

(2013) 01 DEL CK 0025
In the Delhi High Court
Case No : Writ Petition (C) 1137 of 2012

P.S. Vimal	Vs	APPELLANT
UOI and Others		RESPONDENT

Date of Decision : 30-01-2013

Acts Referred:

Citation : (2013) 01 DEL CK 0025

Hon'ble Judges : Veena Birbal, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : R.V. Sinha with Mr. R.N. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—We had heard the petitioner who appeared in person at length on January 24, 2013. Except to help us understand his grievance the petitioner could not render further assistance; with reference to the pleadings before the Central Administrative Tribunal and the orders passed from time to time disposing of the Original Application filed by him; which order was set aside by this Court in a writ petition filed by the petitioner resulting in the Tribunal being required to reconsider the matter and at that stage we find that this Court had highlighted the area of dispute which required a factual adjudication by the Tribunal. We were thus constrained to reserve the matter to pronounce our judgment. The reason why we did so was to enable us to read the file in chamber keeping in view the grievance made by the petitioner.

2. Let us trace the history from the pleadings in OA No. 30/2003. The pleadings would reveal that the writ petitioner had sought multifarious reliefs with respect to he not being promoted from the Senior Administrative Grade (SAG) to the Higher Administrative Grade (HAG) by the Indian Railways. One grievance was pertaining to a Railway Board Resolution dated March 29, 2000 as per which officers to be considered for empanelment for promotion in the HAG ought to have worked in SAG for at least five years on regular basis and should be less

than 59 years of age on 1st July of the year for which the panel was to be made.

3. The reason for the Resolution is that the age of superannuation being 60 years and the vacancies for the year in question are computed in advance. The Indian Railways thought it desirable that those promoted in HAG should be left with at least one year service. The petitioner had challenged the legality and validity of the said circular which had resulted in him not being considered when the DPC met on June 02, 2001; inasmuch as the petitioner was to superannuate on July 31, 2001.

4. The petitioner had raised a grievance pertaining to the DPC which met on July 29, 1999 inasmuch as only 13 anticipated vacancies were considered while drawing up the select panel by the said DPC, which considered the name of the petitioner being at Serial Number "25" of the list of eligible candidates but since persons senior to the petitioner were found fit for being promoted and the number of anticipated vacancies was "13" the name of the petitioner was not put in the select list.

5. No DPC was held in the year 2000 because the Department took the stand that no vacancies were anticipated in the said year. The next year i.e. in the year 2001 DPC met on June 02, 2001 but in view of the Railway Board Resolution dated March 29, 2000 did not consider the name of the petitioner as he was to superannuate on July 31, 2001 and as per the Board Resolution he was ineligible.

6. Disposing of the Original Application filed by the petitioner as per order dated December 20, 2004, the Tribunal noted that when the matter came up for hearing on November 05, 2003 the petitioner confined his prayer limited to his non-empanelled for promotion when the DPC met on July 29, 1999, but in spite of noting as aforesaid, as would be evidenced from the order dated December 20, 2004 dismissing OA No. 30/2003, the Tribunal even went into the legality and validity of the Resolution dated March 29, 2000 and in the process confused the three distinct issues which were raised by the petitioner. The first being the number of anticipated vacancies as of the year 1999. The second was the reason why no DPC was held in the year 2000. The third was the effect of the Office Memorandum in question publishing the Resolution dated March 29, 2000 which had the effect of making the petitioner ineligible for promotion when the DPC met on July 31, 2001.

7. The Tribunal did not return any verdict as to the vacancies available, if at all, in the year 2000.

8. For reasons, which we need not note since the same would be a futile exercise, the Tribunal dismissed the Original Application.

9. And we do not blame the Tribunal for the confusion because we had a first-hand experience of the confusion which the petitioner managed to cause in Court when he argued the matter before us.

10. The onward march of the relevant facts which we need to note takes us to

the order dated April 13, 2009 passed by a Division Bench of this Court disposing of WP(C) 20163/2005 filed by the petitioner challenging the order dated December 20, 2004 passed by the Central Administrative Tribunal.

11. The order dated April 13, 2009, would reveal that the petitioner argued only one point pertaining to whether or not 16 vacancies were available in the year 2000 and if yes ought not the DPC be required to be convened as of the year 2000 and this would mean that the petitioner would not be hit by the rigors of the Board Resolution dated March 29, 2000. As a corollary to the said issue would be the issue that if these vacancies were carried forward, in said eventuality when the DPC met on June 02, 2001, whether the said DPC had to consider the eligible candidates with respect to the vacancy position year-wise and not club the vacancies.

12. Thus, the remand by this Court to the Tribunal as per the order dated April 30, 2009 was limited i.e. to find out from the record of the respondents whether 16 anticipated vacancies were available, requiring a Departmental Promotion Committee to be constituted in the year 2000.

13. The order at the remanded stage passed by the Tribunal is dated October 13, 2011 and we find that in para 8 thereof, with reference to the record of the Indian Railways, the Tribunal has found that at best one could say that there could be 10 anticipated vacancies contingent to officers holding the Higher Administrative Grade being inducted as Members (Technical) in Railways Claim Tribunal. The Tribunal noted that certain other vacancies such as those of P.K. Bandhopadhyaya and R.C. Dubey were not anticipated.

14. In a nutshell, a finding of fact with reference to the record of the Department has been returned by the Tribunal that the petitioner could not show that there were 16 anticipated vacancies for the year 2000, for the reason the so called vacancies if HAG members were inducted as Member (Technical) in Railway Claims Tribunal could not be treated as anticipated vacancies.

15. As an alternative view, the Tribunal has held that in the absence of those who were promoted being impleaded as respondents, the petitioner could not challenge the decision taken at the DPC, a finding which is patently wrong inasmuch as the petitioner was not challenging anybody's promotion; the petitioner was claiming a right to be considered for promotion and empanelled by expanding the zone of consideration with reference to the additional vacancies projected.

16. Now, before us, during arguments on January 24, 2013 the petitioner attempted to question the legality and validity of the Board Resolution dated March 29, 2000, which we find the petitioner cannot do inasmuch as he would be bound by the span and the sweep of the order dated April 30, 2009 passed in WP(C) No. 20163/2005 where-under matter was remanded to the Tribunal on a limited point.

17. We may note that before us the petitioner never attempted to even urge that the finding returned by the Tribunal in para 8 of its impugned order, which is a finding of fact and is with reference to the record of the respondent, is incorrect.

18. We would only further add that on questions of fact the Central Administrative Tribunal would be the final adjudicator and especially when the fact relates to culling out the number of anticipated vacancies with reference to the record of the Department. Unless shown to be palpably erroneous or the result of an omission to consider the relevant record, it would even otherwise be permissible in a writ jurisdiction to question findings of fact recorded by the Tribunal after the Tribunal has summoned the record and required the parties to file affidavits with reference to the vacancy position. We find no merit in the writ petition which we dismiss but without any order as to costs.