
(2012) 07 DEL CK 0179

In the Delhi High Court

Case No : CM No. 2160 of 2012 in Writ Petition (C) No. 6433 of 2010

S.C. Dubey

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 04-07-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2012) 07 DEL CK 0179

Hon'ble Judges : Sudershan Kumar Misra, J;Anil Kumar, J

Bench : Division Bench

Advocate : C. Hari Shanker, Mr. J. Agdish Mr. S.P. Panda, for the Appellant;
V.S.R. Krishna, Advocate for Respondent Nos. 1 to 4 and Mr. Ajit Singh, Advocate
for Respondent Nos. 5 to 8, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—This is an application by the respondent No.5/Applicant u/s 151 of the CPC seeking production of additional documents and calling the original file pertaining to the representations of the petitioner. The abovenoted writ petition has been filed by the petitioner against the order dated 12th July, 2010 passed by the Central Administrative Tribunal, Principal Bench in O.A No.655/2008. The O.A No.655/2008 was filed by the applicant praying for quashing of memorandum dated 14th February, 2002 and for setting aside the order dated 19th October, 2006 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A No.2259/2006.

2. The petitioner had earlier filed O.A No.2259/2006 on the basis of memorandum dated 14th February, 2002 wherein he was assigned seniority in IOW Grade I with effect from 17th June, 1991. Another O.A No.782/2001 was also filed contending, inter-alia, that Rajpal Singh and others had not passed promotional course of IOW Grade-III, therefore, their promotions were not to be considered on regular basis and they were to be considered as on adhoc basis. Reliance was also placed on a letter dated 11th July, 2002 stating that the name

of Rajpal Singh and others appearing in letter dated 5th September, 1990 could not be considered as regular as they had not passed the promotional course.

3. The arguments in this matter were partly heard on behalf of the petitioner on 21st September, 2011, 3rd October, 2011 and the matter was adjourned to 9th November, 2011. On 9th November, 2011 the case could not be preceded as no one had appeared on behalf of the respondents. No one again appeared on behalf of respondents on 16th November, 2011. 5.

4. The Court on hearing the arguments on behalf of the petitioner, however, could not conclude the matter as the counsel for the respondents, including the respondent Nos.5 to 8, had not been appearing.

5. On 29th November, 2011 the counsel for the respondent nos. 5 to 8 appeared, however, no reasons for non appearance on earlier dates were disclosed. The matter was again heard on 29th November, 2011 and on 30th November, 2011. After hearing the pleas and contentions of the respondent Nos.5 to 8, they were directed to file a brief synopsis indicating their propositions with reference to page numbers of the pleadings and documents on record.

6. The matter was thereafter, taken up on 6th January, 2012, however, the counsel for the respondents did not appear nor filed a brief synopsis in terms of order dated 30th November, 2011.

7. Instead of filing the short synopsis, the respondent no.5/applicant thereafter, filed the abovenoted application for producing the additional documents. This Court, while issuing the notice on the application of the respondent No.5/applicant, had noted that the application prima facie does not disclose any sufficient reason for not producing these documents earlier.

8. After 17th September, 2012, the case has been adjourned from time to time on account of delaying tactics adopted by the respondents as the counsel for the respondents Nos.1 to 4 also did not file any reply.

9. Today again it transpired that the replies were not filed by respondent Nos.1 to 4 within time because of which the reply on behalf of the respondent nos. 1 to 4 could not be placed on record. In the circumstances, the counsel for respondent Nos.1 to 4 was directed to give a copy of the reply filed on behalf of respondent Nos.1 to 4 which has been perused by this Court.

10. By the above noted application, the respondent No.5/applicant seeks to produce the copy of letter dated 5th September, 1990; letter dated 25th September, 1990 and the alleged proceedings conducted by respondent Nos.1 to 4 dated 17th February, 2001 regarding the letter dated 25th September, 1990 and photocopies of a document as annexure R-3 dealing with the alleged allegation that the letter dated 25th September, 1990 referred to in the correspondence is a fabricated document made from letter dated 5th September, 1990. The annexure P3 also contain an extract of file, allegedly related to petitioner's representations and the claims dealt with by Headquarters, Western

Railway, Mumbai. According to applicant these facts are relevant and were relevant even before the Central Administrative Tribunal, Ahmedabad in O.A No.782/2001.

11. The respondent No.5/applicant has contended that the letter dated 11th July, 2000 issued after passing of order dated 5th September, 1990 was deliberate and was an attempt to help the petitioner.

12. The respondent No.5/applicant has contended that the letter dated 25th September, 1990 is forged as it shows Rajpal Singh as ad-hoc and the fact that the records of Rajpal Singh have been misplaced is rather deliberate. According to the applicant, the petitioners have, therefore, not made the affected persons as parties and memo dated 14th February, 2002 was never served to the affected persons.

