

(1999) 12 DEL CK 0014
In the Delhi High Court
Case No : CW. No. 1874 of 1998

N. Sethuramalingam

APPELLANT

Vs

Member Secretary, Central Pollution Control, Board

RESPONDENT

Date of Decision : 01-12-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 3 AD 49 : (2000) 85 DLT 74 : (2000) 54 DRJ 403

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr. M.A Chinnaswamy, for the Appellant; Ms. Alpana Poddar and Mr. N. Kinra, for the Respondent

Judgement

K. Ramamoorthy, J.—The writ petitioner, who joined the first respondent/Board, was promoted as Section Officer on ad hoc basis on the 12th of March, 1997. Later on, as per the decision of the DPC, on the 3rd of September, 1997, the petitioner was promoted as Section Officer on regular basis. By order dated 1.4.1998, without giving any notice to the petitioner, he was reverted from the post of Section Officer and that is challenged in this writ petition.

2. The facts culminating in the filing of the writ petition have to be recounted fully.

3. The petitioner on the 14th of May, 1985 was appointed as Lower Division Clerk in the Ministry of Home Affairs, Government of India. The petitioner is a graduate in Science. On the 24th of September, 1988, the Central Board for the Prevention and Control of Water Pollution (Ministry of Environment and Forests, Government of India Organisation, called for applications, inter alia, for the post of Assistant on the pay scale of Rs. 1400-2600. The qualifications prescribed were:-

"Qualification and Experience.

(a) Bachelors Degree from recognised University preferably in Science.

(b) Three years working experience in the field of correspondence/information collection.

Age Limit : 30 years."

4. The Central Pollution Control Board (first respondent) on the 1st of February, 1989, offered the appointment on the strength of the application made by the petitioner. The petitioner was appointed as Assistant (temporary) in ENVI Sonment Information System Project. On the 27th of June, 1989, an office order was issued by the Central Pollution Control Board in the following terms :-

"On the basis of selection and consequent upon the acceptance of the offer of appointment, Shri N. Sethuramalingam is appointed as Assistant under ENVIS Project with effect from 7.6.1989 (FN) in the pay scale of Rs. 1400-40-1600-50-2300-EB-60-2600/-.

2. His pay is fixed at Rs. 1400/- per month with effect from 7.6.89 (FN) and he is eligible to raw other allowances as admissible.

3. His appointment is purely temporary and for a period of one year and can be tenable on year to year basis subject to clearance of verification of character and antecedents.

4. This is being issued the approval of Member Secretary, Central Board,"

5. On the 2.5.1990, the petitioner was transferred to Administrative Section. On the 18th of June, 1990, the appointment was extended by one year w.e.f. 7.6.1990. On the 3rd of October, 1990, the petitioner made a representation for regularising his services w.e.f. 7.6.89. On the 29th of April, 1991, the first respondent sent a reply stating that his request for regularisation was being considered. On the 28th of February, 1992, the Office Memorandum was issued by the Central Pollution Control Board in the following terms :-

Sub: Merging of ENVIS Centre with the mainstream of the Central Board and regularisation of services of ENVIS Staff.

In pursuant to the decision of the Board in its 89th Board Meet- ing held on 22.5.92 regarding merging of ENVIS CENTRE-01 in the Central Pollution Control Board, the Competent Authority has decided to merge the ENVIS Centre-01 in the mainstream of Central Board and to offer regular appointment to staff presently working in ENVIS Centre-01 on the following conditions:

(a) The ENVIS CENTRE is merged with Central Pollution Control Board with effect from the date of 14.7.92.

(b) All the staff working in the ENVIS Centre will be issued regular appointment subject to their acceptance and their regular service in the Central Board shall be reckoned from the date of their respective joining after receipt of appointment orders. Their appointment on regular basis will be in the same post, in the same capacity with protection of their present pay.

c) All the staff working in the ENVIS Centre are entitled for all the facilities as enjoyed by the staff of Central Board.

2. If the conditions given above and also as given in the annexure are acceptable to them they are requested to give willingness to accept the appointment within seven days from the date of communication.

This is being issued with the approval of Competent Authority, Central Board."

6. The Environment Engineer and in charge Administration (P), Central Pollution Control Board, Delhi issued an office order on the same date, which reads as under :-

"The Competent Authority has decided the merger of ENVIS Centre functioning in the Central Pollution Control Board with the mainstream of the Central Pollution Control Board along with the posts with effect from 14.7.1992."

