

(1992) 08 DEL CK 0013

In the Delhi High Court

Case No : Civil Writ Petition No. 3213 of 1991

R.K. Sharma

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 03-08-1992

Acts Referred:

Citation : (1992) 23 DRJ 505

Hon'ble Judges : J.K. Mehra, J

Bench : Single Bench

Advocate : E.X. Joseph and S. Mukherjee, for the Appellant;

Judgement

J.K. Mehra, J.

(1) The present petition has been filed by the petitioner in the following circumstances.

(2) The petitioner was appointed a Telex Operator in the pay-scale of Rs.330-560 on 1st September 1980. At the time of his appointment the Junior Assistants also enjoyed the same scale and common requirement was knowledge of typewriting proficiency at the rate of 40 w.p.m.. It is the case of the petitioner that he was appointed after having cleared the typewriting test. Although this test was initially disputed by the respondents, but on verification from the original record, I satisfied myself that such a test had been conducted and cleared by the petitioner. In 1982, (he Respondent-Corporation merged the persons appointed in ex-cadre post with the category of Junior Assistant brought out a joint seniority list among the staff in the ranks of Junior Assistants enjoying the same scale i.e.Rs. 330-560. The said seniority list was brought out on 18.6.82 wherein the petitioner was shown at S.No.2. Below the name of the petitioner, the words "Telex Operator" are written. This particular seniority list was not objected to and was operated upon. It may be clarified that this seniority list was brought out before any Recruitment Rules were framed or notified as per law. This seniority list had become final. Subsequent thereto, new Recruitment &

Promotions Rules came into force on 27.6.84 wherein it was provided that the appointments made in the Corporation prior to these rules shall be deemed to have been made under these rules. In the circumstances of the case, the petitioner contends, that such a provision could only mean that the appointment of the petitioner as Junior Assistant on the basis of the merger in 1982 is deemed to have been made under the aforesaid rules. Subsequent to the enforcement of the aforesaid rules another seniority list of Junior Assistants was issued wherein the petitioner's name was shown at Serial No.3. but there was a rider attached which reads as -

"SUBJECT to fulfilling the qualitative requirement as per the Recruitment & 3 Promotion Rules."

(3) The covering letter to this second seniority list had clearly stated "Consequent upon the merger of some Ex-cadre posts to the post of Jr. Assistant certain variations in Seniority List have taken place. Reconciling all the aspects a fresh Inter-se seniority list among the staff in the scale of Rs-330-560 are notified for information of all concerned." Written objections to this seniority list were also invited and on the expiry of the time for objections this list became final. It is further pointed out that it was not required, yet on the respondent calling upon the petitioner to take Typing Test at the prescribed speed of 40 w.p.m. and in reply to the said communication dated 7.1.85 the petitioner appeared for typing test and cleared it. Thereafter on 15.4.85. the petitioner was considered for promotion by the Dpc and was promoted to the post of Assistant in the scale of Rs.425-800 and such promotion was communicated vide office order dated 15.4.85. Following such promotion the petitioner took charge of the post of Assistant w.e.f. afternoon of 22nd April 1985 which fact is confirmed by a letter from the respondent dated 7.5.85. Following his promotion, another seniority list of Assistants was published wherein the petitioner was shown at S.No. 16. The respondents have submitted that certain objections were received to the seniority list of the Assistants brought out in February 1986 and it was as a consequence of consideration of those representations, that a memo dated 7.1.87 was issued to the petitioner. The said Memorandum reads as under:-

"CONSEQUENT upon the representation "against his promotion effected based on "his initial date of entry in the Corporation to the post of Assistant in the "scale of Rs.425-800. the Competent Authority has critically examined the stand "of effected Junior Assistants. After due "deliberation of the representation and "critical examination of the Seniority "Rules, "it has been decided that either "Sh. Rakesh Sharma, Assistant is to revert "back to his original post i.e. of Telex "Operator with the present scale of pay "i.e. scale of Rs.425-800 or he is to be "placed at the appropriate place in the "Seniority List of Junior Assistant. "whereby, he may have to revert back to "his lower scale of pay. Sh. Sharma, Therefore, is given an "offer to the post of Telex Operator in "the scale of Rs.425-800 and request him "to convey his acceptance to the proposed "offer latest by 14.1.87 failing with the "Corporation will have no option but to "revert

him back to his original cadre of "Telex Operator/Junior Assistant and his "seniority in the said cadre will be fixed "accordingly."

