

(2019) 12 CAT CK 0019

In the Central Administrative Tribunal

Case No : Original Application No. 2639 Of 2016

Ramesh Chander

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 13-12-2019

Acts Referred:

Citation : (2019) 12 CAT CK 0019

Hon'ble Judges : Vijay Lakshmi, J; Pradeep Kumar, Member (A)

Bench : Division Bench

Advocate : B.K. Berara, Zulfiqar Alam

Final Decision : Dismissed

Judgement

Vijay Lakshmi, J

1. The applicant in the present OA has prayed for the following reliefs:-

"(a) to direct the respondents to grant seniority/ promotion under the handicap quota w.e.f. 30-06-1990 to the Applicant as granted to Shri Ashok Kumar Tanwar junior to the Applicant with all consequential benefits.

(b) Direction to the respondents to pay interest on arrears and cost of litigation to the Applicants as the Applicants has been dragged to the Tribunal by the respondents.

(c) Any other relief as this Hon"ble Tribunal may deem fit under the present facts and circumstances of the case."

2. We have heard learned counsel for the applicant, learned counsel for the respondents and have carefully gone through the records.

3. Both the parties were directed to file written arguments within a week. The applicant has filed written arguments along with relevant case law which is taken on record. However, the respondents have not filed any written argument. We have perused the written argument and the judgment of the Hon"ble Supreme

Court and OM dated May 19, 2015 filed by the applicant with the written arguments.

4. Some background facts in brief, giving rise to the controversy involved in this case, are that the applicant a physically handicapped person was appointed as Lower Division Clerk (in short "LDC") on compassionate grounds on 30.5.1981 in Military Engineer Service (in short "MES"). He joined the service on 2.6.1981 and was initially posted to Garrison Engineer, Red Fort, Delhi. As he had produced some medical documents showing his physical disability, he was exempted from the mandatory requirement of typing test for such post. Subsequently, in due course, the applicant was promoted as Upper Division Clerk (in short "UDC") as well as Office Superintendent (in short "OS") as per his turn and seniority, under general quota.

5. The applicant is aggrieved due to the reason that another handicapped person namely Shri Ashok Kumar Tanwar, who is junior to the applicant, as he had joined as LDC on 1.9.1983 under the "handicap quota" was promoted earlier to the applicant. The applicant made a representation to the department to consider his promotion under "handicap quota" but the respondents rejected his representation, vide impugned order dated 4.6.2016.

6. The applicant is aggrieved due to the fact that a handicapped person junior to him was promoted under handicap quota earlier in time whereas he, despite being a handicapped person, was not promoted and the representation made by him was rejected vide impugned order dated 4.6.2016.

7. The respondents have filed counter affidavit, contending that the appointment of the applicant was under general quota and not under "handicap quota" as he was appointed on compassionate grounds. Therefore, the applicant was promoted as UDC and OS under general quota as per his turn and seniority. As the case of the applicant was found untenable in the given facts and circumstances and legal provisions, his representation was turned down. It has been further averred in the counter affidavit that the applicant after his compassionate appointment, had never represented to consider him against "handicap quota". Though he is comparing his case with Shri Ashok Kumar Tanwar, but there is no comparison between the two, because the appointment of Shri Ashok Kumar Tanwar was under "handicap quota". Moreso, Shri Ashok Kumar Tanwar was given promotion as per Court's order. It has been further contended in the counter affidavit that except exemption from the typing test, there is nothing in official documents to show that the applicant was appointed under "handicap quota". Moreover, the applicant never moved any application or representation, earlier, to convert his compassionate appointment from "general quota" to "handicap quota".

8. We have considered the rival contentions of learned counsel for both the parties.

9. The appointment letter of the applicant dated 20.5.1981 (Annexure A/2)

clearly shows that there is no mention in it of any physical disability of the applicant. The appointment letter also shows that the applicant was required to pass a typing test prescribed for the post. However, after 10 -11 days of his appointment, a letter dated 2.6.1991 was sent by Garrison Engineer to Administrative Officer, Commander Works Engineers, requesting to exempt the applicant from typing test and medical fitness examination which are mandatory requirements in the case of a normal person, considering the physical disability of the applicant. The Administrative Officer, Commander Works Engineers vide letter dated 4.6.1981 asked for medical certificates of the applicant for justifying the exemption for the requisite typing test which was provided by the applicant on the basis of which he was exempted from typing test.

