion as UDC on regular basis from the date the petitioner was appointed on ad-hoc basis i.e. June 25, 1996 as has been treated in the case of respondent No. 4 in the grade of Junior Stenographer is illegal and arbitrary.

14. On the other hand, Mr. M.K. Gupta, learned counsel for the respondent would submit that the Original application filed by the petitioner is not maintainable inasmuch as the petitioner had earlier filed Original Application No. 2269/1997 along with Staff Welfare Association for a direction to fill up the post of Junior Stenographer after taking into consideration the reservation roster. According to them the petitioner having challenged the appointment of the respondent No. 4 in a separate proceeding facilitate the same issue. Further he would support the judgment of the Tribunal dated March 15, 2001 which is in favour of respondent No. 4 wherein according to him the Tribunal has concluded that the promotion of respondent No. 4 is against a clear vacancy of Junior Stenographer, and the petitioner could not have lay a further claim for seniority over and above the respondent No. 4.

15. Ms. Raman Oberoi and Mr. Roshan Lal Oberoi, learned counsels appearing for Union of India would state that the seniority would be determined in terms of the outcome of these writ petitions. According to them in terms of the order of the Tribunal dated March 15, 2001 in Original Application No. 2520/2000 the respondent No. 4 has been shown senior to the petitioner.

16. The first and foremost question that arises for our consideration is whether the petitioner could lay a challenge to the order dated March 15, 2001 passed in Original Application No. 2520/2000 wherein she was not a party respondent.

17. The Supreme Court in its opinion reported as K. Ajit Babu and others Vs. Union of India and others, has held that if a person is aggrieved by a judgment wherein he is not impleaded as a respondent, the judgment would not bind the said person effected and that the person concern would have a right to maintain an independent substantive petition before the appropriate forum.

18. In the present case the petitioner has not filed any substantive petition before the Tribunal. Since she has filed these writ petitions against the order November 20, 2001 passed in Original Application No. 1351/2001 filed by her seeking a similar relief and against order dated March 15, 2001 in Original Application No. 2520/2000 coupled with the fact that no serious objection has been raised about the maintainability, we proceed to decide both the petitions.

19. A further question that would arise for our consideration in these writ petitions is whether ad-hoc promotion of respondent No. 4 can be treated as a regular promotion, which resulted in respondent No. 4 gaining seniority, in the combined seniority list, over and above the petitioner, by granting similar benefit to the petitioner.

20. Before we deal with the submissions of the counsel for the parties we would like to reproduce the contents of the appointment letter with regard to ad-hoc promotion and regular promotion of respondent No. 4. The same are as under:-

Ad-hoc Promotion Order

No. Admn. 1(1)/92.

Dated the 10th Sept. 97

ESTABLISHMENT ORDER

The following officials in this office are hereby promoted as U.D.C. and Jr. Stenographer in the pay scale of Rs. 1200-2040 on ad-hoc basis against purely short-term ad-hoc vacancies with immediate effect and until further orders:-

1. Smt. Renuka, LDC

Promoted as U.D.C.

2. Smt. M. Sitalakshmi, LDC Promoted as Jr. Stenographer

The appointments purely on ad-hoc basis and do not confer any title to or claim for seniority and regular appointments. Further, they are liable to be reverted without notice and without reasons being assigned at any time if circumstances so warrant.

Regular Promotion Order

No. Admn. 1(8)/2001

Dated: 21st May, 2001

In partial modification of this Office Order No. Con-Admin. (3)/86 dated the 14th March, 2001, Smt. M. Sitalakshmi, LDC, who has been officiating as Junior Stenographer on ad-hoc basis w.e.f. 10.09.1997, is hereby promoted as Junior Stenographer on regular basis w.e.f. 10.09.1997 in the pay scale of Rs. 4000-100-6000.

2. Smt. M. Sitalakshmi will be on probation for a period of two years.

3. This order has been issued with the approval of Director General (Tourism), in compliance with the judgment/order dated 15.03.2001 passed by Hon"ble Central Administrative Tribunal, Delhi in O.A. No. 2520/2000 filed by Smt. M. Sitalakshmi, Junior Stenographer v/s. Union of India and others.

