

(2003) 02 DEL CK 0036

In the Delhi High Court

Case No : Civil Writ No. 3077 of 1987 and C.M. No. 4296 of 1987

S.C. Khurana

APPELLANT

Vs

The Project Equipment Corpn. of India Limited

RESPONDENT

Date of Decision : 13-02-2003

Acts Referred:

Citation : (2003) 3 AD 415 : (2003) 107 DLT 767 : (2004) 2 SLJ 317

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : Jyoti Mendiratta, for the Appellant; C.M. Oberoi, for the Respondent

Final Decision : Allowed

Judgement

S.K. Mahajan, J.—Petitioner was appointed Stenographer on 23.2.1977. He was confirmed on this post by letter dated 23rd March, 1978. Vide the letter dated 4th January, 1980, the petitioner was promoted to the post of Secretary in the pay-scale of Rs.600-990. His promotion to the post of Secretary was on probation for a period of one year. On successful completion of the period of probation, the petitioner was confirmed in the post of Secretary vide order dated 5.1.1981. The post was upgraded in the pay-scale of Rs.975-35-1255 by office order dated 2nd March, 1985 w.e.f. 3.12.1984. In this office order, the name of the petitioner has been shown as OM (Officiating). Post of Secretary and Office Manager (OM) are equal status posts. Clause 2 of this office order states that all the employees mentioned in the office order except those upgraded on officiating basis will be on probation for a period of one year and the completion of their probation satisfactorily will depend entirely on their performance in the higher post. By an office order dated 6.9.1985, two Office Manager, including the petitioner, who were working as Secretaries, were promoted as Special Secretaries in the scale of Rs.1050-50-1800 with immediate effect. According to the office order, the promotees were to be on probation for a period of one year and completion of the probation satisfactorily was to depend upon their performance in the higher grade. By office order dated 30th September, 1986,

petitioner was informed that he had satisfactorily completed the period of probation as Special Secretary in the scale of Rs.1050-50-1800. On 29th June, 1987, office order was issued by the respondent reverting the petitioner to the pay-scale of his alleged substantive post of Office Manager, that is, Rs.975-1675 w.e.f. 24.12.1986 and he was designated as Private Secretary. This office order was not conveyed to the petitioner. By another undated office order the respondent sought to make recovery of the difference in the pay and allowances drawn by the petitioner as Special Secretary and the pay and allowances allegedly payable to him as the Office Manager w.e.f. 24.12.1986. Reference has been made to office order dated 17.9.1987 in this un-dated office order. The said office order dated 17.9.1987 has not been placed on record till date. On the passing of this office order, when the recovery was sought to be effected from the petitioner, the present writ petition was filed challenging the right of the respondent to revert the petitioner from the post of Special Secretary to the post of Office Manager and from making any recovery from the petitioner in terms of the said office order.

2. The contention of learned counsel for the petitioner is that in accordance with recruitment rules the promotion to the post of Special Secretary was by selection from amongst the employees working as secretaries and office managers and he having been promoted to the post of Special Secretary in accordance with the Rules and he having completed the period of probation satisfactorily, there was no question of his being reverted to the post of Secretary/Office Manager. It is also the contention of learned counsel for the petitioner that no notice was ever given to the petitioner to show cause why he should not be reverted from the post of Special Secretary to the post of Secretary/Office Manager and the impugned order is, Therefore, liable to be set aside only on the ground of the violation of principles of natural justice.

3. The contention of learned counsel for the respondent however, is that since the petitioner was appointed on probation in the post of Office Manager by order dated 2nd March, 1985 he could not be promoted to the post of Special Secretary on 6.9.1985 as he was still working on probation in the post of Office Manager as on that day. It is, Therefore, the submission of learned counsel for the respondent that a person could not said to be on probation on two posts and it was for this reason that the petitioner was reverted to his substantive post of Manager by order dated 29th June, 1987. Another submission made by learned counsel for the respondent is that in terms of the settlement arrived at between the Management and the Union in June, 1987, the post of Special Secretary was abolished and consequently the petitioner had to be reverted back to his substantive post of Manager. It is also his submission that in terms of the order of promotion promoting the petitioner to the post of Special Secretary, it was within the right of the respondent to revert him to the lower scale without giving any reason.

4. I have given my thoughtful consideration to the arguments advanced by

learned counsel for the respondent but I have not been able to make myself agreeable with him. The services of the petitioner were governed by the Recruitment Rules framed by the respondent. In terms of Rule 4.3 of Section II, person promoted on the basis of selection will not be appointed substantively unless he had rendered satisfactory service for at least one year in the grade to which he had been appointed. If, at the expiry of this period of one year, his services were not found satisfactory, the appointing authority may either extend this period or revert him back to the rank from which he was promoted without assigning any reason. Under Rule 9 of Section II of the Recruitment Rules, if subsequent to the finalisation of Recruitment Rules an agreement was arrived at between the Management and the Union, which had a bearing on any matter governed by the Rules, the Management would amend the Rules to give effect to such agreement with the Union. Though an agreement is alleged to have been entered into between the Management and the Union on 26th June, 1987, however, nothing has been placed on record to show that the Recruitment Rules were amended pursuant to the said agreement with the Union. That may, however, not be relevant for decision of the case inasmuch as the matter can be decided de-hors the agreement, which has been arrived at between the Management and the Union.