7. On the 17th of November, 1992, the first respondent Central Pollution Control Board, wrote to the Under Secretary, Ministry of Home Affairs, New Delhi the following:-

"Sub: Extension of lien - Shri N. Sethuramalingam, Ex-LDC of CSCS cadre of Ministry of Home Affairs.

I am directed to refer to your letter No. A-48011/1/92-Ad.I(B) dated 3.11.92 on the above subject. As you are aware, Shri N. Sethuramalingam has been working as an Assistant in Environmental Information Centre (ENVIS CENTRE) functioning in the Central Board.

2. In a recent development, the ENVIS CENTRE has been merged into the mainstream of the Central Board. Subsequently offers in the form of office memorandum with stipulated terms and conditions of regular appointment were issued to all the staffs working in the CENTRE including Shri N. Sethuramalingam. However, the appointment order on regular basis has not been issued due to some administrative reasons. The process of regular appointment of Shri N. Sethuramalingam on the post of Assistant is in advance stage and likely to be finalised at an early date. Keeping in view these circumstances and the interest of the Organisation and the individual, it is requested that extension of lien in respect of Shri N. Sethuramalingam may kindly be reconsidered for at least one year w.e.f. 7.6.1992 and as requested earlier vide this office letter of even number dated 1.6.1992.

In the light of the above situation, the request received from Shri N. Sethuramalingam for extension of his lien in your department is forwarded for sympathetic consideration."

8. On the 2nd of December, 1992, the Standing Administrative Committee meant for the purpose of the declaration of employees as regular in the service of the Central Pollution Control Board. The minutes of the meeting would read as under :-

"On the basis of Agenda and addenda provided and deliberations held in the Stating Administrative Committee (SAC) meeting, the following resolutions are recommended:

Item No. 1. O: Declaration of employees as regular in the services of CPCB:

SAC recommends to Central Board that all the Board's employees who have completed their probation satisfactorily may be confirmed in the post according to the guidelines contained in DOPT O.M. dated March 28, 1988 and subsequent, amendments made on the subject matter including O.M. dated November 04, 1992.

The present procedure of declaring the services of the employees as "regular" may be discontinued henceforth.

Item No. 2.O: Merging of ENVIS Centre into the mainstream of Central Pollution Control Board.

SAC recommends to Central Board that only those members of posts may be which are already sanctioned and manned in ENVIS to accommodate the staff presently working in ENVIS Centre. These staff may be offered appointment on the basis of their earlier selection with protection of salary as per existing rules. The period of probation for ENVIS staff will be as per prevailing rules in Central Board for the respective categories."

9. On the 12th of January, 1994, the first respondent issued an order offering the petitioner a temporary post of Assistant. The order reads as under :-

"The Competent Authority in the Central Pollution Control Board (hereinafter referred as the Board) is pleased to offer you a temporary appointment as Assistant for employment in the Secretariat of the Board on the following specific terms and conditions:-

1. The scale of pay of the post is Rs. 1400-40-1600-50-2300-EB- 60-2600 and your initial pay will be fixed will be as admissible under the Central Board for the Prevention and Control of Water Pollution (Method of Recruitment and conditions of service including scale of pay of officers (other than Member Secretary)] and other employees Regulation, 1980.

2. This appointment is purely provisional and temporary but likely to continue indefinitely.

3. You will be on probation for a period of two years from the date of appointment and the period of probation, may at the discretion of the Competent Authority be curtailed or extended by such period as deemed necessary.

4. During the probation period the appointment is liable to termination on one month's notice in writing on either side without reasons being assigned. The appointing authority, however, reserving the right to terminate your services forthwith or before expiry of the stipulated period of notice by making payment

to you a sum equivalent to the pay and allowances for the period of notice or for the unexpired portion thereof. The employee cannot, however, surrender pay and allowance in lieu of the period of notice of the unexpired portion thereof and the employees may be required to serve for the fully period of notice.

5. (a) During the probation period you may be required to undergo such training and qualify such tests as may be required.

(b) Failure to qualify in the tests prescribed or to complete the training imparted will render your services liable to be discharged forthwith without assigning any reason.

6. Failure to complete the probation to the satisfaction of the competent authority will render you liable to be discharged from service at any time without any notice and assigning any reason or reverted to a lower post on which you may be having a lien.

7. On successful completion of the period of probation and only after having been informed that you have successfully completed the period of probation, you will continue to be a temporary employee on a regular basis and your services can be terminated save otherwise as a penalty in terms of the service regulations of the Board in the following :-

(a) On three month's notice in writing on either side without assigning any reasons thereof. The appointing authority however, reserves the right to terminate your services forthwith or before the expiry of the stipulated period of notice by making payment to you a sum equivalent to the pay and allowances for the period of notice or for the unexpired portion thereof.

