

(2013) 04 DEL CK 0291

In the Delhi High Court

Case No : Writ Petition (C) 6924 of 2010

Sanjay Chauhan and Others

APPELLANT

Vs

MCD and Others

RESPONDENT

Date of Decision : 29-04-2013

Acts Referred:

Administrative Tribunals Act, 1985 — Section 22(3)(f)
Constitution of India, 1950 — Article 14

Citation : (2013) 04 DEL CK 0291

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : M.K. Bhardwaj and Ms. Jagrati Singh, for the Appellant; Ajay Arora and Mr. Kapil Dutta, Advocates for R1 and Mr. Raman Duggal, Advocate for R-2 to R-25, for the Respondent

Final Decision : Disposed Off

Judgement

V. Kameswar Rao, J.—The present Writ Petition has been filed by one Sanjay Chauhan and seven others (the petitioners), challenging the order passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) dated 02.09.2009 in T.A. No. 1028/2010 and order dated 20.09.2010 passed in R.A. No. 247/2009 in T.A. No. 1028/2010. The Tribunal vide its order dated 02.09.2009 allowed the T.A. No. 1028/2010, which was filed by the respondents No. 2 to 25 challenging the seniority list dated 10.02.2005 in the grade of Upper Divisional Clerks (UDCs) in the Municipal Corporation of Delhi (MCD). The review application filed by the petitioners has been dismissed on the ground that Review Application is not the appropriate remedy to reagitate issues or for correction of what is claimed to be an erroneous order. Some of the relevant facts necessary for adjudication of the present petition are that the MCD has framed regulations for the purpose of recruitment to the post of UDC, which inter-alia stipulates as under:

(i) 75% on the basis of seniority cum fitness from amongst LDCs with eight years

regular service in the grade.

(ii) 25% by selection on the basis of a limited departmental competitive examination from amongst Lower Divisional Clerks with five years service in the grade.

2. The MCD issued various office orders dated 27.07.1995, 15.11.1995, and 10.01.1996, promoting certain officials in the grade of LDCs to the post of UDC on adhoc basis in the pay scale of Rs. 1200-2040. These officials include the respondents No. 2 to 25 herein. Simultaneously, on 20.05.1997 certain LDCs, who have been declared successful in the Limited Departmental Competitive Examination (LDCE) which is one of the mode of recruitment were also promoted as UDCs in the pay scale of Rs. 1200-2040. We have been told, even though the promotion order states the promotion to be adhoc, this was primarily because of pending of Writ Petition No. 4548/1996, Sh. B.K. Sharma & Ors. vs. MCD in this Court.

3. On 09.06.2003, the MCD constituted a Departmental Promotion Committee, which considered/recommended the respondents No. 2 to 25 for promotion to the post of UDC in the pay scale of Rs. 4000-6000 on regular basis. Accordingly on 04.03.2004, a provisional seniority list of UDCs appointed from 24.04.1992 to 31.12.2003 was circulated vide letter dated 04.03.2004 and the objections against the same were called for. After considering the objections, the MCD issued a final seniority list dated 10.02.2005, which was made subject to the decision of this Court in Civil Writ Petitions No. 4548/1996 and 2231/1997.

4. The said seniority list dated 10.02.2005 was challenged by the respondents No. 2 to 25 herein by filing a Writ Petition No. 6659/2005 before this Court, claiming their seniority from the date of adhoc promotion as UDC. The MCD filed counter affidavit to the writ petition. The said Writ Petition was transferred to the Tribunal and was numbered as T.A. no. 1028/2010. On the pleadings so filed by the parties, the Tribunal heard the matter and allowed the T.A. by directing to re-determine the seniority of respondents No. 2 to 25 by reckoning the adhoc officiation by issuing a fresh seniority list. In this order, the counsel appearing for the respondents No. 2 to 25 relied upon as many as 9 judgments of the Supreme Court as well as this Court. The contention of the counsel for the respondents No. 2 to 25 was, that the adhoc promotions were in accordance with the rules under 75% quota by considering the seniority and service records and as such the seniority shall relate back to the date of promotion on adhoc basis. The stand of the MCD has been primarily that the respondents No. 2 to 25 were granted adhoc promotion as UDC without holding the DPC and those who were qualified LDCE, were appointed on regular basis. Some of the petitioners herein, who were private respondents before the Tribunal filed a reply to the petition and oppose the claim of the respondents No. 2 to 25 on merit as well as on delay.

