

(2010) 07 DEL CK 0291

In the Delhi High Court

Case No : Writ Petition (C) 4566 of 2010

Secretary, Ministry of Urban Development

APPELLANT

Vs

M. Annamalai

RESPONDENT

Date of Decision : 14-07-2010

Acts Referred:

Citation : (2010) 171 DLT 172

Hon'ble Judges : Pradeep Nandrajog, J; Mool Chand Garg, J

Bench : Division Bench

Advocate : H.K. Gangwani, for the Appellant; Rajinder Nischal, for the Respondent

Judgement

Pradeep Nandrajog, J.

Caveat No. 35/2010

Since caveator appears, the caveat stands discharged.

CM No. 9066/2010

Allowed subject to just exceptions.

W.P.(C) No. 4566/2010

1. Learned Counsel for the respondent to whom advance copy of the petition has been served waives notice.
2. Counsel state that the writ petition be disposed of today itself.
3. Rule DB.
4. Heard for disposal.
5. As a sequel to a departmental enquiry, a penalty of reduction by one stage in the time scale of pay for a period of 2 years with further direction that during this period the respondent shall not earn increment was passed vide order dated

1.11.2004.

6. The case of the respondent for promotion to the post of Chief Engineer matured for consideration in the year 2008 and since the relevant rules required the selection through a DPC constituted by the UPSC, reference was made to UPSC. Dozier of the respondent was sent by the Department to UPSC.

7. The DPC met in November 2008 and declared the respondent unfit for promotion.

8. The corollary was that a person junior to the respondent was promoted.

9. The respondent took recourse to an action before the Central Administrative Tribunal by filing OA No. 039/2009. The respondent pleaded that the penalty imposed upon him came to an end after two years reckoned with effect from 1.11.2004 and in the month of November 2008, the effect of the penalty could not be considered.

10. The petitioner placed reliance upon an OM dated 14.12.2007, relevant part whereof reads as under:

Vigilance clearance will not normally be granted for a period of three years after the currency of the punishment, if a minor penalty has been imposed on the officer. In case of imposition of a major penalty, vigilance clearance will not normally be granted for a period of five years, after the currency of punishment. During the period, the performance of the officer should be closely watched.

11. The Tribunal relied upon another OM dated 7.7.2008 which reads as under:

The term "empanelment" occurring in para 1 of DOPT's O.M. No. 11012/11/2007-Estt. (A) dated 14.12.2007 relating to guidelines on grant of vigilance clearance does not cover cases of promotion. Cases of promotion of Government servants during the pendency of disciplinary proceedings would be regulated by DOPT's O.M. No. 22011/4/91-Estt. (A) dated 14.09.1992, O.M. No. 22012/1/99-Estt. (D) dated 25.10.2004 and after imposition of any of the prescribed penalties as per O.M. No. 22034/5/2004-Estt. (D) dated 15.12.2004.

12. The Tribunal noted another OM dated 15.12.2004, which reads as under:

Similarly, as the officer undergoing penalty is not to be promoted during the currency of the penalty, the eligibility service in the promotional grade for further promotion shall commence only from the date of actual promotion and in no case, it may be related, even notionally, to the date of promotion of the officer in the panel.

13. The Tribunal concluded the issue by holding that OM dated 14.12.2007 stood superseded by the OM dated 7.7.2008 and hence no reliance would be placed upon the OM dated 14.12.2007.

14. With reference to the OM dated 15.12.2004 the Tribunal held that it leads to the conclusion that a person undergoing penalty is not to be promoted during the

currency of the penalty and once the penalty is over the person regains eligibility for promotion.

15. It is pointed out by Learned Counsel for the petitioner that what the Tribunal lost sight of was the fact that it was not a case where the candidature of the respondent was not considered. Learned Counsel points out that it was obviously a mistaken assessment upon which the Tribunal has proceeded to answer the question, by placing reliance on the aforementioned OMs; but, Counsel does concede that it was the faulty pleading of the Department which led the Tribunal to tread on the wrong track.

