
(2017) 03 DEL CK 0118
In the Delhi High Court
Case No : W.P. (C) No. 5497 of 2002

Prem Prakash

APPELLANT

Vs

UOI

RESPONDENT

Date of Decision : 17-03-2017

Acts Referred:

Citation : (2017) 4 ADDelhi 168

Hon'ble Judges : Mr. G.S. Sistani and Mr. Vinod Goel, JJ.

Bench : Division Bench

Advocate : Mr. U. Srivastava with Ms. Neelima Rathore, Advocates, for the Petitioners; Mr. Vijay Joshi, Senior Panel Counsel, for the Respondent No. 1/UOI; Mr. Ripu Daman Bhardwaj, Advocate along with Mr. D.P. Singh, AO(P), CBI, in person, for the Respondent Nos. 2 & 3/CBI

Final Decision : Dismissed

Judgement

G.S. Sistani, J. (Oral)—C.M. No.8342/2017 (for restoration, by petitioners)

This is an application filed by the petitioners seeking restoration of the writ petition which was dismissed on account of non-appearance and non-prosecution on 30.01.2017.

2. Notice. Learned counsels for the respondents accept the notice.

3. Heard. For the reasons stated in the application, the same is allowed. The writ petition is restored to its original number and file.

4. Application stands disposed of.

W.P. (C) No.5497/2002

5. Challenge in this writ petition is to the order passed by the Central Administrative Tribunal (hereinafter referred to as the "Tribunal") dated 11.07.2001 by which an OA filed by the petitioners was dismissed.

6. The necessary fact to be noticed for disposl of the writ petition are that the

petitioners were working as LDCs in the Central Bureau of Investigation ("CBI"). The next avenue for promotion from LDC was to the post of UDC. As per the relevant recruitment rules, 75% of the vacancies are filled up by promotion on the basis of Seniority-cum-Fitness, failing which by deputation and transfer, and 25% vacancies are filled up by promotion through a Limited Departmental Competitive Examination ("LDCE").

7. The complaint of the petitioners before the Tribunal was that despite having appeared and qualified the examination which was conducted on 9/10.01.1993, the petitioners were not granted promotion, despite the vacancies being available. The Tribunal dismissed the OA primarily on the ground that the vacancies available had been filled up and since the petitioners were ranked below in merit, they were not granted promotion.

8. The consistent stand of the petitioners before the Tribunal as also before this Court is that in all, 117 promotions were made and 25% of 117 would be 29, while only 13 vacancies were filled up from the LDCE Quota. The petitioners upon qualifying the exams stood at Serial Nos.16, 22, 25, 28 & 35 respectively and were thus entitled to promotion.

9. We have heard the learned counsel for the parties.

10. It has been submitted by the learned counsel for the respondent that up to 1993, there were 81 vacancies in all, out of which 61 vacancies were filled up keeping the criteria of promotion and remaining 25% were filled up on the basis of the examination conducted.

11. Since the short question which arises for consideration is whether despite the vacancies being available, the petitioners have been deprived of promotion. Mr. Bhardwaj, learned counsel for CBI has drawn the attention of this Court to the affidavit filed by the respondents before the Tribunal.

12. We note that a specific affidavit was filed by the respondents before the Tribunal giving the year-wise vacancies and the manner in which they were filled. The relevant portion of the affidavit reads as under:

"1. During the year 1990, no vacancy of UDC occurred but there were 10 vacancies of UDCs which were carried forward from the previous year. However, these vacancies were not earmarked for examination quota but in view of the exigencies of the workload and pressure from the branches, a decision was taken to fill these vacancies out of the LDCs waiting in the reserve panel of DPC in anticipation of the vacancies to arise under examination quota in the subsequent years. Out of these 10 vacancies, 09 were physically promoted and remaining 01 was given proforma promotion under NBR as the LDC was on deputation to other Central Govt. Department.

