
(2009) 08 DEL CK 0167

In the Delhi High Court

Case No : Writ Petition (Civil) No. 899 of 1999

O.P. Shukla

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-08-2009

Acts Referred:

Legal Services Rules, 1957 — Rule 8

Citation : (2009) 08 DEL CK 0167

Hon'ble Judges : Madan B. Lokur, J;A.K. Pathak, J

Bench : Division Bench

Advocate : R. Venkataramani and K. Joseph, for the Appellant; A.S. Chandhiok, ASG, Sanjay Katyal and Partap, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Pathak, J.—The Petitioner was selected by the Union Public Service Commission (for short referred to as "UPSC"), against the post of Assistant Legal Advisor, a Grade IV duty post, in Indian Legal Services along with two other candidates. However, he could join on the said post only on 31st October, 1988 due to delay in police verification etc. Petitioner was put on probation for a period of two years. The probation was to expire on 31st October, 1990.

2. In the seniority list of Assistant Legal Advisor, issued on 5th December, 1989, Mr. J.L. Minocha, a promotee officer, was shown junior to the Petitioner. In the month of July, 1991, the Departmental Promotion Committee (for short hereinafter referred to as "D.P.C.") was held for filling the vacancies of Deputy Legal Advisor, arisen during the year 1990-91. The "cut- off. date for the purpose of consideration of candidates for promotion was 1st October, 1991. Mr. J.L. Minocha, who was working as Assistant Legal Advisor with effect from 31st August, 1997, was considered for promotion to the post of Deputy Legal Advisor, being eligible, having completed three years service as on 1st October, 1990, in terms of Rule 8(iii) of the Indian Legal Service Rules, 1957 (for short hereinafter referred to as the "Rules"). However, Petitioner was not considered as he had

neither completed the probation period nor was having the required three years service.

3. Against the vacancies of Deputy Legal Advisor, which arose in the year 1991-92, Petitioner was considered by the D.P.C. even though, he had not completed the three years service. He was considered by the D.P.C. after relaxing the shortfall of one month in service. Recommendation of D.P.C. was referred to the Appointments Committee of the Cabinet (for short hereinafter referred to as "ACC") and its approval was obtained for appointment of the Petitioner on the post of Deputy Legal Advisor along with his juniors. Since Petitioner was in U.S.A. at that time he was promoted immediately on his return from the U.S.A. Petitioner joined on the said post on 2nd February, 1994.

4. On 20th May, 1994 Petitioner made a representation for ante-dating his promotion from the date when his junior Mr. J.L. Minocha was promoted. Vide memorandum dated 9th January, 1997 Respondent rejected the representation of Petitioner.

5. Petitioner filed O.A. No. 143/1998 before the Central Administrative Tribunal, Principal Bench, New Delhi (for short hereinafter referred to as "Tribunal"), inter alia, praying therein that the memorandum dated 9th January, 1997 be quashed and Respondent be directed to grant promotion to Petitioner with effect from the date his junior Mr. J.L. Minocha was promoted.

6. Petitioner contended before the Tribunal that action of the Respondent was in violation of the Department of Personnel and Training, Office Memorandum No. 14017/82/88-Estt. (RR) dated 23rd October, 1989 read with Office Memorandum No. AB14017/12/87-Estt. (RR) dated 18th March, 1988, which provided that if junior officers are considered for the higher post having completed prescribed eligibility condition, the senior officers, who have not completed the required service but had completed the probation period, should also be considered for the higher post. Since Mr. J.L. Minocha, who was junior to the Petitioner, was considered for the post of Deputy Legal Advisor occurring in 1990-1991, therefore, Petitioner should have also been considered and promoted.

7. It was further contended that Respondent had relaxed the eligibility conditions in the case of Dr. Raghubir Singh and K.N. Chaturvedi regarding their probation period. Since, same benefit was not extended to the Petitioner he was discriminated vis-a- vis these two officers.

