
(2004) 04 DEL CK 0056

In the Delhi High Court

Case No : WP (C) No. 1319 of 1989

Shri H.C. Pandey and Another

APPELLANT

Vs

Delhi Development Authority and Another

RESPONDENT

Date of Decision : 30-04-2004

Acts Referred:

Citation : (2004) 04 DEL CK 0056

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : G.D. Gupta and Sanjeev Joshi, for the Appellant; G.K. Srivastava, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Petitioner No.2 died during the pendency of the proceedings. His legal heirs have not been brought on record. Proceedings qua him have abated. I would, Therefore, taking note of the facts only in relation to petitioner No.1.

2. Office order 6.12.1982 reads as under:-

""O R D E R

Consequent upon the decision of the Delhi Development Authority to pay all allowances to the employees of the Slum Wing of the D.D.A. at the rate admissible to the employees of DDA Main and extension of the Delhi Development Authority (Salaries, Allowances and Conditions of Service) Regulations, 1961 to the employees of the Slum Wing, it has been decided to adopt and follow the recruitment rules framed by the Delhi Development Authority for all equivalent and comparable posts in the Slum Department with immediate effect.

All appointments, regularisation and promotions in future, in the Slum Department shall be strictly in accordance with the recruitment rules framed by

the DDA.

This order will also be applicable to all the pending cases of appointment, regularisation and promotions.""

3. Petitioner challenges the said office order and as a consequence thereof prays that the letter dated 14.10.1988 communicated to the petitioner be also quashed and a mandamus be issued to the DDA to promote the petitioner to the post of Accountant as per recruitment rules for the said post as were prevalent in the Municipal Corporation of Delhi with all consequential benefits of pay and allowances, seniority and promotion to further posts.

4. Order dated 14.10.1988 reads as under:-

""Sub: Regarding allowing the pay scale of Rs.550-900/- (pre-revised)

With reference to his representation dated 23.8.88 and 25.2.88 on the subject cited above, Sh. H.C.Pandey Jr. Accountant is advised to qualify the D.D.A.'s departmental Accounts test (S.A.S.) before his case can be considered. As per R.R'' s the passing of the above test is a necessary for appointment as Accountant.""

5. Petitioner No.1 was appointed under the Municipal Corporation of Delhi (MCD) in the year 1959 as distributor. He was promoted to the post of Lower Division Clerk in the year 1961. In the year 1964 he was posted as LDC in the slum department. The said department was transferred to the DDA along with the staff working in the slum department on 1.3.1974. Terms of transfer were as per office order dated 28.2.1974. They record, inter-alia, that the terms of appointment under the MCD would be protected. While working under the DDA in the slum department, petitioner No.1 was promoted as Upper Division Clerk in the month of July, 1974. On 1.4.1978 the Slum Wing was re-transferred back to the MCD. It remained under the Corporation till 15.5.1988 when it was transferred once again to the DDA.

6. When the Slum Department was under the MCD, petitioner No.1 appeared along with few others at a limited departmental examination to effect appointment to the post of Junior Accountant. The said examination was held in the month of February, 1988.

7. Recruitment rules for the post of Junior Accountant under the MCD would reveal that the post of Junior Accountant has to be filled up by promotion on the basis of result of a limited departmental competitive examination. UDC's with 5 years service in the grade rendered after appointment thereto on a regular basis are eligible to sit at the examination.

8. While declaring the result on 2.4.1980, petitioner along with two other persons namely Shri Sunder Sham Arora and Shri Ravi Shankar were declared successful for promotion to the post of Junior Accountant in the Slum Wing. The order of merit of the said 3 candidates was:-

1. Shri Sunder Sham Arora
2. Shri H.C.Pandey (Petitioner)

3. Shri Ravi Shankar (Petitioner No.2 since deceased)

9. Before petitioner No.1 and other two persons could be actually promoted to the post of Junior Accountant as noted above, Slum Department got re-transferred to the DDA w.e.f. 15.5.1980.

10. There was no post of Junior Accountant under the DDA. Since it was a term and condition of the transfer of the employees of the slum Wing under the MCD to the DDA that their service conditions would not be altered and since petitioner No.1 and two other persons noticed above were entitled to be promoted to the post of Junior Accountant as per the Recruitment Rules to the said post framed by the MCD, DDA down-graded 3 posts of Accountants to that of a Junior Accountant and posted the petitioner and he said two other persons as Junior Accountant.

11. On 9.9.1975, MCD had framed the recruitment regulations to the post of Accountant. As per the said notified recruitment regulations, post of Accountant had to be filled up, 25% by promotion on the basis of seniority-cum-fitness from amongst Junior Accountants with 5 years service in the grade and 75% posts had to be filled up on the basis of result of limited departmental competitive examination open to Junior Accountants and Head Clerks with 3 years service in the grade.

12. Petitioner No.1 claims that since he had completed 5 years of service as Junior Accountant in September, 1985 he became eligible for promotion to the post of Accountant in September 1985. As per petitioner No.1, he became entitled to be promoted to the post of Accountant as per his seniority. I may note that similar was the claim made by petitioner no.2 who had since expired during the pendency of the petition.

13. Office order dated 6.12.1982 came in the way of the promotion of petitioner No.1. Said office order, noted in para 2 noted above, notified the resolution of the DDA that pay and allowances of employees in the Slum Wing would be at the rate admissible to employees of the DDA main and extension Wing. Further, recruitment rules framed by the DDA for the equivalent and comparable posts would be applicable in the Slum Department with immediate effect.

