

(2011) 07 DEL CK 0058

In the Delhi High Court

Case No : Writ Petition (C) No. 4023 of 2000

P.K. Pandey

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-07-2011

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19, 21
Constitution of India, 1950 — Article 226

Citation : (2011) 6 AD 350

Hon'ble Judges : M.L. Mehta, J;A.K. Sikri, J

Bench : Division Bench

Advocate : B.N. Singhvi and S.M. Garg, for the Appellant; Ruchi Sindhwani, for R-2/GNCT of Delhi, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—This writ petition is preferred by the Petitioner under Article 226 of the Constitution of India impugning the orders dated 29th February, 2000 passed by the Central Administrative Tribunal (hereinafter referred to as "the Tribunal") in O.A. No. 1284/1997. The aforesaid O.A. was preferred by the Petitioner herein u/s 19 of the Central Administrative Act seeking certain reliefs. The Tribunal has dismissed the O.A. of the Petitioner on the ground of limitation as well as on merits. Before we spell out the grievances which were raised by the Petitioner in the said O.A., we deem it proper to take stock of the relevant facts.

2. Respondent No. 3 (Dr. Usha Yadav) joined Guru Nanak Eye Centre on 23rd November, 1984. Office Order dated 24th November, 1984 was issued in this respect stipulating that the appointment was to the post of Specialist, Grade-II post of Assistant Professor (Ophthalmology), LNJP Hospital, New Delhi in Teaching Specialist Sub-Cadre of the Central Health Service (CHS). We may like to point out at this stage that Respondent No. 3 was appointed by the Government of NCT of Delhi and was posted at the aforesaid hospital which is being run by the Delhi Government.

3. The Petitioner was, likewise, appointed to the post of Assistant Professor (Ophthalmology) after he was selected and recruited as Specialist, Grade-II in Teaching Specialist Sub-Cadre of the CHS. He was posted at Lady Hardinge Medical College w.e.f. 3rd December 1985. On 25th September, 1986 the Petitioner was transferred to Maulana Azad Medical College (MAMC) as Assistant Professor.

4. In the O.A. filed by the Petitioner, the Petitioner also averred that the Respondent No. 3 was given extraordinary leave w.e.f. 5th September, 1988 to 17th December, 1988 to meet her husband in Australia. However, Respondent No. 3 did not join back her duties after the expiry of the leave period. Instead she made representation for extension of leave by 12 months. The said leave was ultimately granted vide orders dated 20th April, 1989. She was given leave up to 17th July, 1989 with a caution that no further extension would be granted to her and disciplinary action for unauthorized absence would be taken against her on failure to report on 18th July, 1989. The Respondent No. 3 did not join the duties even on 18th July, 1989. According to the Petitioner, she remained absent unauthorisedly beyond 18th July, 1989 and even the disciplinary action was contemplated against her. Be as it may, the facts remains that unauthorized period beyond 18th July, 1989 was ultimately regularized and she was allowed to join the duties sometime in the year 1992.

5. The cases of these Assistant Professors for further promotion to the post of Professor were considered by the Department and vide orders dated 21st May, 1993. Twelve persons were promoted as Professors. The name of the Respondent No. 3 did not find mention therein. However, thereafter, presumably on the representation of the Respondent No. 3 a special Departmental Promotion Committee was convened and the Respondent No. 3 was given promotion to the post of Professor w.e.f. 23rd November, 1992 vide orders dated 26th October, 1994. The Petitioner also got promoted to the post of Professor by non-selection method (time bound promotion after 8 years) w.e.f. 3rd December, 1993 vide orders dated 19th June, 1995.

6. It is clear from the above that whereas the Respondent No. 3 was promoted to the post of Professor w.e.f. 23rd November, 1992 and order to this effect was passed on 26th October, 1994 the Petitioner was given promotion to the said post of Professor only w.e.f. 3rd December, 1993. Thus, in so far as post of Professor is concerned the Petitioner was promoted to the said post much after the Respondent No. 3.

7. The seniority list as on 1st January, 1996 for the post of Professors was issued by the Department in which the Respondent No. 3 was shown senior to the Petitioner and naturally so, as already pointed out, the Respondent No. 3 was promoted as Professor prior to the Petitioner. Respondent No. 3 was appointed as Assistant Professor concerned on 23rd November, 1984 whereas the Petitioner came to be appointed to this post on 3rd December, 1985.