13. The applicant/respondent No.5 has contended that he is constrained to file this application now under the abovenoted circumstances and to reveal the facts which have never been revealed by respondent Nos.1 to 4 in earlier O.As. The respondent No.5/applicant reiterated that the letter dated 25th September, 1990 is a forged letter which has been prepared by folding the letter dated 5th September, 1990 in such a manner as to delete the names of four persons from the list of 11 persons in the letter dated 5th September, 1990 and by also folding the serial number of letter dated 5th September, 1990 so that the serial number does not appear in the letter dated 25th September, 1990.

14. The application is contested by the petitioner contending, inter-alia, that the application is an abuse of the process of law and is a deliberate attempt to mislead the Court with a view to derail the present proceedings.

15. The petitioner/non-applicant contended that a non issue is being sought to be raised now on the basis of the documents which were never part of the record before the Central Administrative Tribunal. It is asserted that no reason, much less sufficient reason, has been given for not producing these records earlier. The applicant has not even disclosed that he was not aware of these documents earlier. The petitioner/non-applicant contended that despite the direction to file synopsis after the arguments were concluded by the petitioner, the respondent No.5/applicant did not comply with the order and after remaining absent on a number of occasions, has filed the present application. The attempt in the facts and circumstances seeking to produce the alleged documents is without sufficient cause and the application is an abuse of the process of Court and reflects complete lack of bonafide on the part of the applicant.

16. The petitioner/non-applicant also contended that the applicant is attempting to file selective documents and suppressing others so as to deliberately derail the present proceedings. The non-applicant contended that confusion is being sought to be created by the present application as to whether Rajpal Singh and five other persons named in the office order dated 5th September, 1990 had been appointed on ad-hoc or on regular basis, which had been set at rest by office

order dated 26th May, 1989 whereby 12 persons had been appointed as IOW Grade II. Out of these, five persons that is Sh.Raj Pal Singh, Sh.Amar Bhan, Sh.Dilip Singh Chhabara, Sh.Ranjeet Singh and Sh.Vasavada Kakaria were promoted on ad-hoc basis. The petitioner/non-applicant contended that there was no subsequent letter promoting the said persons on regular basis to IOW Grade-II and in the circumstances the entire controversy now sought to be raised by the respondent No.5/applicant as to whether the said persons were promoted as IOW Grade-II on adhoc or on regular basis does not even merit consideration in view of the contents of their appointment orders.

17. It is also contended by the petitioner/non applicant that the respondent no.5 has already retired and will not be impacted by the controversy now sought to be raised by the applicant. According to the petitioner the respondent no.5 is continuing a proxy litigation on behalf of others.

18. The petitioner/non-applicant further contended that the contents of the appointment orders of these persons cannot be modified and varied on the basis of the letter dated 5th September, 1990 and 25th September, 1990 on the ground that the letter dated 25th September, 1990 has been fabricated from the letter dated 5th September, 1990 by allegedly making manipulation in the same. The petitioner/non-applicant further stated that the letter dated 5th September, 1990 was issued by oversight stipulating that all 12 persons were promoted by letter dated 26th May, 1989. The person who issued the letter dated 5th September, 1990 realized the mistake and had, therefore, specifically issued the letter dated 25th September, 1990 with respect to the persons who had been promoted on adhoc basis vide letter dated 26th May, 1989 but who had been shown in the earlier letter dated 5th September, 1990 as having been promoted on regular basis. The petitioner/non-applicant in reply also produced the letter dated 30th October, 2000 referring to the letter dated 25th September, 1990 whereas the case of the respondent No.5/applicant and respondent Nos.1 to 4 now is that the copy of letter dated 25th September, 1990 was first received in 2001 by the respondent nos. 1 to 4 along with the representation received from the petitioner.

19. Despite the opportunities given repeatedly, the respondent Nos.1 to 4 failed to file the reply within the time granted by this Court. The reply was finally filed which could not be placed on record as it was not filed within the time granted by this Court. Therefore, the Court has taken a copy of the reply filed by the respondent Nos.1 to 4 to the application of the respondent No.5/applicant and perused the same.

20. The respondent Nos.1 to 4 have contended that on perusal of the Divisional file, it is seen that the letter dated 5th September, 1990 is available, however, the letter dated 25th September, 1990 is not available on the file.

21. The other allegations made by the petitioner/non-applicant in reply to the application of the respondent no.5/applicant have however, been denied by

respondent Nos.1 to 4. Rather the allegations made by respondent No.5/applicant have been supported in a way by respondent Nos.1 to 4.