5. The Tribunal was of the view that the seniority and fitness of the respondents No. 2 to 25 was adjudged and only thereafter adhoc promotions were ordered. It

relied upon the judgments of the Supreme Court reported as Union of India (UOI) Vs. Dharam Pal Etc., , The Direct Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and others, , State of W.B. and Others Vs. Aghore Nath Dey and Others, , T. Vijayan and Others Vs. Div. Railway Manager and Others, and the initial appointment on adhoc basis has to be reckoned towards seniority.

6. The Tribunal did not agree with the stand taken by the MCD that the respondents No. 2 to 25 were appointed de hors the rules. It was of the view that reckoning adhoc officiation in case of LDCE and denying it to the respondents no. 2 to 25 is violative of Article 14 of Constitution of India.

7. That pursuant to the order of the Tribunal dated 02.09.2009, the petitioners herein had filed Review Application No. 247/2009 u/s 22(3)(f) of the Administrative Tribunals Act, 1985. Not only the petitioners, some of the officials had filed applications under Rule 16 (2) of the CAT Procedure Rules for recall of order dated 02.09.2009.

8. For the purpose of adjudication of this Writ Petition, we are primarily concerned with the decision in the review application No. 247/2009 filed by some of the petitioners. In the review application, the petitioners had urged that in T.A., they were never served with notice by this Court as well as the Tribunal; the regular promotion as UDC could be made on the basis of recommendation of DPC; prior to 2003 the promotion of the respondents No. 2 to 25 was never recommended by the DPC; they are regularly promoted in the year 1997 against LDCE quota; the respondents No. 2 to 25 were also eligible to participate in LDCE but they did not prefer to participate in the same; adhoc service rendered by respondents No. 2 to 25 de hors the rules cannot be counted for the purpose of seniority.

9. The review application were decided by the Tribunal vide its order dated 20.09.2010, whereby the Tribunal dismissed the same by holding that review application is not a remedy to reagitate the issue or for correction of what has been claimed to be an erroneous order. In other words, the Tribunal did not dwell into the ground raised in the review applications by the petitioners.

10. In the present Writ Petition, the petitioners had initially raised the issue of non service on them before this Court. On such a plea, this Court had summoned the record of Writ Petition No. 6659/2005. Before the record could be seen, on 19.12.2012 when this Writ Petition was listed, it was decided and also agreed to by the counsel for the parties that the matter be heard on merits. The issue of non service is not required to be gone into.

11. We have heard the counsel for the parties.

12. Mr. M.K. Bhardwaj, learned counsel for the petitioner would submit that the petitioners were promoted on regular basis pursuant to the Limited Departmental Competitive Examination (LDCE) to the post of UDC and this promotion is within

quota meant for LDCE. The reference to promotion as adhoc is primarily due to the pendency of Civil Writ Petition No. 4548/1996, Sh. B.K. Sharma & Ors. vs. MCD, in this Court. He would submit that the seniority of the petitioners has been rightly reckoned from 20.05.1997, when they were promoted on regular basis. He would further submit that the respondents no. 2 to 25 herein could not have been given the benefit of the adhoc officiation, as has been done by the Tribunal in the impugned order. He justifies the seniority list dated 10.02.2005.

13. Mr. Raman Duggal, learned counsel appearing for respondents No. 2 to 25, on the other hand, submits that the Tribunal has rightly granted the benefit of adhoc officiation for the purpose of seniority. According to him, the law on the position is well settled as the promotion having been given after scrutinizing the service records of the respondents no. 2 to 25, there is no reason why the benefit of 6-7 years be denied to them. On a pointed query by us as to the basis of the finding in Para No. 12 of the order dated 02.09.2009 of the Tribunal, Mr. Duggal admits that LDCE candidates i.e. the petitioners herein were promoted on regular basis as their promotion has been pursuant to the examination in the year 1997.

14. It is seen that the primary claim of the respondents No. 2 to 25 before the Tribunal has been that the period of adhoc officiation put in by them must be reckoned for the purpose of seniority. When such a question is raised, many aspects have to be seen keeping in view the law that has been laid down by the Supreme Court and this Court. They are like (i) whether the promotions have been made in terms of the rules; (ii) whether the vacancies existed in the respective quota for making promotions; (iii) whether the incumbents, who have been given promotions have the eligibility required for consideration/promotion; (iv) whether DPC has been constituted in terms of the rules; (v) whether, seniority of the feeder cadre is not in dispute; (vi) whether there was a restraint order by court from making regular promotions etc.

