
(2007) 07 DEL CK 0075

In the Delhi High Court

Case No : Writ Petition (C) No. 3885 of 2007

Shri Dharampal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-07-2007

Acts Referred:

Administrative Tribunals Act, 1985 — Section 20(2)

Citation : (2007) 07 DEL CK 0075

Hon'ble Judges : S.L. Bhayana, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : G.P. Srivastava, for the Appellant; R.N. Singh, for the Respondent

Final Decision : Dismissed

Judgement

S.L. Bhayana, J.—Petitioner has assailed the order and judgment dated 27.4.2006 passed in O.A. No 165 of 2005 by the Central Administrative Tribunal, Principal Bench, New Delhi vide which the petitioner's prayers for promotion to the post of Assistant in the pay scale of Rs. 425-800 revised to Rs. 5500-9000, disbursement of undisbursed pay and payment of TA/DA as per CCS (Pension) Rules were dismissed by the learned Tribunal on the ground that the petitioner has not been able to prove from any factual record that he belongs to the Ministerial Cadre of CSCS while on the contrary, it has been conclusively proved that he belongs to Ministerial Cadre of Subordinate Office of CWC.

2. The petitioner through present writ petition seeks quashing of the order and judgment dated 27.4.2006 passed by the Tribunal. He prays that the respondents be directed to promote him to the post of Assistant in the pay scale of Rs 5500- 9000 and pay all arrears of pay, allowances and consequential benefits to the petitioner. It is also prayed that the respondents be further directed to pay the pending dues in the nature of TA/DA etc along with 18% rate of interest.

3. Brief facts leading to the present petition are that the petitioner vide order

dated 7th December 1964 was appointed as Lower Division Clerk in the Ministry of Steel and Mines. On 31.1.1968, he was transferred to the Central Water and Power Commission without his consent and later vide order dated 11.10.1972, he was made quasi permanent and absorbed in the said Department. On 2.6.1972 he was promoted as Upper Division Clerk and was posted at CWC Circle at Jammu. The petitioner maintains that others who were promoted along with him were retained at Badarpur Thermal Power Project, New Delhi but he was singled out and sent to Jammu and Kashmir. On 01.04.1978, he was sent on Foreign Service to Bhutan and repatriated to CW and PC. The petitioner on 01.02.1984 was transferred on deputation as Junior Accountant for one year to the Principal Accounts Office, Ministry of Water sources, New Delhi. According to the petitioner, he was again repatriated to Central Water Commission, New Delhi and reported to duty on 01.07.1987 but he was neither posted in the Head office nor was he transferred to any field office. Period from 01.07.1987 till 07.03.1988 was treated as absence from duty and finally vide office memorandum dated 07.03.1988, he was asked to report to North Eastern Investigation Circle, CWC, Shillong and was promised regularization for alleged absence on joining the duty in Shillong. The said order was challenged by the petitioner before the Central Administrative Tribunal vide OA No. 715 of 1988. The learned Tribunal vide its order dated 30.08.1988 directed fresh transfer and also payment of TTA as per rules. The said order was partially complied with and only transfer order was duly served on the petitioner. Further, Director (Admn.), CWC vide its order dated 16.11.1988 certified that petitioner belongs to Joint Ministerial Cadre of CWC/CEA.

4. In February 1989, petitioners increment were denied to him and adverse remarks in his record stating to be watched for a period of 01.01.1987 to 30.06.1987 were added maligning his track record. Petitioner made representations stating that he did not belong to subordinate cadre of CWC and that his name be borne on the seniority list of CWC's employees.

5. The petitioner filed a CCP No. 78 of 90 in OA No. 715 of 1988 against the noncompliance of the orders of the Tribunal, which was disposed of vide order dated 28.08.1990 on the basis of the statement made by the Under Secretary, CWC to the effect that the dues of the petitioner has been duly paid. The said order was duly challenged in the Supreme Court by means of a SLP No. 17345 of 1991. The Supreme Court vide its order dated 05.08.1991 vacated the order of the Tribunal and directed the Tribunal to decide the claim of the petitioner in accordance with law. The petitioners Misc. Petition No. 2426/91 filed as per the direction of the Hon'ble Supreme Court passed in SLP No. 17345 of 1990 was dismissed on 13.07.1992 and the CCP No. 78 of 1990 in OA No. 715 of 1988 was disposed of on 05.05.1993.