10. It is noteworthy that the copy of the physical disablement certificate, which has been annexed by the applicant with this OA, shows that it has been issued on 27. 5.1983 by Dr. S.S. Pandey, Orthopaedic Surgeon of Dr. Ram Manohar Lohia Hospital, New Delhi showing 50% permanent disability in right upper limb and 40% in right lower limb. However, there is no evidence to show that the applicant had ever made any representation to keep him under "handicap quota". In the rejoinder affidavit, the applicant has not denied the fact that his appointment on compassionate ground was under "general quota" and not under "handicap quota". However, he has repeatedly laid stress on the point that despite being exempted from typing test on the ground of his physical disability, he was not given promotion at the right time whereas the respondents were duty bound to implement the Government Scheme on reservation in promotion of handicapped persons. In this regard, learned counsel for the applicant has placed reliance on G.I., Department of Personnel and Training Office Memorandum dated November 20th, 1989 and also on Office Memorandum dated May 19, 2015 of Ministry of Personnel, Public Grievances and Pensions, Department of Personal and Training to show that there is a provision of 3% reservation of handicapped persons in promotion.

11. It is pertinent to mention that the applicant along with his written arguments has filed a document as additional evidence as Annexure-1 to the Written Arguments, which is the appointment letter of Shri Ashok Kumar Tanwar to show that he too was not appointed under the handicap quota.

12. The aforesaid document (Annexure-1 to the written arguments) cannot be taken cognizance of due to the reason that it has been filed without the support of any affidavit, that too, at a very belated stage after conclusion of the hearing, without even seeking prior permission of this Bench to file it. It is not legally permissible because the respondents had no opportunity to see it or to rebut it.

13. In the counter affidavit, it has been clearly stated that the applicant was appointed as LDC under general quota on temporary basis on compassionate grounds on 2.6.1981 and after his appointment, he never made any representation to consider him against handicap quota and Shri Ashok Kumar Tanwar was given benefit of handicap quota as per Court's Order. Therefore,

the applicant was not given the benefit under handicap quota by the respondents.

14. The applicant has placed reliance on the law laid down by the Hon"ble Apex Court in the case of Bhagwan Dass and another vs. Punjab State Electricity Board, (2008) 1 SCC 579, and OM No.F.No.25012/1/2015-Estt (A-IV) dated May 19, 2015 issued by Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training.

15. The applicant cannot be given any benefit out of the said judgment or the Office Memorandum passed in pursuance of the aforesaid judgment. Because the facts of the case in hand are entirely different from the case before Hon"ble Apex Court. In the case of Bhagwan Dass (supra), the appellant suffered physical disability by complete loss of vision during his service. Under the apprehension that blindness would cause loss of job, which was the only source of livelihood of his family, and enormous mental pressure, he sought voluntary retirement being not aware of any protection which the law afforded him. Under these circumstances, the Hon"ble Apex Court held that it was the duty of the superior officers to explain to the employee about the correct legal position and to tell him about his legal rights under Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. In pursuance of the judgment rendered in Bhagwan Dass case, the Office Memorandum dated May 19, 2015 was issued by DOP&T which says that "No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service. It further says that no promotion shall be denied to a person merely on the ground of his disability.

16. The facts of the present case clearly reveals that the applicant herein had not acquired any disability during his service but his case is that he was a disabled person since prior to his initial appointment on compassionate grounds. Moreso, in the present case, the applicant has not been denied any promotion on the ground of his disability. He has been promoted when his turn has come for promotion.

17. Having considered the rival contentions led by learned counsel for the parties, we are of the firm view that the applicant cannot be given any benefit out of the aforesaid Office Memorandums because he was not appointed under the quota meant for physically handicapped persons. His appointment as LDC was a compassionate appointment under general quota. He had only been granted exemption from typing test, considering his physical disability. The applicant neither made any representation at any point of time to the department that his appointment be converted from general category to handicapped category nor at any later stage. Therefore, he was promoted to the post of UDC as per his turn and seniority under general quota.

18. In so far as promotion of Shri Ashok Kumar Tanwar to UDC is concerned, though Shri Ashok Kumar Tanwar was appointed on 1.9.1983 and was junior to

the applicant, but as he was appointed under handicapped quota, he was given reservation in promotion as per DOP&T's OMs. More so, Shri Ashok Kumar Tanwar had filed an OA, being OA No.438/2013, before Central Administrative Tribunal, Principal Bench, New Delhi and this Bench, vide its Order dated February 25th, 2014, passed in the said OA, had directed the respondents to consider the case of Shri Ashok Kumar Tanwar for promotion and consequential benefits in the light of the observations made in the said Order.

19. Considering the facts and circumstances of the present case and for the foregoing reasons, we are of the considered view that this OA is devoid of merit and is liable to be dismissed. Accordingly, the OA is dismissed. No order as to costs.