21. The next higher post of UDC/Jr. Stenographer is that of Information Assistant. The Recruitment Rule as placed on record stipulates the eligibility for promotion as under:

22. It is an accepted position that promotions which were granted to the petitioner, as UDC and to respondent No. 4, as Junior Stenographer with effect from June 25, 1996 and September 10, 1997 were ad-hoc with a clear stipulation

that such a promotion would not confer any title to or claim for seniority and regular appointments. The promotion in so far as the petitioner is concerned as UDC was effected because of promotion of one Ms. Shashi Khera who was given ad-hoc promotion on a higher grade of Information Assistant. In so far as respondent No. 4 was concerned she was given promotion as Junior Stenographer on ad-hoc basis against a vacancy. A regular promotion is made strictly in accordance with the recruitment rules considering all the candidates who come within the zone of consideration with a clear mandate that such a promotion would be regular in nature. The order of promotion of respondent No. 4 does not reflect so. It is also noted that the respondent No. 4 has never challenged her promotion on ad-hoc basis with effect from September 10, 1997. In the absence of any challenge she could not have filed the Original Application No. 1350/2001 much later for treating the promotion as on regular basis. The promotion orders issued to the respondent No. 4 reproduced above, a comparison of the same, would reveal that when a regular promotion is made, the respondent No. 4 was put on probation for two years. The same was effected after the approval granted by the Director General (Tourism) whereas the respondents No. 1 to 3 have come on record that for making ad-hoc promotions the examination was conducted by the Assistant Director (Admn.) and pursuant thereto the Regional Director, appointing authority in the case had approved the ad-hoc promotion of the respondent No. 4. There is nothing on record to show that the selection committee as stipulated in the Rules i.e. Regional Director, Assistant Director (Admn.) a departmental officer of the level of the Assistant Director and outside officer of the level of the Assistant Director in the department of Tourism was constituted at the time of ad-hoc promotion.

23. So, two aspects: (i) respondent No. 4 not put on probation; (ii) Selection Committee not constituted as per rules, would not make the promotion a regular one or can be said to have the trappings of a regular promotion. The Supreme Court in its opinion reported as *State of Haryana and Others Vs. Vijay Singh and Others*, has in para 20 has held as under:-

20. A reading of order dated 16-10-1995 issued by District Education Officer, Panipat makes it crystal clear that even though Respondent No. 1-Vijay Singh was appointed as Science Master on the recommendations of the District Level Committee, his appointment was purely ad hoc with a tenure of six months or till the availability of a candidate for regular appointment, whichever was earlier. The other Respondents were appointed in the same manner with similar stipulation. The reason why the Respondents were appointed on purely ad-hoc basis is not far to seek. The concerned District Education Officers did send requisitions to the Employment Exchanges and appointments were made on the recommendations of the District Level Committee but all this was not in consonance with the mandate of the 1955 Rules and Notifications dated 28-1-1970 and 29-6-1973. At the cost of repetition, we deem it proper to mention that in terms of Rule 3 of the 1955 Rules, only the Director was competent to make appointments on the posts to which those rules were applicable with the exception that Divisional

Inspector/Inspectress of School or the Principals of Government Colleges could make temporary or officiating appointments on certain posts for a maximum period of three months. After the Board was constituted vide Notification dated 28-1-1970, the Director could make appointment only on the recommendation of the Board unless the State Government was to issue notification under proviso to Clause 6 of Notification dated 29-6-1973. In terms of Rule 8 of the 1955 Rules, every person appointed by direct recruitment was required to be placed on probation for a period of one year. The Respondents were neither appointed by the Director on the recommendations of the Board nor they were placed on probation. As a matter of fact, they were appointed on purely ad hoc basis without following the procedure prescribed for regular appointment. Therefore, the mere fact that the ad hoc appointments of the Respondents were preceded by sending requisitions to the Employment Exchanges and recommendations by the District Selection Committee cannot lead to an inference that they were appointed on regular basis.

24. Further it is noted the next promotion post was that of Information Assistant. The feeder posts for that post includes UDC/Jr. Stenographers/Film Projector Operator/Junior Hindi Translator and the promotion is effected through selection cum seniority method or selection cum merit method having 8 years of regular service in the grade. In other words seniority would have a role to play if the merit being same. As we have concluded that the promotion of the respondent No. 4 was on ad-hoc and not as regular, the order of the Tribunal would be also unsustainable as it would give benefit of ad-hoc service for eligibility for promotion to the post of Information Assistant to respondent No. 4 much before the petitioner who was above in seniority.

