

(2005) 10 DEL CK 0042

In the Delhi High Court

Case No : Writ Petition (C) 19119 of 2004

R.K. Srivastava

APPELLANT

Vs

Delhi Jal Board and Others

RESPONDENT

Date of Decision : 27-10-2005

Acts Referred:

Citation : (2006) 126 DLT 676

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Sunil Satyarthi, for the Appellant; Sandeep Aggarwal, for the Respondent

Judgement

S. Ravindra Bhat, J

1. Issue Rule. With consent of parties, the petition was heard finally.
2. The petitioner, in these proceedings, claims that he has been ignored and overlooked by the respondent DJB while issuing an order dated 22.11.2004 entrusting current duty charge in the post of Executive Engineer (E and M) on a temporary basis. It is alleged that his juniors were given that benefit.
3. The petitioner was appointed by DJB on 28.01.1983 as Assistant Engineer. The seniority list for the post was circulated on 10.04.1987. As per the seniority list, the petitioner was placed at Serial No.65 whereas the respondent Nos. 4 and 5 were below imp at Serial No. 66 and 68.
4. The DJB revised the pay scale for the post of Assistant Engineer in August 1999 and subsequently, the petitioner was also granted the Assured Career Progression benefit on 26.06.2003.
5. In this background, it is averred that while placing officials in current duty charge, the petitioner could not have been ignored and the respondents have acted in an arbitrary and discriminatory manner.

6. The DJB, in its return, has taken the position that certain minor penalty proceedings had been initiated against the petitioner which led to an order dated 19.8.99 imposing the penalty of withholding of two increments with cumulative effect. The order by which the penalty was imposed has been placed on record. The allegations found against the petitioner were that he had not taken steps to initiate action for ensuring the supply of

10 hand pumps and the spares from a Contractor. The order of penalty has become final.

7. It was also alleged that the petitioner was "booked" for major penalty proceedings in October 2004. The charge sheet was issued in May 2005.

8. Learned counsel for the petitioner besides reiterating the submissions and contentions in the writ petition, also contended that the respondents could not have adopted a policy of "pick and choose". The petitioner ought to have been considered; and that the effect of minor penalty imposed on him in the year 1999 cease to be in vogue. He submitted that the respondents could not take shelter of disciplinary proceedings, since admittedly the charge sheet was issued in May 2005.

9. Learned counsel for the respondent on the other hand, submitted that the impugned order is not a promotion in any case the DJB would be initiating action to fill up the post on regular basis shortly as per the recruitment rules and that would involve consultation with the Union Public Service Commission (UPSC). He submitted that no employee has a right to be placed on in charge basis. The petitioner had not made out the case showing his entitlement to be placed as In charge which did not entail regular selection or even payment of higher salary.

10. The issue which arises is whether the denial of "In charge" duty to the petitioner can be categorized as arbitrary. As noticed earlier, the posting is purely on the exigencies of work and is temporary in nature. Nevertheless while posting employees, the authority, namely, the DJB is expected to follow certain principles or a rationale. The question here is whether denial of the benefit of placing the petitioner "In charge", can be called arbitrary. The two grounds taken are the earlier imposition of a minor penalty and a pending charge sheet, issued in May 2005. 11. I am of the opinion that no employee can claim a right to an "In charge" posting. The consideration by the Court has to be confined to the issue whether the reason given for excluding the petitioner is arbitrary. In this case, the DJB had imposed minor penalty in the year 1999. This has been cited as a reason by DJB; it is, in my opinion sufficient ground to deny the benefit to the petitioner. An "In charge" posting is not a regular promotion and it is of an extremely tenuous character.

12. As far as the issue of charge sheet is concerned undoubtedly the counsel for petitioner is correct in stating that no disciplinary inquiry or proceeding commences unless a charge sheet is served upon an employee. That issue is not relevant in view of my conclusion that the reason for not granting the petitioner

the benefit of In charge arrangement was the imposition of a prior penalty, which cannot be called arbitrary.

13. Having regard to the circumstances and the statement of the parties, I am of the view that the respondent should process the case for filling up of the post of Executive Engineer (E and M) as expeditiously as possible; ensure that the process is initiated through the UPSC within eight weeks from today and follow up the same. The relevant papers and documents should be forwarded to the UPSC within that period. All endeavor shall be made to ensure that the regular DPC is held and promotions are effected within a period of six months from today. In such an eventuality, the petitioner's case would be considered subject to the sealed cover procedure, and other rules applicable in DJB.

14. Petition is disposed off in the light of the above directions. No costs.