5. The petitioner was admittedly promoted as a Secretary vide order dated 4th January, 1980. It is also not denied that he was confirmed as a Secretary in the pay-scale of Rs.675-1205 vide order dated 5th January, 1981. Under the Rules, the post of Secretary and Office Manager are equivalent posts, which at the relevant time were in the pay-scale of Rs.600-30-990. By an office order dated 2nd March, 1985, all that was done by the Management was to upgrade the post of Office Manager to the scale of Rs.975-35-1255-40-1575-50-1675. The post of Secretary and Office Manager being equivalent post, post of Secretary would also be deemed to have been upgraded to the pay-scale of Rs.975-1675. By order dated 2nd March, 1985, petitioner was not promoted to the post of Office Manager. Petitioner was already working in the equal status post of Secretary in the same pay scale of Rs.600-300-900 and the post having been upgraded in the pay scale of Rs.975-1675 he was also placed in the upgraded scale. In fact no promotion could have been made from the post of Secretary to the post of Office Manager as they are equivalent posts and it was only the scale, which was upgraded from 600-990 to 975-1675. This might have been done because of the revision in the pay by the Pay Commission or for some other reasons, which are not available on the file.

6. As already observed above, since the posts of Secretary and office manager were equivalent posts, there was no question of promoting the petitioner from the post of Secretary to the post of Office Manager. Petitioner had already been promoted to the post of Secretary as far back as in 1981. Clause incorporated in the office order dated 2nd March, 1985 that the persons including the petitioner, whose scales were upgraded would be on probation for a period of one year, in my opinion, was totally superfluous. The person who had already completed the

probation satisfactorily could not be put on probation for another period of one year and that too after four years of his satisfactorily completing the period of probation. In any case, even assuming the petitioner was put on probation for a period of one year by order dated 2nd March, 1985, there was no bar that he could not be promoted to the higher post of Special Secretary during this period of probation. Petitioner having been promoted to the post of Special Secretary by an order dated 6.9.1985 and he having satisfactorily completed the period of probation and having been confirmed as Special Secretary vide order dated 30.9.1986, the probation, if any, to the post of Office Manager by order dated 2nd March, 1985 would be deemed to have been confirmed. The respondent cannot now turn around and say that since the petitioner was on probation as on 6.9.1985 when he was promoted as Special Secretary, he was required to be reverted.

7. Coming to the contention of learned counsel for the respondent that in view of the settlement arrived at with the Union, this post of Special Secretary was required to be abolished and on abolition of this post, the petitioner was necessarily to be reverted back to his post substantive of Office Manager, I find that the post of Special Secretary has been classified under the Rules along with certain other posts. Post of Special Secretary having been classified under the rules does not appear to be an ex-cadre post. However, even assuming it to be an ex-cadre post, the person who had been substantively appointed to a particular grade could not have been reverted to the lower grade only because under a settlement the Management had agreed to abolish a particular post. In case the post was not available or had to be abolished, it was the duty of the respondent to offer an equivalent post to the petitioner on such abolition of the alleged ex-cadre post. Moreover, the settlement can operate only in future and the Management cannot retrospectively abolish the post on which the incumbents are functioning and take away the substantive rights, already created in their favor.

8. It is admitted case of the parties that before reverting the petitioner from the post of Special Secretary to the post of Office Manager, no notice to show cause was given to him. It in itself is sufficient ground to quash the impugned order passed by the respondent. The respondent could not have taken an action against the petitioner without following the principles of natural justice. In case, it was the view of that the petitioner could not have been promoted in the first instance as he was already on probation by promoting the petitioner the respondent had committed a mistake which required to be corrected, even then, it was incumbent upon the respondent to first give notice to the respondent to show cause as to why he should not have been reverted. It was only on receipt of reply from the petitioner and after giving opportunity of hearing that any order could have been passed by the respondent. The respondent having thus completely violated the principles of natural justice and having not given any opportunity of hearing to the petitioner could not revert the petitioner from the post on which he was already confirmed by the respondents.

9. Looking from any angle, I do not find any justification in the order passed by the respondent. The order passed by the respondent being illegal and unjustified cannot be sustained. I, accordingly, make the rule absolute, quash the order reverting the petitioner from the post of Special Secretary to the post of Office Manager and also prohibit the respondents from recovering any amount from the petitioner as is threatened to be recovered by the impugned order marked as Annexure P-9 to the writ petition. Quashing of the impugned order would entitle the petitioner, to all benefits to which he may be entitled as if the said order was never passed. In the facts of this case, however, I leave the parties to bear this own costs.