6. Petitioner filed another OA No. 1859 of 1993 u/s 20(2)(b) of CAT Act challenging the non-action of the respondents on the representation dated 20.07.1992 and depriving him the promotion to the post of Assistant. Another

OA No. 1689 of 1994 was filed sometime in September 1994 challenging the failure to perform their mandatory duty to ensure full payment of the petitioners duty pay and allowances as well as TTA. The said OA's were disposed of by a common order dated 08.03.1995.

7. The petitioner filed another OA No. 165 of 2005 raising the issue of promotion in the said application which the petitioner alleges had not been decided in the OA No. 1859 of 1993 and, Therefore, there is no estoppel in challenging the same.

8. The petitioner in his writ petition has challenged the order of learned Tribunal on the grounds that the principle of res judicata is not applicable and there is no estoppel operating against the said petition. Further, the petitioner states that similarly situated persons have been treated differently. He has quoted the incidence of a colleague, Mansa Ram, junior to petitioner, who was initially appointed as LDC and later promoted to UDC and sent on deputation to CW and PC, was not only made Quasi permanent and absorbed in CW and PC but was also promoted and posted at the Head Office. The petitioner is aggrieved of the fact that the petitioner has been singled out in the matter of transfer and such treatment is actuated with mala fides and extraneous considerations. The petitioner has further stated that denial of payment to the petitioner on several occasions and even post retirement is illegal and arbitrary, only with the sole purpose to harass the petitioner.

9. We have gone through the writ petition and the Tribunals order. The learned Tribunal while rejecting the claim of the petitioner observed that:

From the entire factual record, it is clear that he belongs to Ministerial Cadre of Subordinate Office of CWC. It is also a fact that he has agitated the issue several times in the past and he is trying to agitate the issue again which has finally been adjudicated upon by the Tribunal.

10. The basic claim of the petitioner is for the posting and promotion against the post of Assistant in the Head office of the Commission.

11. We have heard the counsel for the parties and heard the arguments made at bar. The petitioners counsel has pleaded that the petitioner has been singled out and has been denied promotion, which is his legitimate right. He further argued that people who were similarly situated have been granted promotions to the head office whereas he has been denied the same. Counsel for the petitioner has vehemently argued that non-consideration of the petitioner for promotion to the post of Assistant is arbitrary and illegal.

12. Learned Counsel for the respondents has averred that said decision is as per the rules and guidelines applicable to the case in hand. He while opposing the writ petition of the petitioner stated that the petitioner is seeking promotion to the post of Assistant at the Headquarter office, which is applicable to candidates who belong to CSC Service.

13. We have heard learned Counsel for the parties and given anxious consideration to the writ petition. The petitioner has challenged the Tribunal's Order on the ground that he has been denied promotion, which is his legitimate claim. On perusing the records, it is apparent that the petitioner has not even made a passing reference to the notification or the guideline or the rule that forms the basis of right claimed for. The present case is not one of denial of promotion on the ground of lack of promotional avenues but one of denial of promotion which the petitioner alleges to be his right which he has been denied.

We are constrained to state that petitioner has failed to place on record any evidence to show that he belongs to CSCS Cadre, whereas the record and postings of the petitioner show that he belongs to the Ministerial Cadre of subordinate office of CWC. The promotion that the petitioner desires is applicable to officials belonging to CSC Service, a different cadre to which the petitioner does not belong. The petitioner is claiming a right to promotion for a post that is not applicable or assigned to his cadre. In such circumstances, it is only logical and rational on the part of respondents not to consider him for the said post as he is not eligible for it. In so far as payment of other dues and entitlements is concerned, the same was agitated in the OA of 1689 of 1994 and O.A.1859 of 1993, which were disposed of vide a common order dated 08.03.95, wherein the aforementioned issues pertaining were conclusively decided and since the said order has not been challenged by the petitioner in this writ petition, the said order has attained finality and deserves no intervention of the writ court. We have observed that the petitioner had agitated the claim time and again without any success and all previous attempts had only gone in vain. This writ petition seems to be another desperate attempt to gain some mileage out of another round of litigation, albeit with no success.

14. In view of the foregoing discussion on the present writ petition, we find that there is no infirmity with the order of Tribunal, the said petition is devoid of merits and deserves no intervention of this Court.

15. With these observations, the present writ petition is dismissed.