(4) It is interesting to note that the authority does not give any considered decision as to how Mr. Sharma's inclusion in the seniority or his promotion was improper or bad. but on the contrary it gives him option either to suffer reversion to the original post of Telex Operator with the existing scale of pay or to be placed at the appropriate place in the seniority list of Junior Assistants where he may have to revert back to his lower scale of pay. Faced with such anomalous situation where neither the seniority list was dispatched nor it is held that he was not put in the Junior Assistants' seniority. In fact he is offered by the department to be placed in that particular category by reverting him to his lower scale of pay. The petitioner gave a letter on 21.1.87 giving his willingness to accept the scale of Rs.425-800 provided he is given benefits of seniority with effect from 15.4.85 and designated as an Assistant (Telex) and that it is made into a period cadre post in the proposed Recruitment and Promotion Rules along with Assistants (general) in the same scale for promotion to the next higher grade of Section Officer (Personnel & Administration) in the scale of Rs.500-900. It is interesting to note that on 13.9.88, the petitioner was informed by a Memo that "He may be given the option to go back as Telex Operator with the protected pay or in case he chooses to remain, then he will not be entitled to any future promotion on the basis of the present seniority which has been fixed wrongly", and that "there can be no objection to his seniority being revised/fixed having regard to the date of his joining as Junior Assistant and his future promotion determined on that basis and the present designation also revised accordingly."

(4) All this is being done without casting any aspersion on or declaring his promotion as wrongful and without revoking his promotion affected on 15.4.85. While this has been going on a seniority list of Assistant was brought on 13.11.90 wherein the petitioner was shown at S.No.11. However on 18.12.90 the Personnel Department declared such an inclusion as inadvertent. Representation against such omission was also rejected and issued another seniority list omitting the name of the petitioner and petitioner's representation against such omission was also rejected. Consequent upon the omission of the petitioner from the List of Senior Assistants cannot be considered for promotion as Section Officer whereas all others in the said seniority list would be considered.

(5) I have heard the parties at length. Counsel for the respondent has fairly conceded that according to their view. the petitioner remained included in the seniority after clearing the Typing Test on 5.1.85 because" initially the Typing Test which was given to him was for Telex Operator. He concedes that such test was cleared by the petitioner. I fail to understand how two typing tests are different because the key board of the Telex machine and the typewriter is similar and the process of typing letter is same. For that reason the second typing test was superfluous. In the memo of the respondents, no other requirement is indicated which the petitioner had to fulfill to qualify for inclusion

in the said seniority list. Accordingly I hold that the petitioner was correctly placed in the seniority list on the merger of the two cadres i.e. ex-cadre post of Telex Operator with the post of Assistants and was entitled to be considered for all consequential promotions following such merger and his non-inclusion therein was unjustified and could not have been based on any rational consideration. The petitioner has relied upon Ex-Major N.C. Singhal Vs. Director General Armed Forces Medical Services, New Delhi and Another, wherein the Supreme Court was pleased to lay down the conditions of service was not liable to be altered or modified to the prejudice of the appellant by an Administrative instruction which were given retrospective effect from 26.10.82. The principle that emerged from the discussion in that case is summed up that the government has no power to alter or modify the conditions of service of a government servant with retrospective effect to the prejudice of the government servant. The other ruling cited by the petitioner in support of his contention are The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others, , which also related to the persons having been drawn from 3 sources and subsequent integration into single cadre, wherein the Supreme Court had laid down that once the persons coming or recruited to the service, from two different sources are absorbed into one integrated class with identical service conditions, they cannot be discriminated against with reference to the original source, for the purpose of absorption and seniority. In (he present case, what prompted the authority was the objections based on his original source of employment as Telex Operator. The other rulings cited by the petitioner included the cases of A. Janardhana Vs. Union of India and others (193) 3 Scc 601 and Jawaharlal Nehru University Vs. Dr. K.S. Jawatkar and Others, .

(6) The respondents have drawn my attention to the case 1986 (2) Slr 628 wherein S.S. Chadha, J. of this Court had laid down that even in the absence of the duly notified recruitment regulations the Corporation had the authority to appoint a person. That I am afraid does not in any manner apply to the facts of the present case where I find that the action of the respondents in excluding the petitioner from the seniority list of the Senior Assistant suffer from total arbitrariness apart from being otherwise not in conformity with the canone of natural justice.

(7) The counsel has further stated that although the Recruitment & Promotion Rules came into force in June 1984, but the said recruitment rules were framed in the year 1981 and had been submitted to the competent authority for approval on 23.10.81. Be that as it may. Recruitment Rules until they come into force will not have effect of altering any condition of service which have already come into existence before coming into force of the Recruitment Rules.

(8) Accordingly , I allow this writ petition. The exclusion of the petitioner from the seniority list of Senior Assistant issued in December 1990 is hereby set aside. The respondents are directed to reinstate the petitioner's name in the said seniority list to its original place and consider him for promotion and future

promotions. In the circumstances, parties are left to bear their own costs. If any promotions have already been made by the respondents, the same shall be subject to the consideration of and promotion of the petitioner as if his name had not been excluded in the first instance.