
(2004) 01 DEL CK 0055
In the Delhi High Court
Case No : CW No. 23 of 1979

Shri Gopal Krishan

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 21-01-2004

Acts Referred:

Citation : (2004) 73 DRJ 37 : (2004) 3 SLJ 69

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : G.D. Gupta and Puneet Verma, for the Appellant; V.P. Chaudhary and Saroj Bidawat, for the Respondent

Judgement

Pradeep Nandrajog, J.—Mr. Gopal Krishan, who is petitioner in CW No. 23/79 and Mr. Chander Prakash, who is the petitioner in CW No. 67/79 along with respondents 2 to 4 in the said two writ petitions namely Shri Hari Singh Sidana, Shri S.K.Sharma and Shri S.K.Luthra were all employed as Steno-Typist under the University of Delhi. Respondents 2 to 4 were senior to the two writ petitioners in the seniority list maintained for the post of Steno Typist.

2. The next higher post in the cadre was the post of Stenographer. There existed two vacant posts of Stenographer which required to be filled up in the year 1978. On 22.7.1978 Executive Council of the University approved a scheme for giving advance increments to the Steno-typist who acquired higher proficiency in shorthand.

3. On 11.8.1978, the University issued a notice informing that a combined, Stenographer and proficiency test would be conducted to effect promotion to the two vacant posts of Stenographer as well as to give incentive under the scheme to the Steno-typist, who acquired higher proficiency as per the decision taken by the Executive Council of the University on 22.7.1978. Both the petitioners as well as respondents 2 to 4 who as noticed above are common respondents in both the writ petitions took the test which was notified to be held on 5.11.1978. 10

persons were empanelled and their names were put in the list in order of merit. The list reads as under:-

"Sl. Name No. of No. Mistakes

1. Shri Gopal Krishan 7 (Roll No. 52)
2. Shri Chander Parkash 20 (Roll No. 51
3. Shri S.K.Luthra 24 (Roll No. 29)
4. Shri R.V.R. Murthy 24 (Roll No. 49)
5. Miss Santosh Bala 25 (Roll No. 56)
6. Shri Anil Kumar Arora 25 (Roll No. 56)
7. Shri S.K. Sharma 27 (Roll No. 14)
8. Miss Harsh Rani 28 (Roll No. 58)
9. Shri Krishan Kumar 29 (Roll No.63)
10. Shri Hari Singh Sidana 30 (Roll No.10)"

4. On 13.12.1978 and 1.1.1979 the University promoted respondents 2 and 3 namely Shri Hari Singh Sidana and Shri S.K.Sharma respectively to the post of Stenographer. Petitioners were given to understand that even respondent No. 4 was likely to be promoted. Both of them filed separate writ petitions as noted above. It was prayed that promotion of respondents 2 and 3 be quashed. Petitioners be promoted as stenographer w.e.f. 13.12.1978 i.e. the date when respondent No. 2 was promoted. Petitioner alleged that being rank higher in merit as compared to respondents 2 and 3, they were entitled to be promoted as Stenographer.

5. During the pendency of the writ petition both the petitioners have been promoted or placed in the scale of Stenographer, but their claim still subsists as per learned counsel for the petitioner as not only would the petitioners, if they succeed, be entitled to the wages as Stenographer w.e.f. 13.12.1978 but even for purposes of increment they would be affected.

6. It is not disputed by the respondent that in the test held on 5.11.1978 relative position of the candidates in order of merit was as noted in para 3. Stand of the University is that it has been the consistent practice of the University to consider the merit, record of service and seniority while effecting promotions. It is pleaded by the University as under:-

"Once a list was prepared on the basis of norms laid down for merit and record of service, names of those in the list were re-arranged in order of their seniority to form the panel and the senior most amongst them was appointed first and so on."

7. As regards the list of ten candidates in order of merit noted in para above, it is

pleaded by the University as under:-

"In so far as the merit is concerned, it is to be determined by the test held on 04.11.1978 (should read 5.11.1978). 10 candidates were selected on the basis of merit. Since there was no adverse report against any of them and their record of service was satisfactory, they were put in the qualifying list. Those names were then arranged in order of seniority, to give due regard to seniority."

8. The admitted position common to all the parties is that promotions of the employees of University of Delhi are governed by the "University Non-teaching Employees Terms and Conditions of Service Rule, 1971". Sub Rule 5 of Rule 5 which deals with general conditions of service provides for recruitment by promotion and the same reads as under:-

"(i) Appointment to a post in any grade by promotion shall be made, whether in a permanent or officiating capacity, from amongst employees serving in posts in the next lower grade.

(ii) Every appointment by promotion shall be on the basis of merit and record of service due regard being paid to seniority."

9. It is thus apparent that as per the Rule, appointment by promotion has to be on the basis of merit and record of service. Due regard has to be paid to seniority. Stand of the respondent is that there was nothing adverse in the record of service of any of the 10 persons whose name is entered from Serial Nos. 1 to 10 of the list noted in para 3 above. It is also the admitted position as is evident from the pleadings of the University that placement of the 10 persons at Serial No. 1 to 10 was based on their merit position determined on the basis of mistakes committed by each candidate. Lesser the number of mistakes higher the position on the merit list.