(b) The employee has, however, no option to make payment to the Board in lieu of the period of notice. It shall be open to the competent authority to waive the notice period in respect of any employee and relieve him from the organisation.

(c) The competent authority in the Board shall however, not ordinarily exercise the powers as in (a) above except :-

i) As a matter of penalty imposed by any under the service Regulations:

or

ii) In the event of retrenchment in the establishment or abolition of the post or cadre or winding up of the organisation."

8. Private work of any kind whatsoever is prohibited.

9. You are required to contribute compulsorily towards G.P. Fund in accordance with the rules in force from time to time.

10. You are not entitled to any traveling allowance for joining the appointment.

11. The appointment carries with it the liability to serve in any part of India.

12. You are required to obtain a certificate of medical fitness from a Medical Officer not below the rank of a Civil Surgeon at your own cost and no expenditure on this account will be reimbursed by the Board. This certificate should be sent before joining or produced at the time of your joining without which you cannot be inducted or allowed to join duty. (Specimen of Medical Certificate is enclosed).

13. You are required to submit a declaration to the effect that:-

(a) You do not have more than one spouse living or that you, having a spouse living, are not married in any case in which such marriage is void by reason of its taking place during the life of such spouse.

(b) You are not married to a person who is already having a wife living or that you are not married in any case in which such marriage is void by reason of the husband having a wife living at the time of such marriage.

14. On appointment you will be required to take on oath of allegiance to the Constitution of India or make a solemn affirmation to that effect.

15. You are also required to submit the following certificates before or at the time of joining duty:

(a) Character certificate from at least two class-I Gazetted Officers.

(b) Certificate affirming that you have not been prosecuted for any criminal offence nor there is any criminal case pending against you in any court of law.

(c) Certificate from the Competent Authority in support of your claim that you belong to Scheduled Castes/Scheduled Tribes Community, if applicable.

a) During the period of probation you will not be entitled to any increments along with arrears of pay and allowances may be released on successful completion of the period of probation.

b) You will not look for training or higher education of your own as training programmes are organized for the employees by the board in the country and foreign countries.

17. You will not be entitled to General Pool Accommodation but house rent allowance as fixed by the Board from time to time will be admissible.

18. If any declaration given or information furnished by you proves to be false or if you are found to have wilfully suppressed any material information, you will be liable to be removed from service and such other action as the competent authority may deem necessary.

19. Other conditions of service will be governed by the relevant rules and orders from time to time.

20. You are required to acknowledge the receipt of this letter and indicate your

willingness to take up the appointment under the Board within 7 (seven) days of the receipt of this letter failing which this offer shall be treated as cancelled without any further reference to you. You are further required to join within 30 days of the date of receipt of this letter.

21. In case you accept, the offer, you will be taken as a direct and fresh recruit and not on deputation. If your parent office agrees to keep lien, this office will not undertake any liability in respect of pension and leave salary contribution.

22. You shall be required to pass a typewriting test in English or Hindi at a minimum qualifying speed of 30 w.p.m. within the period of probation failing which you will not be entitled to increments of pay. Increment in the prescribed scale of pay will be released from the date you qualify the test and no arrears of pay on accounts of release of increments will be payable.

23. You are appointed subject to future clearance of Police Verification of character and antecedents.

24. You are required to contribute compulsorily towards Group Insurance Scheme in accordance with the rules in force from time to time.

25. You are required to report for duty to the ADMINISTRATIVE OFFICER(P), CENTRAL POLLUTION CONTROL BOARD, HEAD QUARTERS, DELHI within 30 days of receipt of this letter failing which the offer stand cancelled and no further correspondence in this regard shall be entertained.

26. Your seniority in the Cadre will be reckoned from the date of joining of the post against this offer of appointment."

10. The petitioner continued to be in the service. As on 1.1.1995, provisional seniority list was issued. The petitioner is shown at item No. 9. Shri Seetal Prasad, respondent No. 4, was shown at item No. 11. As on 1.1.1996 seniority list was published. The petitioner was shown at item No. 8 and Shri Sheetal Prasad, respondent No. 4 was shown at item No.9. It is shown in the seniority list that Sheetal Prasad, respondent No. 4, joined service on the 1st of February, 1990.