14. As per the notified recruitment regulations to the post of Accountant under the DDA, for being eligible to be promoted to the post of Accountant, candidates had to qualify at a written examination. Said examination was called SAS examination. Assistants, UDCs, Stenographers and graduate LDCs with 3 years service were eligible to appear at the examination.

15. Petitioners contended that they were governed by the recruitment regulations framed by the MCD and, Therefore, 25% of the posts had to be filled

up by effecting promotion based on seniority. Pending consideration of their representation, petitioners appeared at the SAS examination conducted by the DDA twice but could not qualify.

16. On 14.10.1988, as noted in para 4 above, DDA informed the petitioners that they had to qualify in the departmental examination tests (SAS) before the case could be considered for promotion.

17. Laying a challenge to the office order dated 6.12.1982, counsel for the petitioner contended that DDA could not unilaterally alter the terms and conditions of employment of the petitioners. The terms and conditions under which the petitioners were re-transferred to the DDA were to be found in the office order dated 14.5.1980. As per the said office order, terms and conditions of service of the petitioners under the MCD were maintained on the petitioners being transferred and absorbed under the DDA in the Slum Department. Therefore, counsel contended that the Recruitment Rules followed by the MCD would be applied to the petitioners.

18. Mr.G.K.Srivastava, counsel for DDA, replied that petitioners cannot blow hot and cold. Petitioners have not denied the fact that w.e.f. 6.12.1982 they have got the benefit of pay and allowances adopted by the DDA as per the Resolution of the DDA to pay the pay and allowances to the employees in the Slum Wing at the rates admissible to employees of the main Wing of the DDA. Counsel contended that the said Resolution also stipulated that the recruitment rules framed by the DDA for equivalent or comparable post would apply to the Slum Wing as well. Counsel contended that petitioners cannot take advantage of part of the Resolution and disclaim another part of the Resolution. Counsel contended that by receiving pay and allowances at par with the employees of DDA, petitioners were estopped from questioning the applicability of recruitment rules framed by the DDA to be made applicable in the slum Wing. Alternatively, counsel contended that even if the notified recruitment rules of the MCD had to be applied, petitioners and Shri Sunder Sham Arora constituted the cadre of Junior Accountants under the DDA in its Slum Wing. Only 25% posts of Accountant had to be filled by promotion based on seniority as per the notified recruitment regulations of the MCD. Petitioners have not stated that any post was available to be filled by promotion based on seniority.

19. It is no doubt true that terms and conditions on which an employee is transferred from a parent department to another department cannot be altered unilaterally by the department where the employee is transferred and absorbed. But that would not mean that the latter department has to follow, for all times the recruitment rules of the department where the employment was serving before being transferred. There may be situations where the cadre in the two departments may be entirely different. Promotional posts may be differently available in the cadre strength of the two departments. There may be situation where in the 2 departments different nomenclature of posts exists. The term of transfer that the terms and conditions of employment of the transferred

employees would remain the same would mean that in the post they are transferred, terms and conditions would remain the same. Chance of promotion is not a service condition. Where, even within a department, cadres are merged which merger adversely affects the chances of promotion of an employee, he can raise no grievance.

20. Service conditions and terms and conditions of employment of the petitioners as Junior Accountant were protected under the DDA. DDA resolved in the year 1982 that pay and allowances under the DDA and the Slum Department would be the same. Petitioners got the benefit thereof. Resolution further mandated that further promotion would be as per the recruitment rules followed by the DDA in the General Wing in so far as further promotions in the Slum Wing were concerned. This resolution does not alter the terms and conditions of the employment of petitioners. Chance of promotion is being affected.

21. Assuming that the office order dated 6.12.1982 does not govern the Slum Department in so far as applicability of recruitment rules are concerned. Petitioners, then, would be governed by the recruitment rules as in force under the MCD.

22. Petitioners and Shri Sunder Sham Arora would constitute a cadre under the Slum Wing of the DDA. Since 25% posts of Accountant had to be filled by promotion. It would require the DDA to have a cadre strength of Accountant under the slum Wing. Petitioners have not averred as to what is the cadre strength of Accountant under the Slum Wing of the DDA. We do not have the cadre strength of Accountant under the Slum Wing. If the cadre strength of Accountant under the Slum Wing is 1, 2 or 3, only 1 post would be available for promotion, based on seniority. It is difficult to conceive that for a cadre strength of 3 to the post of Junior Accountant, cadre strength of Accountant would be more than 3. Normally, as one goes up the pyramid the pyramid tapers. Higher you go in the category lesser become the number of posts.

23. Pleadings of the parties are silent on this issue. Onus was on the petitioners to plead and establish that there existed a cadre post of Accountant which had to be filled in the slum Department by promotion based on seniority. Petitioners have failed to discharge the said onus. As per the pleadings, petitioners cannot claim right to be promoted in the general cadre of DDA.

24. Assuming that there was one post of Accountant in the Slum Department which had to be filled up by promotion based on seniority, petitioners being junior to Sunder Sham Arora could not lay a claim to the said post. Shri Sunder Sham Arora had not approached this court. Petitioners, Therefore would have no case at all to lay a claim for promotion based on seniority.

25. The rule is discharged. Writ petition is dismissed.