
(2013) 09 DEL CK 0384
In the Delhi High Court
Case No : Writ Petition (C) 5319 of 2011

Pranay Sinha

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-09-2013

Acts Referred:

Citation : (2013) 6 ILR Delhi 4388

Hon'ble Judges : Gita Mittal, J;Deepa Sharma, J

Bench : Division Bench

Advocate : Kirti Uppal, Mr. S.K. Pandey and Mr. Anshumaan Sahni, for the Appellant; A.K. Behura, Ms. Meenu Mainee, Advocates for Pvt. Respondents and Mr. Ankur Chhibber, for R-2, for the Respondent

Final Decision : Disposed Off

Judgement

Gita Mittal, J.—The instant writ petition raises a challenge to a judgment dated 30th September, 2010 passed by the Central Administrative Tribunal in O.A. NO. 567/2009 and order dated 4th July, 2011 in R.A. No. 95/2011 titled as M.K. Sharma & Ors. vs. Union of India & Ors. The original application was filed before the Tribunal by the promotees in the cadre of deputy directors with the Employees' State Insurance Corporation (ESI) seeking a direction to the Director General, ESI to draw a correct seniority list on the basis of the principles set out in DoP&T Office Memorandum dated 3rd March, 2008 with all consequential benefits. The application was disposed of by the impugned order with following directions:

25. Resultantly, as we do not find a prayer to quash the seniority list, we dispose of this OA with a direction to the respondents to reconsider drawing up seniority list in the cadre of Deputy Directors, strictly on the basis of the principle culled out in DoP&T OM dated 3.3.2008 and thereafter consider the claim of applicant for promotion, if eligible, along with all consequential benefits. While doing so, the observations made by us in the body of the order shall also be taken note of. The directions shall be complied with by the respondents within a period of 3

months from the date of receipt of a copy of this order. No costs.

During hearing before us today, Mr. Kirti Uppal, learned senior counsel who appears on behalf of the petitioners who are directly recruited Deputy Directors with the ESI, has submitted that the issue with regard to the validity and blindness of the office memorandum dated 3rd March, 2008 and its implications thereof has been settled by the Supreme Court of India which has ruled on the blindness thereof as well as on the Office Memorandums dated 7th February, 1986 and 3rd July, 1986. It has been held that the said memorandums would apply to the fixation of seniority of government employees.

2. In this regard our attention has been drawn to the pronouncement Union of India (UOI) and Others Vs. N.R. Parmar and Others etc. etc., Para 29 of this pronouncement is relevant and reads as follows:

29. A perusal of the OM dated 3.3.2008, would reveal, that a reference to paragraphs 2.4.1 and 2.4.2 of the OM dated 3.7.1986, has been made therein. Thereupon, the meaning of the term "available" used in paragraph 2.4.2 of the OM dated 3.7.1986, is statedly "clarified". In view of the conclusion drawn in the foregoing paragraph, the said clarification must be deemed to be with reference, not only to the OM dated 3.7.1986 but also the OM dated 7.2.1986. We have already noticed, in an earlier part of the instant judgment, the essential ingredients of a "clarification" are, that it seeks to explain an unclear, doubtful, inexplicit or ambiguous aspect of an instrument, which is sought to be clarified or resolved through the "clarification". And that, it should not be in conflict with the instrument sought to be explained. It is in the aforesaid background, that we will examine the two queries posed in the preceding paragraph. We have already analysed the true purport of the OM dated 7.2.1986 (in paragraph 20 hereinabove). We have also recorded our conclusions with reference to the OM dated 3.7.1986 wherein we have duly taken into consideration the true purport of paragraph 2.4.2 contained in the OM dated 3.7.1986 (in paragraph 21 hereinabove). The aforesaid conclusions are not being repeated again for reasons of brevity. We have separately analysed the effect of the OM dated 3.3.2008 (in paragraph 26 of the instant judgment). It is not possible for us to conclude that the position expressed in the earlier office memoranda is unclear, doubtful, inexplicit or ambiguous. Certainly not on the subject sought to be clarified by the OM dated 3.3.2008. A comparison of the conclusions recorded in paragraph 20 (with reference to the OM dated 7.2.1986) and paragraph 21 (with reference to OM dated 3.7.1986) on the one hand, as against, the conclusions drawn in paragraph 26 (with reference to OM dated 3.3.2008) on the other, would lead to inevitable conclusion, that the OM dated 3.3.2008 clearly propounds, a manner of determining inter se seniority between direct recruits and promotees, by a method which is indisputably in conflict with the OMs dated 7.2.1986 and 3.7.1986. Of course, it was possible for the Department of Personnel and Training to "amend" or "modify" the earlier office memoranda, in the same manner as the OM dated 7.2.1986 had modified/amended the earlier OM dated

22.11.1959. A perusal of the OM dated 3.3.2008, however reveals, that it was not the intention of the Department of Personnel and Training to alter the manner of determining inter se seniority between promotees and direct recruits, as had been expressed in the OMs dated 7.2.1986 and 3.7.1986. The intention was only to "clarify" the earlier OM dated 3.7.1986 (which would implicitly include the OM dated 7.2.1986). The OM dated 3.3.2008 has clearly breached the parameters and the ingredients of a "clarification". Therefore, for all intents and purposes the OM dated 3.3.2008, must be deemed to be non-est to the extent that the same is in derogation of the earlier OMs dated 7.2.1986 and 3.7.1986. Having so concluded, it is natural to record, that as the position presently stands, the OMs dated 7.2.1986 and 3.7.1986 would have an overriding effect over the OM dated 3.3.2008 (to the extent of conflict between them). And the OM dated 3.3.2008 has to be ignored/omitted to the extent that the same is in derogation of the earlier OMs dated 7.2.1986 and 3.7.1986. In the light of the conclusions recorded hereinabove, we are satisfied that the OM dated 3.3.2008 is not relevant for the determination of the present controversy.

3. Learned senior counsel appearing for the petitioners contends before us that the directions made by the Central Administrative Tribunal have to abide by the principles laid down by the Supreme Court of India in para 29 of N.R. Parmar (supra). It is further submitted that if respondents abide by the same, the petitioners would have no further objections. It cannot be disputed that the authoritative enunciation of the applicable principles by the Supreme Court of India binds all parties before us.

4. Mr. Ankur Chhibber, learned counsel for the official respondents and Mr. A.K. Behura, learned counsel representing the private respondents before us submit that the law laid down by the Supreme Court of India binds them and they would have no objection to the respondents drawing up seniority list complying the principles laid down by the Supreme Court of India in para 29 of the said judgment.

In view of the above, we direct as follows:

(i) The order dated 30th September, 2010 passed by the Central Administrative Tribunal is hereby modified only to the extent that the respondents shall re-consider the seniority list in the cadre of Deputy Directors in terms of para 29 of UOI and Ors. vs. N.R. Parmar & Ors.

(ii) In case, the seniority list is not in compliance with the above directions, the respondents shall ensure that the seniority list is expeditiously drawn up in terms thereof.

The writ petition is disposed of in the above terms.

C.M. NOS. 10798-99/2011

In view of the order passed in the writ petition, these applications do not survive for adjudication and the same are accordingly dismissed.