2. During the year 1991, 39 vacancies of UDCs occurred, these were bifurcated under two separate quotas i.e. Seniority cum Fitness Quota and Examination Quota in the ratio of 75% and 25% respectively as per the provisions contained

in the Recruitment Rules of UDCs in CBI. In this way, 29 vacancies went under Seniority Quota (75% of the total vacancies) and 10 vacancies went under Examination Quota (25% of the total vacancies). a) Out of the 29 vacancies reported to DPC under Seniority Quota, only 23 vacancies could be filled during the year and the balance 06 vacancies remained unfilled. b) Out of the 10 vacancies under Examination Quota, 09 were adjusted against the excess vacancies filled in the year 1990 and 01 was carried forwarded to the next year, i.e. 1992.

3. During the year 1992, total 37 vacancies of UDCs occurred out of which 28 were earmarked under Seniority Quota (75% of the total vacancies) and 09 went under Examination Quota (25% of the total vacancies) as per the provisions contained in the Recruitment Rules of UDCs in CBI. a) In this way, in the year 1992, there were in all 34 vacancies which were reported to DPC (28 occurred during the year + 06 carried forwarded from the previous year). Out of these 34 vacancies under Seniority Quota, only 21 could be filled and the remaining 13 unfilled vacancies were carried forward to the next year. b) All the 09 vacancies which occurred during the year 1992 under Examination Quota along with 01 vacancy carried forward from the previous year, were kept unfilled as no examination was conducted during this year. In this way, at the end of the year 1992, 10 vacancies were there under Examination Quota. 4. During the year 1993, in all 05 vacancies occurred out of which 04 vacancies went under Seniority cum Fitness Quota (75% of the total vacancies) and 01 vacancy went under Examination Quota (25% of the total vacancies) as per the provisions contained in the Recruitment Rules of UDCs in CBI.

(a) In this way, in the year 1993, there were in all 17 vacancies which were reported to DPC under Seniority cum Fitness Quota (04 vacancies occurred during the year plus 13 vacancies carry forward from the previous year). Out of which only 12 vacancies could be filled and the remaining 05 vacancies which were reserved for ST category could not be filled and were carry forward to the next year. b) In the year 1993, under Examination Quota, there were 11 vacancies available under this quota (01 vacancy occurred during the year plus 10 vacancies carried forward from the previous year). Examination was conducted in this year and DPC had given a panel of 08 persons. All the 08 qualified LDCs were promoted as UDC during the year. Beside this, 02 UDCs who were on deputation to other departments and availing proforma promotion under NBR since 1989 and 1990 had also reported back in CBI on their repatriation from the deputation post. In this way, in all 10 vacancies were filled under Examination Quota."

(Emphasis Supplied)

13. The vacancies can be tabulated as under:

Year

Total

Vacancies

Occurred

Total

Vacancies

Filled

75% Seniority Quota

25% Examination Quota

Total Vacancies

75% Seniority Quota

25% Examination Quota

Total Vacancies

1990

--

--

--

--

9

9

1991

29

10

39

23

0

23

1992

28

9

37

21

0

21

1993

4

1

5

12

10

22

Total

61

20

81

56

19

75

14. Having regard to the affidavit placed on record before the Tribunal as also before this Court and the year-wise quota which has been extracted herein above, it leaves no room for doubt that the respondents had filled up the vacancies maintaining the ratio between the seniority quota and examination quota and since the petitioners were not high up in the merit list, they could not have been granted promotion; as has been rightly held by the Tribunal.

15. At this stage, Mr. Srivastava submits that some vacancies may have fallen post 1993 and thus, the petitioners would be eligible for the same. Learned counsel for the respondents submit that no such ground was ever raised or agitated before the Tribunal. We agree with the submission of the counsel for the respondents that any discrepancy in filling vacancies post 1993 would be outside the scope of the present proceedings.

16. For the reasons stated above, we find no merit in the writ petition. The same is accordingly dismissed.

17. No costs.