
(2011) 05 DEL CK 0413

In the Delhi High Court

Case No : Writ Petition (Civil) No. 3661 of 2011

Sandip Kumar Roy

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-05-2011

Acts Referred:

Citation : (2011) 05 DEL CK 0413

Hon'ble Judges : Dipak Misra, C.J; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Gyan Prakash, for the Appellant; Ankur Chhibber, for the Respondent

Judgement

Sanjiv Khanna, J.—The Petitioner, Sandeep Kumar Roy, has assailed order dated 23rd April, 2010 passed in OA No. 1259/2010 and order dated 7th July, 2010 passed in RA No. 159/2010, by the Central Administrative Tribunal, Principal Bench, New Delhi (tribunal, for short).

2. By order dated 23rd April, 2010, learned Tribunal held that the Original Application filed by the Petitioner was time barred and the application for condonation of delay deserves to be dismissed. In these circumstances, the merits were not examined. R.A. No. 159/2010 was dismissed vide order dated 7th July, 2010 on the ground that the first order was passed on the basis of pleadings made in the Original Application and there was no occasion for review on the basis of new material.

3. The Petitioner was selected as Geologist (Junior), Group "A", junior scale post in the Geological Survey of India. The said examination was conducted by Union Public Services Commission and the Petitioner was 25th in the order of merits as per the list published in October, 1999. The Petitioner was issued an appointment letter dated 15th May, 2002. It appears that some others were issued appointment letters in the year 2000. It is pointed out that this delay in issue of appointment letter was on account of a stay order passed by the Central Administrative Tribunal, Allahabad.

4. On 16th January, 2009, the Petitioner was recommended by the Departmental Promotion Committee (DPC, for short) for promotion to the post of Geologist (Senior), Group A, senior time scale. The Petitioner, thereafter gave a number of representations that his juniors had been promoted as Geologist (Senior) Group A, senior time scale, in the year 2007 and he should be given promotion from the date his juniors were promoted. As the Petitioner did not receive any reply and response to his representations, he approached the tribunal in OA 1259/2010.

5. It is apparent from the order dated 23rd April, 2010, that the tribunal has taken the view that the Petitioner was challenging the seniority list on account of the delay and default in appointment or the delay in issue of appointment letter. This challenge as per the tribunal should have been made in 2000/2002 or soon thereafter but not in 2010.

6. The Petitioner has placed on record copy of the seniority list of Geologist (Junior) as on 1st July, 2005. The Petitioner is shown at Sr. No. 25 in the said seniority list. It is pointed out by the Petitioner that a stay order was passed by the Central Administrative Tribunal, Allahabad, in the year 2000, pursuant to which successful candidates could not be issued appointment letters. Thus, it is submitted that this fortuous circumstance over which the Petitioner had no control, cannot give a march or work as an advantage for those who were lower down on the merit list. Accordingly it is urged that the Petitioner was not at fault.

7. Further, Geologist (Junior) with 5 years service were/are eligible for promotion as Geologist (Senior). Therefore, in the DPC held on 6th August, 2007, the Petitioner was not eligible as he had not completed 5 years. Whereas the Petitioner was eligible as had completed 5 years of service when the DPC was held in 2009.

8. In view of the aforesaid facts, the contention of the Petitioner is that there was no delay on his part in approaching the tribunal. The Petitioner states that he was given seniority as per the merit list at serial No. 25 as Geologist (Junior) He claims that he should be treated as senior to his juniors, after he was promoted to the post of Geologist (Senior) in 2009. The Petitioner has contended that the cause of action in fact arose after the Petitioner was promoted as Geologist (Senior) in 2009 but he came to know that he was not to be given seniority and he would rank junior to others who were promoted in 2007. The Petitioner is right in his contention that at best, the cause of action arose only in August, 2007, when juniors to him were considered and promoted to the post of Geologist (Senior). The contention of the Petitioner is that the aforesaid conduct of the Respondents is contrary to law. In this connection, our attention is drawn to the averments made in the review application wherein these facets have been highlighted. The Petitioner has stated that he was selected and included in the team which had toured Antarctica, South Pole in the year 2007-2008. It is noticed that these aspects have not been discussed and considered in the order dated 23rd April, 2010. The review application was dismissed holding that the tribunal had earlier decided the original application on the basis of pleadings and

would not take into consideration the new material.

9. Keeping in view the aforesaid facts, the two impugned dated orders 23rd April, 2010 and 7th July, 2010 deserve to be set aside and the matter is remanded to the tribunal for fresh adjudication. While examining the original application including the application for condonation of delay, the facts pointed out above by the Petitioner will be taken into consideration. Observations made above will be treated as a prima facie view and will not be binding on the tribunal.

10. The tribunal in its order dated 23rd April, 2010 has also recorded that the Petitioner had not chosen to array the persons junior to him as parties/ Respondents. The contention of the Petitioner is that no opportunity was given to the Petitioner to array them as Respondents. In this connection, our attention is drawn to A. Sagayanathan and Ors. v. Divisional Personnel Officer (1992) Suppl. (2) SCC 172. It is submitted that the Petitioner was under a bonafide impression that they need not be impleaded as Respondents as he was seeking relief against his employers.

11. As matter has been remanded for fresh decision, we give liberty to the Petitioner to move an application to implead "his juniors" as parties in the original application before the tribunal. The writ petition is accordingly disposed of with no orders as to costs.