16. Learned Counsel for the petitioner seeks to explain the reason why the Tribunal was misled to tread on a wrong path by drawing our attention to the fact that for the post in question, UPSC was the body concerned which convened a DPC, but was not made a party. Counsel highlights that the service jurisprudence is clear. The DPC is entitled to evolve a procedure which is fair and transparent while considering the candidature of Government employees for purposes of promotion. Counsel highlights that higher is the post, more are the responsibilities and greater would be the public interest to scrutinize eligible candidates for such posts. Learned Counsel draws our attention to a policy guideline framed by UPSC governing the exercise of power by the Departmental Promotion Committees while considering the eligible candidates.

17. The said policy guidelines framed and followed by UPSC reads as under:

Current Practice for Treating the Penalties in the DPC Meetings Held Under Aegis of the Commission

The current practice prevailing in the Commission is as under:

(1) Where the penalty is ?Censure? or a warning or displeasure of a Superior officer has been conveyed.

The cases are decided by the DPCs on case to case basis after taking into consideration the article of charges/background material, etc. against the officer.

(2) Penalties of (a) ?withholding of promotion?, (b) ?recovery from pay?, (c) ?reduction to lower stage in the time scale of pay by one stage for a period not exceeding 3 years, without cumulative effect?, (d) ?withholding of increments from pay? (all minor penalties), (e) ?reduction to a lower stage in the time scale of pay for a specified period; (f) ?reduction to lower time scale of pay, grade, post or service? (major penalties).

(i) If the penalty is awarded in the last assessment year or thereafter, the officer is made ?Unfit? only once. That penalty is not considered thereafter.

(ii) However, if the penalty, is awarded before the last assessment year but within the assessment matrix, the grading for that year is lowered by one level. For example, if the grading is ?Outstanding?, it is reduced to ?Very Good?. Similarly, the ?Very Good? is reduced to ?Good? and ?Good? to ?Average?. This

is also given effect only once.

(3) Penalties of 'compulsory retirement?', 'removal from service' and 'dismissal from service?' (major penalties).

The officer is treated as 'Unfit for promotion in view of the penalty.

18. One thing is clear, on reading the impugned order, it is not a case where the candidature of the respondent was not considered and thus there is no scope for considering the effect of the 3 office memorandums which have been considered by the Central Administrative Tribunal, for the reason, the said office memorandums contemplate as to who is eligible to be considered for promotion and who is not. The issue before the Tribunal was as to whether correct principles were applied in the evaluation of the candidature of the respondent whose case was considered as entitled to be considered for promotion by the DPC. The decision had to be with reference to the guidelines noted in para 17 above.

19. Noting that the faulty pleadings before the Tribunal have resulted in the mess, we dispose of the writ petition with a guidance to Learned Counsel for the petitioner that in future, the Counsel should be better instructed to spot and identify the legal issues which arise for consideration and file appropriate pleadings.

20. The writ petition is allowed.

21. Impugned order dated 23.11.2009 allowing OA No. 039/2009 is set aside.

22. OA No. 039/2009 is restored for fresh adjudication before the Tribunal.

23. Since it is a case of faulty pleadings on either side, we permit the parties to file supplementary pleadings before the Tribunal; the first step in the completion of the supplementary pleadings would be taken by the petitioner who would be permitted to file a supplementary affidavit highlighting the applicable office memorandum and the policies adopted by UPSC while evaluating the candidates. The respondent i.e. the original applicant would be permitted to file response thereto.

24. Parties are directed to appear before the Registrar of the Tribunal on 3.8.2010 and upon a formal application filed by either party and copy of this order annexed therewith, the Registrar of the Tribunal would list OA No. 039/2009 before the appropriate Bench for a fresh consideration of the matter.

25. No costs.

26. Dasti.

CM No. 9050/2010

Since the writ petition has been disposed of, the CM for stay stands dismissed as infructuous.