
(2013) 04 DEL CK 0298
In the Delhi High Court
Case No : Writ Petition (C) 3769 of 2012

Nighat Parveen

APPELLANT

Vs

MCD and Others

RESPONDENT

Date of Decision : 01-04-2013

Acts Referred:

Citation : (2013) 04 DEL CK 0298

Hon'ble Judges : Pratibha Rani, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Jyoti Singh, Mr. Manjeet Singh, Ms. Tinu Bajwa and Ms. Depalli, for the Appellant; Ajay Arora and Mr. Kapil Dutta, Advocates for R-1 and 2, Mr. Raj Shekhar Rao, E.V. Venugopal and Mr. Anandna Handa, Advocates for R-3, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—The Municipal Corporation of Delhi made appointments to the post of Unani Hakim after conducting interviews on April 10, 17 and 19, in the year 1989. A select panel of 04 Unani Hakim was prepared, in order of merit, as under:-

- (i) Dr. Nighat Parveen (petitioner)
- (ii) Dr. Sohail Ahmed Farooqui
- (iii) Dr. Salma Khatoon
- (iv) Dr. Muzayyana Khatoon (respondent No. 3)

The petitioner was at Sl.No. 1 of the select panel having obtained 20 marks and respondent No. 3 was at Sl.No. 4 of the select panel having obtained 161/2 marks. It is not in dispute that as per the applicable Rules governing seniority issued on July 03, 1986 by the Municipal Corporation of Delhi, seniority of direct recruits was to be determined by the order of merit in which they were selected for appointment.

2. Due to the reason that character verification of respondent No. 3 was received first followed that of Dr. Salma Khatoon, followed next of Dr. Sohail Ahmed Farooqui and lastly of the petitioner, the said four persons joined duties as under:-

3. On November 04, 1992, the Government of India issued an Office Order, keeping in view the law declared by the Supreme Court: that as regards directly recruited persons, inter-se seniority has to be as per the order of merit at the selection process. Needless to state, as regards the Municipal Corporation of Delhi, it was already bound by the applicable Rules governing seniority framed on July 3, 1986, to which we have made a reference hereinabove. But by way of abandoned precaution, the Municipal Corporation of Delhi had resolved that insofar they are not inconsistent with any service Rules framed by the Corporation, directions and guidelines issued by the Government of India from time to time would apply to the Municipal Employees.

4. A provisional seniority list of Unani Hakim was circulated on September 18, 1996. Objections were invited within 15 days. In the said list, the names of the four candidates empanelled on May 21, 1989 were listed from Sl.No. 15 onwards of the list; not in order of merit as per the select list issued on May 21, 1989, but with reference to the date they joined the Municipal Corporation of Delhi. Resulting in respondent No. 3 being placed at Sl.No. 15, Dr. Salma Khatoon at Sl.No. 16, Dr. Sohail Ahmed Farooqui at Sl.No. 17 and the petitioner at Sl.No. 18. The reason was that these four had joined duties on June 01, 1989, June 07, 1989, June 09, 1989 and June 15, 1989 respectively.

5. It appears that the draft list inviting objections did not come to the notice of the petitioner, Dr. Sohail Ahmed Farooqui and Dr. Salma Khatoon. None of them filed objections and the result was that on November 14, 1996 the seniority list was finalized as proposed in the draft seniority list and as a result respondent No. 3 who was at Sl.No. 4 of the select panel became senior to the three persons above her in the select panel.

6. After 3 years and 4 months, when the petitioner realized that the seniority was assigned contrary to the Rules governing seniority issued on July 03, 1986 as also the Government of India office instruction dated November 04, 1992, adopted by the Corporation, she made a representation on March 13, 2000 praying that the seniority list be corrected. Finding no response she submitted a reminder on July 22, 2000.

7. Realizing its mistake, and lest somebody objects to the rectification being done without notice to the persons likely to be effected, on September 28, 2000 the Municipal Corporation of Delhi circulated a revised draft seniority list as per which the seniority of the petitioner, respondent No. 3, Dr. Sohail Ahmed Farooqui and Dr. Salma Khatoon was shown as per the order of merit as per the select list dated May 21, 1989.

8. Respondent No. 3 objected to the draft seniority list pointing out that the

seniority list had already been finalized on November 14, 1996 she took a stand that the same could not be revised.

9. Keeping in view the Rules framed by the Municipal Corporation of Delhi governing seniority of directly recruited persons as also the Government of India Office Memorandum which was adopted by the Corporation, the Municipal Corporation of Delhi re-fixed the seniority and notified the modified seniority list on March 13, 2001. The said revised list placed the four empanelled candidates as per the merit list issued on May 21, 1989, in the order of their merit in the panel.

10. Respondent No. 3 filed WP (C)1756/2001 in this Court challenging the revised seniority list dated March 13, 2001; and suffice would it be to record that the challenge was on the technical ground of the Corporation become functus officio after it had notified the seniority list on November 14, 1996. She highlighted that the list could not be revised after 4 years.

