
(2010) 05 DEL CK 0341

In the Delhi High Court

Case No : Writ Petition (C) No. 3255 of 2010

Sh. Jai Ram

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-05-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 05 DEL CK 0341

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : Ranbir Yadav, for the Appellant; M.K. Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has impugned the order dated 23rd April, 2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 2422 of 2009, titled as Sh. Jai Ram v. Union of India and Ors. dismissing his petition seeking to set aside the orders dated 19th August, 2009 and 21st August, 2009 and restoration of the petitioner to the post of Senior Pharmacist with all consequential benefits.

2. The petitioner had contended that he belongs to Scheduled Caste Category and he was appointed against the post of Pharmacist and had joined the Lady Harding Medical College & Associate Hospitals. He was appointed in 1992 vide Office Order dated 7th September, 1992 on regular basis.

3. Respondent No. 4, Sh. Satish Kumar Gaur was also working as Pharmacist and he was promoted as Senior Pharmacist on 2nd May, 1996. When respondent No. 4 was promoted, a representation was made by the petitioner that since he belongs to Schedule Caste Category, he is entitled to promotion for the post of Senior Pharmacist (1 post only) as he is a Scheduled Caste candidate.

4. Consequent to the representation made by the petitioner, a Review DPC was convened which recommended the name of the petitioner for promotion as

Senior Pharmacist in Scheduled Caste Category although there was only one post and the policy of roster for reservation category could not be applied to the said post. The petitioner was however, promoted by order dated 6th February, 1997 with retrospective effect from 2nd May, 1996 and Sh. Satish Kumar Gaur, respondent No. 4 was reverted to the post of Pharmacist from the post of Senior Pharmacist.

5. Later on, on a representation by the respondent No. 4, Sh. Satish Kumar Gaur, another Review DPC was held on 15th September, 2008 which recommended the name of respondent No. 4 for promotion, as it was held that the promotion of the petitioner under reserve category was erroneous, as no reservation could be implemented in respect of single post. Since Sh. Satish Kumar Gaur was the senior most Pharmacist, therefore, he was entitled for promotion as Senior Pharmacist as per rules and thus, the order for reversion of the petitioner to the post of Pharmacist and promotion of respondent No. 4 to the post of Senior Pharmacist was passed on 6th October, 2008.

6. The order dated 6th October, 2008 was challenged in an earlier O.A. No. 2214 of 2008, which was allowed by the Tribunal by order dated 17th April, 2009 as the order dated 6th October, 2008 reverting the petitioner was passed without giving any opportunity to him. The respondents, however, were given opportunity to pass appropriate order after giving a reasonable opportunity to the petitioner.

7. Consequently, a show cause notice dated 25th June, 2009 was issued to the petitioner, and thereafter order dated 19th August, 2009 was passed reverting the petitioner from the post of Senior Pharmacist to the post of Pharmacist, which was challenged by the petitioner filing the O.A. No. 2422 of 2009, which was dismissed by order dated 23rd April, 2009, which is challenged before this Court in the present writ petition.

8. The petitioner before the Tribunal had challenged his order of reversion dated 19th August, 2009 on the ground that his reversion after a long lapse of time was not permissible and post was based on roster in reservation which was introduced later on, an earlier settled case of vacancy based roster could not be reopened.

9. The Tribunal noticed the respective contentions and held that the post of Senior Pharmacist was a single post and noticing the minutes of the Review DPC held on 6th February, 1997 and relying on "Dr. Chakradhar Paswan v. State of Bihar and Ors. 1988 SCC (L & S) 516; Bhide Girls Education Society v. Education Officer, Zila Parishad, Nagar and Ors. 1994 SCC (L & S) 78; Post Graduate Institute of Medical Education and Research, Chandigarh Vs. Faculty Association and Others, ; Balbir Kaur and Another Vs. U.P. Secondary Education Services Selection Board, Allahabad and Others, it was held that if only a single post is available in a particular cadre, policy of reservation/roster cannot be applied and such a post has to be treated as an unreserved post. The Tribunal also relied on Post Graduate Institute of Medical Education and Research, Chandigarh Vs.

Faculty Association and Others, , where the reliance was placed on Union of India and Ors. v. Brij Lal Thakur (1997) 4 SCC 2789, and Union of India and Another Vs. Madhav Gajanan Chaubal and Another, holding that in case of a single post cadre, total exclusion of general members of the public and cent percent reservation for backward classes is not permissible within the constitutional frame work. It was held that unless there is plurality of post in a cadre, the question of reservation will not arise because any attempt of reservation by whatever means and even with device of rotation of roster in a single post cadre is bound to create 100% reservations of such post, whenever such a reservation is to be implemented. In the circumstances, it was emphatically held that there cannot be any reservation in a single post cadre and the reasoning in case of Madhav (Supra) and Brij Lal Thakur (Supra) upholding the reservation of a single post cadre was not followed as those decisions had been overruled later on.

10. The other plea of the petitioner that the settled issue could not be unsettled after a long lapse of time was also not accepted. It was held that the petitioner had been promoted contrary to rules ignoring two Pharmacists who were senior to him, and therefore, the illegality had to be rectified and rectification of the illegality committed could not be denied on the basis of lapse of considerable time. Relying on Post Graduate Institute of Medical Education and Research, Chandigarh (Supra) it has been again reiterated that there could not be reservation in respect of the single post of senior Pharmacist in Kalawati Saran Children's Hospital, and therefore, the order dated 19th August, 2009 reverting the petitioner to the post of Pharmacist from senior Pharmacist was upheld.

11. The plea of the petitioner of applicability of the DoPT dated 2nd July, 1997 was also repelled on the ground that the same was applicable only in respect of promotion order in accordance with law where only adjustment of roster was involved, however, it does not restrict correction of promotions that have been made as a result of patent error.

12. Learned Counsel for the petitioner has raised the same pleas and contentions which were raised before the Tribunal. The Supreme Court has held in Post Graduate Institute of Medical Education and Research, Chandigarh (Supra) that reservation in a single post cadre cannot be resorted to as such a reservation would bring a situation that the single post in the cadre would result exclusively for the member of the backward classes and the general members of the public would be completely excluded and such a 100% reservation is not permissible within the constitutional frame work. If the promotion was granted to the petitioner on the basis of such a 100% reservation of a single post cadre, it was patently illegal and the respondents were justified in correcting their error and reverting the petitioner to post of Pharmacist from the post of Senior Pharmacist and their decision cannot be faulted on any of the ground raised by the petitioner.

13. In totality of the facts and circumstances this Court does not find any illegality, irregularity, or such perversity which shall require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of

India.

14. The writ petition is without any merit, and it is, therefore, dismissed.