
(2010) 04 DEL CK 0209
In the Delhi High Court
Case No : WP (C) No. 2479 of 2010

Sh. Rampat Azad	Vs	APPELLANT
Union of India and others		RESPONDENT

Date of Decision : 27-04-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 04 DEL CK 0209

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

Bench : Division Bench

Advocate : Tanveer Ahmed Mir, for the Appellant; D.S. Mahendru and Ms. Jasmine Ahmed, Advocates for respondent Nos. 1 and 2, Mr. Naresh Kaushik and Ms. Aditi Gupta, Advocates for UPSC/respondent No. 3, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has challenged the order dated 2nd December, 2008 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A.No.2351 of 2007, titled as "Sh.R.P. Azad v. Union of India through Secretary (Textiles) & others", whereby the Tribunal directed the respondents to either create promotional avenues or extend to the petitioner financial upgradation as per the methodology laid down under the Rules and Law, even if Carpet Training Officer (CTO) is a closed cadre.

2. The plea of the petitioner is that his channel of promotion was in the nature of and category of Junior Field Officer (JFO) leading to re-designated HPO, leading further to Assistance Director, Handicrafts, leading further to Deputy Director, Handicrafts and finally Regional Director, Handicrafts. According to the petitioner the Tribunal has failed to appreciate these facts and has been misled in the believing that channel of promotion of the petitioner was from CTO to that of Assistant Director, Handicrafts and the cadre of CTO was closed.

3. Though the learned counsel for the petitioner has referred to the

memorandum dated 15th July, 1976, order dated 15th February, 1978, order dated 4th June, 1979 and order dated 16th May, 1997 as well as order of the Tribunal passed in earlier petition dated 2nd December, 1999 in O.A. No.2921 of 1997, titled as "Sh.R.P.Azad v. Union of India" whereby the Tribunal had disposed of the petition of the petitioner directing the respondents to take prompt steps to consider the regularization of the petitioner and others similarly situated against the available regular vacancy of CTOs in accordance with rules and instructions and consider their cases for promotion subject to availability of vacancies in the promotional channel in accordance with the rules and instructions as well as judicial pronouncements.

4. Learned counsel for the petitioner has not disputed that the order dated 2nd December, 1999 in O.A. No.2921 of 1997, titled as "Sh.R.P. Azad v. Union of India" was not challenged by the petitioner. Reliance can also be placed on the communication dated 22nd August, 2000 from Deputy Director (Admn.-II) to the Secretary, Union Public Service Commission requesting to take up the matter on priority basis and expedite the approval for regularizing the incumbents, at an early date, from the date of their initial appointment since some other JFOs are also alleged to be left out besides 45 CTOs (erstwhile JFOs) whose case was sent to UPSC for regularization. This is not disputed that an order dated 26th June, 2006 was passed whereby the petitioner's service as an erstwhile Junior Field Officer was regularized as CTO who was on ad hoc service earlier in the pay scale of Rs.5500-175-9000/-. The order dated 26th June, 2006 is as under:-

"No.15(87)/93-Admin.II-Pt.F.

Government of India

Ministry of Textiles

Office of the Development Commissioner (Handicrafts)

West Block No.VII,

R.K.Puram, New Delhi-110066

Dated: 26.06.2006

Consequent upon approval of UPSC vide letter No.F.No.4/23(1)/200-AP-3 dated 3.6.2002 and in continuation of this office Order No.15(87)/93-Admn.II dated 16.5.197 the ad-hoc services of Shri R.P.Azad, CTO (erstwhile Junior Field Officer) is regularized w.e.f. their date of appointment/date of joining in the pay scale of Rs.5500-9000/-.

Sd/-

(Sanjay Agarwal)

Development Commissioner (Handicrafts)

The Central Pay & Accounts Office,

Office of DC (Handicrafts),
New Delhi"

5. A contempt petition being C.P. No.126 of 2007 was also filed by the petitioner for alleged non-compliance of order passed in O.A.No.2921 of 1997 dated 2nd December, 1999. Pursuant to that the respondents were directed to pass a speaking order either promoting the petitioner or declining to do so. It was also held that while declining to give promotion to the petitioner, the respondents shall give reason for the same. Pursuant to order dated 6th July, 2007, an order was passed which was communicated to the petitioner by communication dated 28th September, 2007 holding that for considering for promotion to the post of Assistant Director (A & C), CTO is the feeder cadre. It was held that since Carpet Scheme in the rest of India has already been closed down during the IXth plan in phased manner vide order No.A.12031/4/98-Admn.-II (Part file) dated 12th April, 2004 under a policy decision communicated by the Department of Expenditure, Ministry of Finance, therefore, upon the closure of said Centers, all the Officials that is CTOs of the Carpet Scheme other than J & K are declared surplus vide Office Memorandum. It was also intimated any post in any closed scheme became vacant either on redeployment in other Organization or on retirement of official, automatically abolished under such scheme, and therefore, the question of promotion of the petitioner to the next higher post does not arise at that stage.

6. This is not disputed that by the order dated 26th June, 2006, the service of the petitioner who was working on ad hoc basis was regularized as CTO in the pay scale of Rs.5500-9000/- from the date of his appointment, was not challenged by him.

7. Before the Tribunal the plea of the petitioner for promotion was opposed on the ground that CTO Cadre has been closed, and therefore, the petitioner cannot get promotion which was repelled by the Tribunal in view of the ratio of the Supreme Court's judgment in "A. Satyanarayana & others v. S. Purushotham & others (2008) 2 SCC (L & S) 279, holding that right to consideration for promotion is to be treated as fundamental right, as promotional chance of an employee cannot be closed forever and the government has to consider removing stagnation and frustration among the employees. In the circumstances, the Tribunal directed the respondents to either create promotional avenues or extend to the petitioner the financial up-gradation as per methodology laid down under Rules and Law.

8. In totality of the facts and circumstances, the learned counsel for the petitioner is unable to make out any illegality, irregularity or such perversity in the order of the Tribunal which will necessitate any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

9. The writ petition, in the facts and circumstances is without any merit, and therefore, it is dismissed.