8. After issuance of the seniority list, for the first time, the Petitioner made representations dated 20th May, 1996 and 15th June, 1996 questioning the seniority assigned to the Respondent No. 3. In these representations, his plea was that the Respondent 3 joined as Assistant Professor against a temporary vacancy whereas the Petitioner was appointed to the post of Assistant Professor against a regular vacancy and, therefore, the Petitioner should have been treated senior to the Respondent No. 3. It was further contended that since the Respondent No. 3 remained on authorized absence for quite some time and was re-employed as Assistant Professor w.e.f. 12th April, 1991 and she could not be treated as senior to the Petitioner and, therefore, the Petitioner should be shown as her senior. These representations were rejected vide orders dated 7th April, 1997. At this stage, challenging these orders, the Petitioner filed the aforementioned O.A. before the Tribunal with the following prayer:

(a) set aside and quash the impugned seniority list as on 1.1.1996 as well as the rejection order dated 7.4.1997.

(b) quash and set aside the impugned order dated 26.10.1994 promoting the Respondent No. 3 w.e.f. 23.11.1992.

(c) direct the Respondents No. 1 and 2 to refix the seniority of the applicant above Respondent No. 3 as she was re-employed w.e.f. 12.4.1991 as Associate Professor and eligible for promotion on or after 23.12.1995 only.

(d) Declare that the Respondent No. 3 cannot count her services on the post of Associate Prof. during the period of unauthorized absence and that the conversion of unauthorized absence into EOL is bad and illegal and thereby consequently quash and set aside the same.

9. This O.A. was filed on 20th April, 1998. It is clear from the prayers extracted above that the Petitioner had, inter alia, challenged the orders dated 26th October, 1994 whereby the Respondent No. 3 was given promotion to the post of Professor w.e.f. 23rd November, 1992. Whether the Petitioner was entitled to other relief or not naturally depend upon the validity of the aforesaid order, whereby the Petitioner had questioned the promotion given to the Respondent No. 3 w.e.f. 23rd November, 1992. However, when this promotion orders were issued, the Petitioner had not objected to the same. The plea taken by the Petitioner before the Tribunal was that it is only when seniority list was issued that he came to know that he ranked below the Respondent No. 3 in the said seniority list and cause of action arose in his favour from that day, without losing any time, the Petitioner had challenged the promotion and seniority of Respondent No. 3 by making representation. The Tribunal has not accepted this plea observing that the cause of action arose when promotion orders were issued and not when the seniority list was circulated. On this basis, the O.A. of the Petitioner was dismissed as time barred u/s 21 of the said Act having been filed much after the expiry of one year from the date of issuance of orders dated 26th October, 1994.

10. It is not in dispute that as per provisions of Section 21 of the Central Administrative Act, is provided for an aggrieved person to challenge the impugned action on the part of the Department. The contention of the Petitioner that cause of action arose only on the date when the seniority list was issued is totally misconceived. Once, the promotion order is not challenged, the promotion is to be treated as valid on that action and the seniority list was only consequential. Therefore, cause of action arose to the Petitioner when the promotion orders were issued on 26th October, 1994 as rightly point out by the Tribunal. From this date, the Petitioner, however, did not make any representation against this order of promotion nor approached the Tribunal within a period of one year from the date of such order. Such an O.A. was thus clearly time barred and rightly dismissed on this ground. We are also of the opinion that the Tribunal was right in observing that it cannot be believed that the Petitioner was not aware of the promotion of the Respondent No. 3 as Professor. The Petitioner as well as the Respondent No. 3 are under the employment of same employer in the said Department. Merely because at given point of time they were posted in two different hospitals would not afford any proper explanation or justification to the Petitioner to claim the ignorance about the promotion of Respondent No. 3. No such plea was ever taken in the representations made by the Petitioner. It was only when the Respondent took objections of O.A. being time barred in the reply filed to the O.A, the Petitioner came out with the plea that he was unaware of the promotion of Respondent No. 3 as Professor which cannot be accepted. Since the O.A. filed by the Petitioner has rightly been dismissed as hit by limitation u/s 21 of the Act, it is not necessary to go into the merits. This petition is dismissed on this ground alone.