22. The learned counsel for the respondent No.5/applicant was confronted with the copy of letter dated 25th September, 1990 as to how it can be forged, if the signatures on the letter dated 25th September, 1990 and on 5th September, 1990 are genuine, which has not been denied by the counsel for the respondent No.5/applicant also though now the plea of the respondent nos. 1 to 4 is that the said letter is now not available on their record.

23. Perusal of the letter dated 5th September, 1990 and 25th September, 1990 unequivocally show that the letter dated 25th September, 1990 could not be made from the letter dated 5th September, 1990 and the alleged enquiry also appears to have been conducted to support the allegation of the applicant/respondent no.5 and others who would benefit from the same. In any case, the real issue is whether those five persons could be promoted on regular basis or ad-hoc basis as the allegations are that they had not qualified the relevant examination. In the circumstances, whether the letter dated 25th September, 1990 could be genuine or not could be ascertained from the fact whether these five persons had qualified the relevant examination or not. The respondent nos. 1 to 4 have not produced the relevant record nor the applicant/respondent no.5 wants to refer to the record about the examination being qualified by those five persons or not. In the circumstances, it is apparent that the respondent no.5 is trying to carry on a proxy litigation as the counsel for the applicant has admitted that the applicant has already retired and this controversy will not impact him now.

24. The allegations now made by the learned counsel for the respondent No.5/applicant that the letter dated 5th September, 1990 was folded vertically so as to conceal the serial number and horizontally also so as to conceal certain names cannot be accepted because when the learned counsel was confronted with the fact that the number of lines on the pages of both the letters are same and in case a portion of the letter dated 5th September, 1990 had been folded to conceal the name of some of the persons, number of lines would have reduced, as both the letters are on pages which have horizontal line, rather submitted that the additional lines must have been drawn later on by the person who forged the letter. These explanations which are given by the counsel for the applicant are not reflected anywhere in his application or even from the alleged enquiry alleged to have been conducted, a copy of which is now sought to be produced by the respondent No.5/applicant, though the respondent nos. 1 to 4 have not produced any record.

25. None of the respondents are, however, able to show any sufficient reason as to why these documents, if they were relevant could not be produced by the applicant earlier. There is not even any averment that these documents were not within the knowledge of the respondent No.5/applicant. The respondent nos. 1 to 4 have also tried to allege that the copy of letter dated 25th September, 1990

was received by them for the first time with the representation made by the petitioner in 2001. This allegation of the respondent nos. 1 to 4 is apparently false as this letter dated 25th September, 1990 finds mention in a letter on behalf of the Respondent nos. 1 to 4 which is of 2000. If the copy of the letter dated 25th September, 2001 was first received by the respondent nos. 1

to 4 in 1990, it could not be referred to in another letter of respondent nos.1 to 4 which is on record and which is of the year 2000. Apparently, the pleas raised by the respondent nos. 1 to 4 in this regard are not sustainable.

26. The letter dated 25th September, 1990 was referred to by the petitioner in his representation dated 19th January, 2001, a copy of which was also filed along with the petition filed before the Central Administrative Tribunal almost a decade back. If these letters were referred to, there was no reason for the respondent No.5/applicant not to have made enquiries about these letters when the replies were filed before the Tribunal. No cogent reason has been disclosed as to why only after the Tribunal had decided the matter and thereafter the writ petition having been filed in 2010 and after the conclusion of the hearing by the petitioner and the applicant not filing the written synopsis despite the opportunity given to him a number of times, the alleged enquiries were conducted by the respondent no.5/applicant who has since retired and the present controversy does not impact him now. Apparently, the applicant is carrying on proxy litigation on behalf of the others and the sole aim is to delay the disposal of the writ petition. The documents now sought to be produced, therefore, should not be allowed

to be taken on record and allow the applicant to start new controversies. 27. Apparently, the alleged enquiry alleged to have been conducted by the respondent Nos.1 to 4 to infer that the letter dated 25th September, 1990 has been forged from letter dated 5th September, 1990 had been done at the behest of the interested persons and the alleged inference drawn in that are palpably incorrect. In any case, if there was a doubt about the veracity of the letter dated 25th September, 1990, the same should have been raised at the appropriate stage. The respondent nos. 1 to 4 and the applicant cannot be allowed to raise these controversies now at such a belated stage. The respondent no.5/applicant has not been able to show any sufficient reason for seeking production of these documents at this stage and re-open the whole controversy on behalf of other persons at this belated stage. In the circumstances, the application is nothing but an attempt by the respondent No.5/applicant to delay the disposal of the case and in the circumstances this Court has no option but to dismiss the application. For the foregoing reasons, we do not find any ground to allow the application which is, therefore, dismissed with a cost of Rs.30,000/- payable by the respondent no.5 to the petitioner. Cost be paid within four weeks.