

(1991) 03 DEL CK 0053

In the Delhi High Court

Case No : Civil Writ Appeal No. 3647 of 1990

Rama Kapur

APPELLANT

Vs

Income Tax Development Corporation

RESPONDENT

Date of Decision : 06-03-1991

Acts Referred:

Citation : (1991) RLR 234

Hon'ble Judges : S. Duggal, J; B.N. Kirpal, J

Bench : Division Bench

Advocate : B. Dutta, Shiv Kumar, S.N. Bhandari, V.N. Sharma and M. Chopra, for the Appellant;

Judgement

B.N. Kirpal, J.

(1) RULE. D.B. The challenge in this W.P. is mainly to two actions of the respondent Corp. Firstly, the petitioner is challenging her seniority vis-a-vis with those of respondents 4 and 5 and the second challenge is to the respondent Corp. not considering the petitioner as being eligible for being promoted to the next higher post of Senior Manager in the Corp.

(2) Briefly stated, the facts are that the petitioner as well as the respondents 4 and 5 are employees of the respondent Corporation. Their details of employment are as follows : Mrs. Rama Kapoor, Graduate, 26.8 67 -Appointed Asstt. Manager (Rs 425-800). 1.8.74-Promoted Senior Asstt. (550-900). Nov. 83-Promoted Asstt. Manager (Rs. 700-1300). 25.7.90-Promoted Manager (1100-1600). C.P.S. Pillai, Non-Graduate, resp. 4 Nov. 69-Appointed in scale Rs. 330-560. 19.9.76-Promoted Senior Asstt. (Rs. 550-900). Sept. 86-Promoted Manager (Rs. 1:00-1600). Sh. A K. Roman, Graduate, resp. 5 June 69-Appointed Jr. Steno (Rs. 330-500). 1.7.80-Promoted Asstt. Cont. (Rs. 700 1300). Sept. 86-Promoted Manager (Rs. 1100-1600).

(3) The aforesaid details are challenged by the respondents only to the extent that respondent

(4) Is stated to be a Graduate and not a non-Graduate and secondly, the scale given of Rs. 425-800 of the petitioner is not correct as she was in the scale of Rs. 210-425. It is, however, admitted that respdt was not a Graduate when he joined the respdt. Corp. and he became a Graduate only in 1983, after he had been promoted to the scale of Rs. 700- 1300 as Assistant Manager. Furthermore, it is the admitted case of the respondents that the scale of Rs, 210-425 was the pre-revised scale is Rs. 425-800 since 1973. It is true that in 1967 the petitioner was in the pre-revised scale of Rs. 210-425 but in 1969 respondents 4 and 5 were in the pre-revised scale of Rs. 130-300 and Rs. 210-530 respectively. 4. The aforesaid facts clearly show that the petitioner was recruited in the higher scale earlier in point of time than respdt. No. 4 or 5. Furthermore, the petitioner was promoted to the scale of Rs. 550-900 earlier in point of time than respondents 4 and 5. The difficulty has arisen, as far as petitioner is concerned, with regard to her promotion to the next higher grade of Asstt. Manager (Rs. 700-1300)

(5) The aforesaid difficulty has arisen admittedly because of the manner in which the seniority list was prepared by the respondent Corp. According to the Corp. there are different functional areas under it. The seniority is maintained functional wise ,for instance the seniority of the transport department would be different from the seniority of the employees working in the hotel division and different from the seniority of the employees working in the duty free shops. It is, however, not in dispute that the Corporation has the power to transfer an employee in the same scale from one functional area to another functional area. In fact, the petitioner was so transferred originally from the duty free shop to different departments from time to time.

(6) In our opinion, when there is a power of transfer, and the employees are transferred possibly for good reason, from one functional area to another functional area, then there has to be a common seniority list which should be maintained. The seniority list has to be of grade and not of functional area. If this is not so, the effect would be that a person can be deprived of his seniority by transferring him to another functional area and placing him under a junior employee. This will obviously affect the right of promotion and this is what has happened in the present case. According to the respondents, in 1980 respondent 4 was working in the duty free shop and was the senior most and, Therefore, was promoted by the Departmental Promotion Committee. According to respondents, petitioner was not working in the duty free shop in 1980 and, Therefore, she was not considered by the D.P.C. The petitioner was not considered because she was removed from the seniority of duty free shop as she was working in a different functional area. This in our opinion, was a wrong procedure which was followed by the Corp.