8. As per the Respondent, cut-off date for the purpose of consideration of candidature of concerned officers was fixed as 1st October, 1990 with regard to vacancies arisen in the year 1990- 91. As on that date, Petitioner had not completed the probation period. He was also not having three years of service in the feeder grade, thus he was not eligible. So far as Mr. J.L. Minocha is concerned he had completed three years of service as on 1st October, 1990. Respondent was considered for the vacancies arisen in the year 1991-1992 even though he had not completed three years service. Shortfall in service was

relaxed and his case was referred to Appointments Committee of Cabinet and after obtaining approval Petitioner was promoted to the post of Deputy Legal Advisor, on his return from the U.S.A. Since the Petitioner was not eligible for promotion to the post of Deputy Legal Advisor as on 1st October, 1990 his date of promotion could not have been antedated to 7th October, 1991 when his junior Mr. J.L. Minocha was promoted.

9. Tribunal held that crucial cut off date for consideration of candidates for promotion on the post of Deputy Legal Advisor was 1st October, 1991. As on that date Petitioner did not fulfil the eligibility criteria of three years service as contained in Rule 8 (iii) of the said Rules. Thus, Respondent cannot be found faulted in not considering the Petitioner against the vacancies of 1990-91. With regard to the alleged discrimination vis-a-vis Dr. Raghubir Singh and Mr. K.N. Chaturvedi is concerned Tribunal, by following judgment of the Supreme Court titled Chandigarh Administration and another Vs. Jagjit Singh and another, , held that if the order in favour of other persons was found to be illegal or not warranted, the same cannot be made basis for issuing a writ compelling the Respondents therein to repeat the illegality or pass unwarranted order. Accordingly, contention of the Petitioner regarding discrimination was rejected. Tribunal also held that the cause of action had arisen in the year 1991; whereas O.A. was filed in the year 1998. Even, first representation was made by the Petitioner on 20th May, 1994. No cogent reason was given to explain the unreasonable delay. Thus, the O.A. was also barred by limitation.

10. We have heard learned Counsel for the parties and have perused the relevant material available on record and we find no reason to interfere with the impugned order. In our view, Tribunal rightly held that Petitioner did not fulfil eligibility criteria for promotion regarding the vacancies arisen in the year 1990-91 and was not entitled to ante-dating of his promotion. Tribunal was also right in holding that the Original Application was barred by time.

11. Material placed on record makes it clear that the cut off date for considering the candidates for the vacancies of 1990-91 was 1st October, 1990. Petitioner joined as Assistant Legal Advisor on 31st October, 1988 and was put on probation for a period of two years. The period of probation was to expire on 31st October, 1990. As such, as on, 1st October, 1990 Petitioner had not even completed the period of probation. He was not confirmed on the post of Assistant Legal Advisor as on that date. Being a probationer he was not eligible for the promotion to a next higher post. Beside this he was not having three years of service as on 1st October, 1990 and was otherwise not eligible to be considered for the post of Deputy Legal Advisor in view of Rule 8(iii) of the said Rules.

12. Rule 8(iii) reads as under:

8(iii). To a duty post in Grade III, unless he has held a duty post in Grade IV for a total period of not less than three years;

13. Post of Assistant Legal Advisor was in Grade IV; whereas post of Deputy

Legal Advisor was in Grade III. Thus, it is clear that for promotion to the post of Deputy Legal Advisor from the feeder grade of Assistant Legal Advisor a person was required to hold the post of Assistant Legal Advisor for not less than three years. As on 1st October, 1988 Petitioner had completed only two years of service. This condition of three years service could have been relaxed in view of the fact that Petitioner's junior Shri J.L. Minocha had completed the prescribed eligibility condition for promotion and was going to be considered but only if Petitioner had completed the period of probation.

14. Para 3.1.2. of the Office Memorandum dated 18th March, 1988 reads as under:

It may so happen that in some cases of promotion, the senior officers would not have completed the required service whereas the juniors would have completed the prescribed eligibility condition for promotion. In such cases, seniors will be left out from consideration for the higher post. To avoid such a situation, a suitable note may be inserted in the recruitment rules so that the seniors who have completed the probation period, also be considered where the juniors who have completed the requisite service are being considered

15. Bare perusal of the above Office Memorandum makes it clear that a senior officer can be considered even if he has not completed three years services, while his juniors are being considered, only in case he had completed the probation period. Admittedly, Petitioner had not completed probation period as on 1st October, 1990 and eligibility condition in his case could not have been relaxed.

16. We are of the view that this writ petition is devoid of merits. Dismissed.