

(2011) 08 DEL CK 0064

In the Delhi High Court

Case No : Writ Petition (C) 2723 of 1987

Raghuvir Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-08-2011

Acts Referred:

Citation : (2011) 08 DEL CK 0064

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Rajiv Dewan, for the Appellant;

Judgement

Muralidhar, J.—The Petitioner was appointed as Junior Assistant in Projects & Equipment th Corporation of India Limited ("PECIL") in the pay scale of Rs. 310-480 on 25 th July 1979. The Petitioner was promoted to the post of officiating Executive Assistant ("EA")/Junior Accountant ("JA") in the pay scale of Rs. 430-950 on temporary basis. By an office order dated 18 th September 1982 he was regularized in the post of EA.

2. For promotion to the next higher post of Office Manager, the incumbent should have completed seven years as EA/JA /Stenographer. However, where a candidate, like the Petitioner, belonged to the reserved category, the number of years to be completed in the feeder cadre was five years. In terms of the applicable promotion policy at that point in time, the period of ad hoc/officiating service was also to be counted for the purpose of eligibility for promotion. In the seniority list of th EA/JA/Stenographer announced on 27 th June 1986, the Petitioner was placed at th Serial No. 59 although the date of his initial appointment to the post of EA was 16 th February 1981.

3. On 30 th June 1987 the Petitioner made a representation stating that the Respondent had arbitrarily excluded the officiating period of the Petitioner as EA while considering the Petitioner for promotion as Office Manager.

4. In the counter affidavit filed on 20 th January 1988 the stand taken by PECIL

is was that the initial appointment of the Petitioner was temporary and that the officiating period would not count for the purpose of consideration for promotion.

5. This Court has heard the submissions of Mr. Rajiv Dewan, learned Counsel for the Petitioner. He placed reliance upon a number of decisions including B.D. Verma v. Union of India, (1997) 10 SCC 433, , R.S. Ajara and Others Vs. State of Gujarat and Others, Dr. (Capt.) Akhouri Ramesh Chandra Sinha and Others Vs. State of Bihar and Others, G.P. Doval and Others Vs. Chief Secretary, Government of U.P. and Others, and Suraj Bhan v. Union of India 2006 (82) DRJ 180 (DB) to urge that the ad hoc period as EA should count for the purpose of determining the eligibility for promotion as Office Manager. Relying upon the decision in P.N. Premachandran Vs. The State of Kerala and Others, it is submitted that the Petitioner cannot be made to suffer on account of administrative lapse of the Respondent in not considering the case of the Petitioner for promotion as and when it fell due. Mr. Dewan pointed out that Mr. A.K. Gandotra, Mr. H.C. Kapoor and Mr. V.K. Chaudhary were promoted by giving them the benefit of the officiating/ad hoc service. Since none has appeared for the Respondents, this Court has taken note of their stand in the counter affidavit.

6. It is admitted by Respondent No. 2 in the counter affidavit that if the ad hoc/officiating period served by the Petitioner in the post of EA was counted, then the Petitioner would satisfy the requirement of the qualifying period for promotion to the post of Office Manager. It is pointed out that there was a settlement arrived at with the employees and Clause 4.7.2 thereof required the SC/ST roster to be continued to be maintained. Although it is not denied that the officiating service had to be considered, it is stated that since it might result in suppression of a number of seniors, "promotion of seniors was effected upon their completing the qualifying period." It is submitted that the basic seniority list had not been disturbed. It is stated that Mr. Om Pal Singh, whose promotion to the post of Office Manager was earlier to the Petitioner, was in fact senior to the Petitioner. As regards Mr. Ramesh Kumar, he had been promoted to the post on 1 st July 1987 but the monetary benefits had been th granted to him with effect from 11 th January 1987. The Petitioner had been shown senior to Mr. Ramesh Kumar.

7. The explanation given by the Respondent for not counting the ad hoc period is not very convincing. In terms of the policy that was applicable at the time the Petitioner had to be considered for promotion, the period during which he was an ad hoc EA had to be counted. The policy whereby the ad hoc period was to be excluded was subsequently made and would not apply retrospectively to deny the Petitioner his right to have the ad hoc period counted for the purposes of seniority. The explanation that this might affect his seniors overlooks the fact that for the Petitioner who was in the reserved category the period of qualifying service for promotion was five years whereas for those who were in the unreserved category it was seven years. Therefore even otherwise the Petitioner would have been promoted as Office Manager earlier than those belonging to the unreserved category who might have been senior to him in the feeder cadres.

The Petitioner is justified in contending that the period of officiating/ad hoc service in the post of EA should be counted for his eligibility for promotion to the post of Office Manager. There appears to be No. valid reason for denying the Petitioner promotion as Office Manager with effect from 1st July 1987 as prayed for.

8. Accordingly, a mandamus is issued to Respondent No. 2 to consider the case of the Petitioner for promotion as Office Manager from 1st July 1987 and also fix his seniority accordingly with all consequential benefits. Necessary orders be issued and payment of arrears be made by Respondent No. 2 within a period of eight weeks from today.

9. The writ petition is disposed of in the above terms.