(7) The seniority list should have been a common seniority list for all the employees working in the grade of Rs. 550-900 when those employees are holding inter-changeable posts irrespective of the functional area in which those posts are. If this is not done, the respondent Corporation will have arbitrary

power to alter the seniority and promotional avenues on its whims and fancies. In order to deprive a person of his promotion in the next higher grade, if promotion is made on the functional area basis, then all that the Corporation has to do is to transfer that person to different functional area and thus deprive him of the promotion. If, on the other hand a common seniority list is maintained, such possibility of exercise of arbitrary power will not arise.

(8) We have no reason to doubt that in the present case if a common seniority list had been maintained, the petitioner, who had all along been senior to the respondents 4 and 5, would have been considered and possibly promoted in 1980 as an Assistant Manager. At this point it is relevant to take into consideration an important fact and that is that the petitioner admittedly made a representation to the Corporation but the question arose with regard to her being considered for promotion to the post of Manager. The requirement for being appointed as a manager was that the person should have five years experience in the grade of Rs. 700-1300. The petitioner who had been promoted in 1983 to the grade of Rs. 700-1300 did not have five years experience whereas respondents 4 and 5 had that five years experience because they had been promoted in 1980. The Grievance Committee vide its decision dated 12.2.87 granted relief to petitioner and observed : "The Committee observed that Mrs. Rama Kapoor was not called for interview in 1980 for the post of Manager (DFS) in the pay scale of Rs. 700-1300 in spite of written assurance to her by the Competent Authority that she will be called for interview Along with others as and when post of Manager (DFS) is filled up. Mrs. Rama Kapoor's promotion was delayed for about 3 years when she was considered and promoted as Am (Sales) in November 83. The Committee unanimously, decided that in order to compensate Mrs. Kapoor for the aforesaid delay, she may be given relaxation for placing her within the zone of consideration for the next higher scale of pay i.e. Rs. 1100-1600 as and when any vacancy exists in future. The Committee noted that she has already put in more than 3 years service in the scale of Rs. 700-1300 whereas minimum experience required for promotion to the level of Rs. 1100-1600 is 5 years. The relaxation of period falling short of 5 years was granted by the Committee for consideration of her name in the future."

(9) From the aforesaid it is clear that the G.C. of the respondent came to the conclusion that the petitioner should have been called and considered for promotion in 1980 and her promotion was wrongly delayed for a period of three years. The decision of G.C. is in consonance with the principle that there should have been a common seniority list and if this had been done, injustice to the petitioner would have not been done in 1980.

(10) For the aforesaid reason, we are firmly of the view that the seniority of the petitioner vis-a-vis with the seniority of the other employees has to be fixed and the seniority list has to be prepared on the grade basis and not functional area wise basis.

(11) This will be possible only if there is a common cadre in the sense that a

person can be transferred from one functional area to another functional area. If there is a water tight department and no transfer is permitted, then within the water tight department seniority list will be prepared. But where there is a common cadre and the employees are transferred from one functional area to another functional area in the same grade, then there must be a common seniority list.

(12) Coming now to the second grievance of the petitioner, in our opinion, the decision of the G.C. should be taken to its logical conclusion. If the petitioner was wrongly deprived of her appointment as an Assistant Manager in 1980 and has been given the benefit of three years by the G.C. for considering her to be eligible for promotion to the next higher post of Manager, then it will be logical to hold that she should be given this advantage of three years even for considering her for being eligible for the next higher post, namely, that of Senior Manager. The reason for this is very simple. If the petitioner had been promoted in 1980, then she would have been eligible for promotion as a Manager in 1986. She was, in fact, promoted as Manager in 1990. Her position qua eligibility could only be better and not worse than that of respondent 4. As and when respondent 4 is considered to be eligible for being considered for promotion, the petitioner should have also been considered eligible. This being so, the respondents should consider her as being eligible for promotion to the post of Senior Manager and should not ignore her simply for the reason that she has not served for three years as Manager in the grade of Rs. 1100-1600.

(13) From the aforesaid it will follow that a common seniority list has to be prepared and maintained and the basis for the seniority will be the date of entry in a particular grade. The water tight compartment type of functional area may have separate seniority list if no transfers are allowed to or from that functional area.

(14) Furthermore, the petitioner has to be considered for promotion to the next higher post of Senior Manager. The petitioner will have to be placed in the seniority list of managers from the date when respondent 4 was so placed for the purpose of selection to the post of Senior Manager. We further direct the respondents to hold a fresh D.P.C. for appointment to the post of Senior Manager.