11. As on the 1st of January, 1997, the seniority list was published and the petitioner is shown at item No. 5 and Sheetal Prasad, respondent No.4, was shown at item No. 6. As I had noticed above, the petitioner was appointed as Section Officer on regular basis and he cannot be reverted unless sufficient cause is shown by the first respondent.

12. The main ground on which the first respondent had reverted the petitioner was that there was a clerical error in the seniority list and that came to its notice, after the receipt of the representation from Sheetal Prasad, respondent No. 4, the first respondent passed the order reverting the petitioner. This is hardly a reason. In the note dated 21.1.1998 put up with reference to this point, when Sheetal Prasad made representation, it is stated that all the persons concerned

were given opportunity to file their objections. But Sheetal Prasad did not file any objection. The note reads as under :-

Sub: Representation made by Shri Sheetal Prasad for promotion to the post of Section Officer Regarding.

FR is a representation received from Shri Shital Prasad, Assist. ZO(B) addressed to the Chairman, CPCB with a copy to the Secretary, and CPCB Employees Welfare Union, H.O. Delhi forwarded by I/C. ZO (B) on the above cited subject.

The remark of M.S. is as follows:-

Earlier representation is yet to be examine, pl put up immediate- ly.

sd/

MS 27.11.97

AO(P)

Please comply "A" & put up early.

Sd/

AO(P) 28.11.97

SO

Sd/

SO 15.12.97

Sh. Meer Singh

In this regard it is submitted that he has claimed that Shri N. Sethuramalingam is junior to me, and I may be given promotion to the post of Section Officer.

2. Regarding the DPC, as per Seniority List all eligible candidates were placed in the DPC held on 30.07.1997. The promotion order in respect of Section Officer has been issued. The case of Shri Sheetal Prasad was not placed in the DPC due to lack of exp. At this time, there is no existing post of S.O.

3. Regarding the seniority, the Seniority of Group "C" & "D" as on 1.1.1995 was issued and sufficient time was given to the officials. But he has not raised any objection pertaining to the seniority.

In this connection it is not possible to revert Shri N. Sethuramalingam, Section Officer, at this stage.

Now, it is suggested that one post of Section Officer may be created and the case of Shri Sheetal Prasad may be considered."

Submitted please."

13. The learned counsel for the fourth respondent Mr. N. Kinra, submitted that

the petitioner, who was working in the office, had manipulated the records and he saw to it that the seniority list was not communicated to the persons concerned, and, Therefore, the petitioner cannot be allowed to take advantage of his own wrong deeds. The learned counsel submitted that having agreed to appointment w.e.f. 12th of January, 1994, the petitioner cannot seek seniority from the date of his earlier appointment in CPCB in 1989.

14. The learned counsel for the fourth respondent Mr. N. Kinra, relying upon the judgment of the Supreme Court in "Union of India Vs. Onkar Chand", 1998 (2) SC 131, submitted that the petitioner cannot claim seniority on the basis of his service from 1989 to 1994 in the first respondent organisation. The judgment of the Supreme Court is clearly distinguishable on facts. The first respondent had treated the petitioner as being in continuous service and prepared the seniority list in 1995. Therefore, it is not for the fourth respondent to say that the petitioner cannot be said to be senior to him.

15. The learned counsel for the petitioner, Mr. M. A. Chinnaswamy, submitted that the petitioner was appointed in 1989 and continuously worked in the department and he had been making representation for his service being regularised. There was a merger in 1992 and he was treated as employee of the first respondent and, Therefore, when he had continued to serve in the organisation since the date of his initial appointment, he is senior to the Sheetal Prasad, the fourth respondent and, Therefore, while considering the case of the petitioner for promotion to the post of Section Officer, the first respondent had proceeded on the basis of the seniority list issued in 1995, to which Sheetal Prasad, the fourth respondent did not file any objection, and, Therefore, it is not open to Sheetal Prasad, the fourth respondent to claim seniority over the petitioner.

16. On the material placed before this Court, on facts, two things are clear. First is that the petitioner was in employment of the first respondent right from 7.6.1989, and there was a merger in 1992 and the petitioner was appointed on the 12th of January, 1994. The second is that after taking into account his continuous service, the seniority list was prepared and published, objections were invited from all officers, and on the basis of merit, he was promoted as Section Officer in 1997, and, Therefore, the said Sheetal Prasad, the fourth respondent cannot, in law, be heard to contend that he was senior to the petitioner in the post of Assistant. The order passed by the first respondent on the 1st of April, 1998 is liable to be set aside. Accordingly it is set aside.

17. The writ petition is allowed.

18. There shall be no order as to costs.