15. The pleadings of the parties has been very sketchy and vague. The respondent Nos. 2 to 25 in their petition basically averred the factual aspect of the case and not the aspects which have been reflected above by us. The possible reason can be that they were not privy to such information. They may be right in saying so. Regrettably the reply of the MCD is as vague as possible without dilating on the issues like (i) reasons for making adhoc promotion only and not regular; (ii) whether DPC in terms of the rule has been constituted for making such promotions; (iii) whether the vacancies existed against the respective quotas, on the dates when promotions were made on adhoc basis.

16. During the course of the hearing of the T.A., the Tribunal passed a specific order directing the MCD to show as to what was the reason to promote the applicants on adhoc basis. Unfortunately, no such information was forthcoming. The Tribunal was required to insist upon such information be given to it so that there is a proper adjudication of the issue raised in the petition. The Tribunal instead proceeds with the case and decides in the manner as reflected in the

impugned order. Regrettably the Tribunal except referring to the judgments cited by the learned counsel for the respondents No. 2 to 25 did not opine on their applicability. The applicability would be clear if the facts relevant are on record. In the absence of the facts, the applicability of the judgment is in doubt. The judgment should be understood in the context of the service rules, the facts pleaded. Further it is seen, reference to the judgment of the Supreme Court reported as Union of India (UOI) Vs. Dharam Pal Etc., was totally wrong as the Supreme Court in the Dharampal's case (supra) has held as under:

The policy decision taken by Railway Authorities to regularise services of MCCs appointed on ad hoc basis was a one-time measure. It was not to be followed as a precedent and therefore it was not necessary to follow it subsequently. Inter se seniority of direct recruits and promotes is regulated by Rule 302 of the Indian Railway Establishment Manual. An employee appointed to a post according to rules is entitled to seniority from the date of his appointment and not from the date of confirmation. However, where initial appointment is ad hoc and not according to rules and the appointment is made as a stopgap arrangement, period of officiation does not count for seniority. When ad hoc appointment is made, the same should be done according to rules. If mandatory provisions of the rules are not complied with, the period does not count for seniority. It is one thing to say that appointment is made on ad hoc basis but it is another thing to say that inter se seniority would be determined on the basis laid down in another rule.

The conclusion of the Supreme Court is opposite to the proposition advanced on behalf of respondents no. 2 to 25.

17. In the R.A., the petitioners had submitted that the promotions of the respondent Nos. 2 to 25 was in excess of the quota meant for promotion (i.e. beyond 75%). The promotion was also without holding any DPC and under such circumstances, the adhoc officiation could not have been counted for the purpose of seniority. It is a trite law that any promotion made on adhoc basis dehors the rules would not reckon for the purpose of seniority.

18. The seniority, which has a bearing on the career prospects of an employee and to which an immense sanctity is attached, is required to be decided by calling upon the parties, specially the MCD, to produce record consisting of required information necessary for the purpose of adjudication. Instead the Tribunal decided the same in a cryptic manner, which may not be a correct approach.

19. Even the attempt of the petitioners, in the R.A., to contend that the promotions of the respondent Nos. 2 to 25 was beyond quota and dehors the rules, as no DPC was constituted, was brushed aside by the Tribunal only on the premise that an attempt is being made to re-agitate the issue. Surely, if on such enquiry, if the review application was found to be frivolous, the Tribunal was not powerless to dismiss such a petition with stringent terms.

20. We are of the view that the petition is liable to be remanded back to the Tribunal, directing the Tribunal to adjudicate the issue of seniority afresh by calling for the records from the MCD and also permitting the MCD to file additional affidavit, keeping in view our observations in Para No. 15 above. A response be also permitted to be filed by the petitioners and the respondents No. 2 to 25 herein to the additional affidavit.

21. Accordingly, we set aside the order of the Tribunal order dated 02.09.2009 in T.A. 1028/2009 and order dated 20.09.2010 in R.A. 247/2009 in T.A. 1028/2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi. We restore the T.A. 1028/2009 to its original number and direct the Tribunal to decide the same as expeditiously as possible but not beyond a period of six months from the date of this order.

22. We may clarify that anything said by us in this order must not be construed as an expression on the merit of the case. The Writ Petition is disposed of. No costs.