10. Does the rule require rearranging the names of the person by unscrambling the list based on merit and record of service and rearranging the same on basis of seniority held by the candidate in the feeder cadre? What would be the meaning of the words "due regard being paid to seniority" in the service rules? The Supreme Court, in its decision reported as Union of India (UOI) Vs. Mohan Lal Capoor and Others, considered a service rule which reads as under:-

"The Selection for inclusion in such list shall be based on merit and suitability in all respects with due regard to seniority."

It was held:-

"22.....The Selection Committee has an unrestricted choice of the best available talent, from amongst eligible candidates, determined by reference to reasonable criteria applied in assessing the facts revealed by service records of all eligible candidates so that merit and not mere seniority is the governing factor. A simple reading of the Regulation 5 (2) clearly indicates this to be the correct view. The required number has thus to be selected by a comparison of

merits of all the eligible candidates of each year. But, in making this selection, seniority must play its due role. Seniority would, however, only be one of the several factors affecting assessment of merit as comparative experience in service should be. There could be a certain number of marks allotted, for purposes of facilitating evaluation, to each year of experience gained in the service."

11. In the judgment reported as Sarat Kumar Dash and Others Vs. Biswajit Patnaik and Others, , the concept of merit came suitably with due regard to seniority was explained as under:-

"6. It is seen that the Government, in the absence of statutory rules, have applied, by administrative order, the principle of "merit-cum-suitability with due regard to seniority". It is settled law that in case of promotion to the posts of higher cadre, it has always been the settled criteria applied by the Governments is "merit-cum-suitability with due regard to seniority" or "merit and ability" but not "seniority" or "seniority-cum-suitability". In fact, this question was considered by PSC, as stated earlier, before its evaluation of the respective merits. They secured the rules in the comparable services of the State where the principle of "merit-cum-suitability with due regard to seniority" is the statutory rule and thereby, the PSC had accepted the recommendation of the Government to apply the above rule to adjudge the relative merits of the candidates and in fact they did so apply.

7. In Capoor case this Court has stated with regard to the principle thus:

"[W]hen Regulation 5(2) says that the selection for inclusion in the list shall be based on merit and suitability in all respects with due regard to seniority, what it means is that for inclusion in the list, merit and suitability in all respects should be the governing consideration and that seniority should play only a secondary role. It is only when merit and suitability are roughly equal that seniority will be a determining factor, or if it is not fairly possible to make an assessment inter se of the merit and suitability of two eligible candidates and come to a firm conclusion, seniority would tilt the scale. But, to say, as the High Court has done, that seniority is the determining factor and that it is only if the senior is found unfit that the junior can be thought of for inclusion in the list is, with respect, not a correct reading of Regulation 5(2). I do not know what the High Court would have said had Regulation 5(2) said: "Selection for inclusion in the select list shall be based on seniority with due regard to merit and suitability". Would it have said that the interpretation to be put upon the hypothetical sub-regulation (2) is the same as it put upon the actual sub-regulation?"

8. In case of merit-cum-suitability, the seniority should have no role to play when the candidates were found to be meritorious and suitable for higher posts. Even a juniormost man may steal a march over his seniors and jump the queue for accelerated promotion. This principle inculcates dedicated service, and accelerates ability and encourages merit to improve excellence. The seniority

would have its due place only where the merit and ability are approximately equal or where it is not possible to assess inter se merit and the suitability of two equally eligible competing candidates who come very close in the order of merit and ability. Under those circumstances, the seniority will play its due role and calls it in aid for consideration. But in case where the relative merit and suitability or ability have been considered and evaluated, and found to be superior, then seniority has no role to play."

12. Indeed, "concept of merit-cum-suitability with due regard to seniority" is distinct from the "concept of seniority subject to merit" and the "concept of seniority subject to suitability". As explained in Sarat Kumar Dash's case applying Capoor's case, the principle of merit-cum-suitability subject to seniority mean that where competing candidates are equal or come close in order of merit and ability, seniority would break impasse and the one senior would be placed above the other. Save and accept this limited role, seniority has no role to play where the rule prescribes merit-cum-suitability, due regard being paid to seniority.

13. Mr. V.P.Chaudhary, learned Senior Counsel for the University argued that the University had always understood and applied the rule to mean that all those who qualified as per the bench mark fixed in the steno-typing test and nothing adverse was found in their service record were treated equally and based on seniority, panel was prepared. Counsel contended that comparative assessment of suitability based on service record was never done by the University and this was also one way in which the rule could be interpreted. I am afraid, in light of the categorical judgment of the Supreme Court in Capoor's case rendered in the year 1974, the University had no justification to interpret the rule as propounded by Mr. V.P.Chaudhary.

14. Writ petitions succeed in that, directions are issued to the respondent to place the petitioners in the grade of Stenographer by treating them as having been promoted to the said post w.e.f. 13.12.1978. Petitioners would be entitled to their seniority above respondents 2 to 4 as stenographer. Petitioners would be entitled to their yearly increments treating them as Stenographer w.e.f. 13.12.1978. Arrears be calculated and paid to the petitioners within a period of 8 weeks from the date of this order. Promotion of respondents 2 and 3 as Stenographer is not being quashed because admittedly during the pendency of the writ petitions, petitioners came to be promoted as Stenographers which promotions would have enured to respondents 2 and 3. Petitioners would be entitled to costs against respondent No. 1 in the sum of Rs. 5000/- each.