11. It is the case of the writ petitioner that she was never served of any notice by this Court when WP (C) 1756/2001 was admitted for hearing, nor was she served with any notice from the Central Administrative Tribunal, when the writ petition filed by the respondent No. 3 was transferred to the Central Administrative Tribunal due to a Notification issued under the Central Administrative Tribunal Act, 1985 requiring service disputes between employees of the Municipal Corporation of Delhi and the Corporation to be decided by the Central Administrative Tribunal. On transfer to the Tribunal the said writ petition was registered as T.A. 1136/2009.

12. T.A. No. 1136/2009 was allowed by the Tribunal on the technical ground that the seniority of respondent No. 3 was disturbed after 12 years. The Tribunal held that this could not be done because in the meanwhile respondent No. 3 was promoted.

13. It is apparent that the Central Administrative Tribunal was misled by the fact that it was deciding T.A. No. 1136/2009 after more than 12 years reckoned from when the seniority list dated November 14, 1996 was issued; ignoring that it was concerned with the revision affected to the seniority list dated March 13, 2001. In other words, the Municipal Corporation of Delhi was not disturbing a seniority list after 12 years. A seniority list dated November 14, 1996 was being disturbed, by way of a revision, on March 13, 2001.

14. The Municipal Corporation of Delhi challenged the decision dated August 17, 2010 passed by the Central Administrative Tribunal allowing T.A. No. 1136/2009. WP (C) 7340/2010 under which said order was challenged was dismissed by a Division Bench of this Court on December 14, 2010, by which date the writ petitioner was not served for the reason it was pointed out by respondent No. 3, impleaded as a respondent No. 1 in the said writ petition, that the Corporation had issued another seniority list on November 30, 2010 restoring the seniority position as per the seniority list issued on November 14, 1996 in compliance with

the directions issued by the Tribunal.

15. As the petitioner learnt that her seniority was disturbed due to the decision dated August 17, 2010 she filed an application seeking review of the said decision pointing out to the Tribunal that she was not served which has been dismissed by the Tribunal vide the second order impugned in the instant writ petition, being the order dated May 18, 2012.

16. Opposing the writ petition, learned counsel for respondent No. 3 simply urges that it is impermissible to revise a seniority list after more than a decade.

17. On merits of how the seniority position had to be assigned, learned counsel for respondent No. 3 had no submissions to make in view of the settled legal position that pertaining to directly recruited persons selected on basis of merit, inter-se seniority is governed by the merit position in the select list and not the date of joining, and in particular when the date of joining is on the fortuitous circumstance of somebody's character verification being done early and others late.

18. Now, as noted above, the Municipal Corporation of Delhi had rectified the wrongly finalized seniority list dated November 14, 1996 on March 13, 2001 i.e. after 4 years and 4 months.

19. While deciding T.A. No. 1136/2009 on August 17, 2010, the Tribunal noted that a seniority list could not be disturbed after 12 years and it is apparent that the Tribunal was misled by the year assigned to the T.A. Number i.e. the year 2009. The Tribunal over looked the fact that the seniority list dated November 14, 2009 was revised after 4 years and 4 months and not 12 years. The further error committed by the Tribunal is to note that in the interregnum respondent No. 3 was promoted, ignoring the fact that even the writ petitioner had been promoted in the interregnum to the same post.

20. On the subject of belated claims, howsoever meritorious they may be, to seniority list issued, in the decision reported as Shiba Shankar Mohapatra and Others Vs. State of Orissa and Others, noting a large number of authorities on the point, in paragraph 30 of its opinion, the Supreme Court opined that 3 to 4 years is a reasonable period to challenge the seniority list and in case someone agitates the issue of seniority beyond this period, delay has to be explained by furnishing satisfactory explanation.

21. We do not deal with the point whether or not the petitioner was served with a notice when respondent No. 3 filed WP (C)1756/2001 in this Court and whether or not she was served with a notice by the Central Administrative Tribunal when, on being transferred to the Tribunal, said writ petition was registered as T.A. No. 1136/2009; a fact asserted by the petitioner and refuted by respondent No. 3, for the reason we find that the decision dated August 17, 2010 passed by the Central Administrative Tribunal is wrongly influenced by the fact that the petitioner had questioned the seniority list dated November 14, 1996 after 12

years. We would simply highlight that on the merit of the case, petitioner's claim is irrefutable and for said reason respondent No. 3 did not even attempt to argue that the seniority list which was revised on March 13, 2001 was incorrect.

22. The petition is allowed. Impugned decision dated August 17, 2010 as also the decision dated May 18, 2012 passed by the Tribunal are set aside. R.A. No. 157/2012 filed by the petitioner is allowed and T.A. No. 1136/2009 filed by respondent No. 3 is dismissed. Seniority list issued on March 13, 2001 is declared to be the correct seniority list. Parties shall bear their own costs all throughout.