
(2002) 05 DEL CK 0088
In the Delhi High Court
Case No : CWP 1854 of 1999

M.U. Rafat Ullah

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-05-2002

Acts Referred:

Citation : (2002) 05 DEL CK 0088

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

Bench : Division Bench

Advocate : B.T. Kaul, for the Appellant; Viraj R. Datar, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—The petitioner being aggrieved by and dissatisfied with an order dated 10th September 1998 passed by the Central Administrative Tribunal, Principal Bench in OA 3379/92, has filed this petition wherein he had questioned an order dated 24th April 1992 issued by the respondents herein whereby and whereunder his request for refixation of seniority with retrospective effect from July 1981 as Inspector and the order dated 15th June 1992 promoting his juniors to the cadre of ITO, Group B. was rejected.

2. The petitioner claims his seniority qua S/Shri V.M. Tandon and N.K. Aggarwal. He filed an OA before the Central Administrative Tribunal in the year 1986 claiming his seniority in the cadre of UDC. By a judgment and order dated 21st May 1990, the respondents were directed to recast the seniority list which was done and upon recast thereof the position of the respective employees was as under:

Petitioner - 280 V.M. Tandon - 285 N.K. Aggarwal - 324 3. Allegedly, all the aforementioned - the petitioner and the two employees-were granted retrospective promotion in the cadre of the Head Clerk w.e.f. 22nd July 1975 by an order dated 10th June 1991.

4. The petitioner alleges that the respondents Shri V.M. Tandon and Shri N.K. Aggarwal were promoted to the post of Inspector w.e.f. 31-7-1981 without considering the case of the petitioner.

5. The contention of the petitioner is that though the said Shri V.M. Tandon and Shri N.K. Aggarwal passed the departmental qualifying examination much before him, he also passed the same on or about 3rd March 1981.

6. The contentions of the petitioner before the Tribunal, as also before us were two-fold: one, having regard to the seniority list prepared, the said Shri V.M. Tandon and Shri N.K. Aggarwal could not have been promoted to the post of Inspector w.e.f. 21st July 1981 and 31st July 1981 without considering his case as he passed the said departmental qualifying in the meantime in March 1981, keeping in view the fact that they were junior to him; and two, in any event, as the post of Inspector was to be filled up in seniority quota of the respondents, the petitioner should have promoted earlier to these persons.

7. The afore-mentioned contentions did not find favor with the learned Tribunal.

8. Mr. B.T. Kaul, the learned counsel appearing on behalf of the petitioner would contend that the learned Tribunal committed a serious error in passing the impugned judgment in so far as it failed to take into consideration the seniority list at all and proceeded to hold that the petitioner had failed to produce any document in support of his case stating:

"The applicant has not controverted these facts or placed any document on record to show that either Shri Tandon or Shri Aggarwal who were promoted earlier had been promoted in the seniority quota and not, as averred by the respondents, as per the year of passing the departmental examination."

9. The learned counsel would contend that so far as the implementation of the earlier judgment is concerned, although the same was implemented to the extent of fixation of seniority, his representation was rejected by an order dated 24th April 1992.

10. The learned counsel for the respondents, on the other hand, would submit that Shri V.M. Tandon and Shri N.K. Aggarwal were promoted following the criteria of promotion on the basis of passing of the department test. They were promoted on the basis of the year of passing the Inspector examination and in terms of the judgment of this court in CW No. 1810/79 pursuant where to Shri V.M. Tandon was given promotion on 20th March 1980 and Shri N.K. Aggarwal w.e.f. 20th March 1981. According to the respondents, as on the said dates the petitioner had not qualified the departmental examination for Inspector, his seniority in the cadre of Inspector cannot be placed over Shri Tandon and Shri Aggarwal.

11. Admittedly, the petitioner did not question the afore-mentioned order of promotion by filing a writ petition before this court or by taking appropriate action before any forum questioning the promotion of the said Shri Tandon and

Shri Aggarwal. The cause of action for promoting the said two employees w.e.f. 1980 admittedly arose in the year 1981. The petitioner appears to have filed a representation on 12th March 1992 only. In his representation also, he did not dispute the revision of his seniority as UDC and subsequently fixation of seniority as Head Clerk on 22nd July 1975.

12. His contention regarding seniority in the post of Inspector was dealt with on detail and inter alias on the ground that he passed his departmental examination of Inspector only on 3rd March 1981, his representation was rejected.

13. The learned Tribunal in its impugned judgment has noticed the fact that as Shri V.M. Tandon was not promoted with retrospective effect, despite the fact that he had qualified Therefore, a writ petition was filed by him in this regard which was marked as CW 1810/79. The said writ petition was allowed. The deemed promotion as Inspector was granted in favor of Mr. V.M. Tandon w.e.f. 28th September 1979 on ad hoc basis and from 20th March 1980 on regular basis under the seniority quota whereas the similar benefit was granted to Shri Aggarwal w.e.f. 20th March 1980.

14. In therefore-mentioned situation, the Tribunal further noted that whereas the petitioner passed the said examination in the year 1981 the said Shri Tandon and Aggarwal passed the said examination in the year 1972.

15. In view of the afore-mentioned finding of fact arrived at by the learned Tribunal, we are of the opinion that the contention of the petitioner to the effect that his seniority should be counted and he should be declared senior over Shri Tandon and Shri Aggarwal, cannot be accepted. It is also not a case where the petitioner's case over-looked inasmuch as, as noticed hereinbefore, pursuant to the direction of this court. Shri Tandon and Shri Aggarwal had been given promotion with retrospective effect. The said orders having not been questioned, attained finality.

16. As the petitioner was not qualified to hold the said post on the date on which Shri Tandon and Shri Aggarwal were promoted, the question of the petitioner being declared as senior to them would not arise. So far as the seniority list whereupon reliance has been placed, the same contained an apparent mistake and thus, the respondents were entitled to rectify the same.

17. For the reasons afore-mentioned, we hold that there is no merit in this petition which is accordingly dismissed but in the facts and circumstances of this case, there shall be no order as to costs.