25. The Tribunal could not have determined the issue of promotion of respondent No. 4 as a regular without ensuring persons whose seniority to be effected, like the petitioner herein, are joined as party respondents. We agree with the submission of Ms. Ahlawat that when UDC/Junior Stenographer/Film Projector/Junior Hindi Translator are feeder posts for Information Assistant then it was required for the respondent No. 4 to make the petitioner a party.

26. The position of law as to whether an ad-hoc promotion can be treated as a regular one and for that matter for the purpose of seniority is very well-settled. In its opinion reported as *Md. Israills and Others Vs. State of West Bengal and Others*, the Supreme Court has held as under:

9. XXX

We are, however, not persuaded to accept this submission of learned counsel for the respondents. In view of the analysis of different provisions of Recruitment Rules, the West Bengal Public Service Commission (Consultation by Governor) Regulation, West Bengal Public Service Commission (Exemption from Consultation) Regulation, we have no doubt that the initial appointment of respondents 6 to 30, purely on ad hoc basis without consultation with the Public

Service Commission cannot be held to be a regular service in the cadre of Employment officer, and as such the same cannot be counted for the purposes of reckoning their seniority in the cadre.

In the case reported as R.K. Mobisana Singh Vs. KH. Temba Singh and Others, the Supreme Court has held as under:

39. Applying the principles of the aforementioned decisions to the facts of this case, we are of the opinion that although in terms of the office memorandum, no retrospective effect could be given to the order of regularisation passed in favour of the promotees, as in absence of any seniority rules operating in the field, the State was required to evolve a policy. It for its own reason did not do so.

40. The office memorandum of 1959 was applicable in a case of this nature. In some of the cases, promotion might have been given without following the rules. When promotion is given only in the exigency of situation without following the Rules, the period cannot be counted towards seniority.

41. If they had been given regularisation with retrospective effect, the same by itself may not be a ground to apply the said order ipso facto for determining the inter se seniority. Seniority although is not a fundamental right but a civil right. Such a right of the direct recruits could not have been taken away without affording an opportunity of hearing to them.

42. It was obligatory on the part of the official respondents to take into consideration that the retrospective regularization could be granted only when there exists such a rule. If rules were not followed at the time of grant of promotion, question of grant of regularization with retrospective effect would not arise. Retrospective regularization whether in terms of the directions of the High Court or otherwise, thus, although could confer other service benefits to the officer concerned, but the same cannot be held to be of any assistance for reckoning seniority with retrospective effect.

27. In so far as the submission of Mr. M.K. Gupta, learned counsel for respondent No. 4 that in view of the Original Application filed by the petitioner No. 2269/1997 along with Staff Welfare Association has been dismissed, the Original Application filed by the petitioner, from which one of the impugned order arises, was not maintainable, has to be rejected. This we say so the Original Application No. 2269/1997 was filed by the petitioner and the staff association only seeking a relief to the limited extent that the post in question of Jr. Stenographer has to be filled by a Scheduled Caste category candidate to which the petitioner belongs. Counting of ad-hoc service for the purpose of seniority was not an issue.

28. Further his submission that the promotion of respondent No. 4 was against a clear vacancy is concerned the same also does not attract us. This we say so, mere existing of a vacancy and promotion of a person on such a vacancy on ad-hoc basis without following the Recruitment Rules would not qualify such a promotion as regular one. We have already held that the promotion of

respondent No. 4 did not have the trappings of the regular promotion. Hence the conclusion of the Tribunal in its order dated March 15, 2001 in Original Application No. 2520/2000 is clearly untenable against settled position of law reproduced above. In so far as relief prayed for by the petitioner seeking the same benefit as has been given to the respondent No. 4 by the Tribunal is concerned, we hold that she would not be entitled to any parity more so, as we have held the directions given in Original Application No. 2520/2000 for treating the ad-hoc promotion of respondent No. 4 as regular as unsustainable. In view of this conclusion, the writ petition filed by the petitioner No. 3050/2002 challenging the order dated November 20, 2001 in WP(C) No. 1351/2001 is liable to be dismissed. In so far as the WP(C) No. 3049/2002 filed by the petitioner challenging the order dated March 15, 2001 in Original Application No. 2520/2000 is concerned, the same is liable to be allowed. The order of the Tribunal directing to treat the promotion of respondent No. 4 as regular is set aside. Consequently Original Application No. 2520/2000 filed by the respondent No. 4 before the Tribunal is dismissed. No order as to costs.