

(2011) 01 DEL CK 0010

In the Delhi High Court

Case No : Writ Petition (C) No. 4420 of 2001

Shri Rakesh Kumar Sharma

APPELLANT

Vs

Indian Tourism Development Corp. and Others

RESPONDENT

Date of Decision : 03-01-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 01 DEL CK 0010

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Gyanender Singh, for the Appellant; Amit Seth, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—The challenge by means of this petition under Article 226 of the Constitution of India is to the Award dated 16.1.2001 passed by the Presiding Officer, Industrial Tribunal, and by which Award, two issues were decided. The first issue pertained to the grant of allowance in the post of Assistant (Accounts) where the Petitioner was officiating. The second issue is the claim of the Petitioner for grant of promotion to the post of Assistant (Accounts).

2. So far as the first issue is concerned, the Industrial Tribunal has held that till the time the Petitioner acted on the officiating post, he was given the allowances for that post. However, he was not found fit to serve on the post and as per the appointment letter, it was clarified that there was no right to be made permanent on the post. Accordingly, the claim for officiating allowances on the officiating post was held to have been satisfied because the Petitioner had got the allowance for the period he served in the officiating post. So far as the second issue is concerned, the Tribunal by reference to the relevant rule held that promotion was by selection subject to the candidate performing satisfactory service in the post from which promotion is sought. The Departmental Promotion Committee (DPC) did not find the Petitioner suitable and the Industrial Tribunal has referred to various memos which were issued by the management to the

Petitioner/workman with regard to the performance and conduct of the workman being found highly unsatisfactory. The memos have been referred to by the Industrial Tribunal as Ex.MW1/2, Ex.MW1/3 and Ex.MW1/4.

3. The relevant portion of the order of the Industrial Tribunal on both the issues reads as under:

A management through the testimony of MW1 have proved on record copy of an order dated 29.10.85 (EX.MW1/1) whereby, the officiating allowance was granted to the workman and two of his colleagues Sh. Harjeet Singh and Mrs. Thankamony Pillai clarifying that officiating allowance would not confer any right on the employees to claim permanent and regular appointment to the post of Junior Assistant (Accounts). Ex.MW1/2 is the copy of letter dated. 20.11.85, whereby, the workman had been intimated that since he had started on go-slow tactics and his output was totally unsatisfactory, therefore, he should maintain Progress Report and put up to Sh.S.C. Jain through Accounts Officer (Delhi). Vide this letter, he was also advised to improve his work. Ex.MW1/3 is copy of letter dated, 22.1.86, whereby, the workman was again told about the unsatisfactory performance of his duties. Similarly, is the communication dated 15.3.86 (EX.MW1/4), whereafter the management vide Ex.MW1/5 dated, 7.5.86 ordered withdrawal of the officiating allowance in respect of the workman with immediate effect. From these documents, thus it is clear that the management has withdrawn the officiating allowance in the case of the workman to which the later had no legal right as was made clear to him while granting the same, cannot be said as an action on the part of the management is arbitrary and without assigning the reasons for the withdrawals of the orders granting the allowance as alleged by the workman in his statement of claim.

Not only this, the management have placed on record and proved the communication as Ex.MW1/7, dated 31.8.88, Ex.MW1/8 dated 14.9.86 and Ex.MW1/9 dated 3.11.88, Ex.MW1/10 dated 19.7.89 and Ex.MW1/11 dated 26.7.89, whereby it stands established that the workman had been found by the management derelict in performing his duties to their entire satisfaction. Cumulative effect of all these documents is sufficient to absolve the management of their liability to discharge the onus in respect of Issue number 1 and since it is the workman who had claimed his right to officiating allowance, therefore, it is required him to establish that the officiating allowance granted to him by the management vide order dated 19.10.95 by any reason had conferred on him, right to continue drawing the said allowance irrespective of his performance, have been found unsatisfactory as proved by the management through the documents discussed above. The workman besides his oral testimony regarding his allegation of discrimination to the continuous of the allowance in respect of his colleagues cannot be considered conferring on him any right to be granted the allowance despite his performance having been adjudged unsatisfactory by the management who had been intimating the workman about the same and advising him to improve upon till the same was withdrawn in his case. It is also

admitted in his cross-examination that grant of this allowance was on adhoc basis and he was paid the same till he worked in the officiating capacity. He has also been falsified by the documents in his stand, that the allowance was withdrawn without any basis. He has admitted it to be correct that the allowance was withdrawn because he had not been working in the officiating capacity as Junior Assistants, meaning thereby that he did not work as Junior Assistant after the allowance was withdrawn, therefore, his claim of being granted the allowance till 31.12.86 can not be accepted simply for the reason that his colleagues junior to him had been paid till that date. The allowance was withdrawn on 7.5.86 and admittedly the workman did not officiate as Junior Assistant thereafter. He, therefore, can not be held entitled to the grant of allowance as claimed by him after the same was withdrawn.

Ld. A.R. of the management, referring to the rules of recruitment and promotion etc., submitted that the post of Assistant (Accounts) was to be filled up as 50 per cent direct recruitment and 50 per cent by promotion on selection from amongst Junior Stenographer/Junior Assistant with three years satisfactory experience in that grade. He submitted that since the Departmental Promotion Committee which was duly constituted in this case having representation by the members belonging to minority communities and SC/ST and they found the workman not suitable for promotion, therefore, he was not selected for the post of Assistant (Accounts). Admittedly that promotion to this post was non-selection post which meant a post other than a selection-post to be filled on the basis of seniority subject to suitability and elimination of unfits. But, since the Departmental Committee did not find the workman suitable, the workman could not be selected finding him unsuitable and unfit for the post as is evident from the minutes of the Committee as well as communication issued to the workman as referred to above proved by MW1. He has also relied upon the judgment of the Hon'ble Supreme Court of India, in the case between the Union of India (UOI) and Others Vs. Durgadass and Others, Wherein, it was held, "the selections made by the Departmental Promotion Committee were not arbitrary. None of the Petitioners before the High Court had better confidential remarks than those selected.". In this case, it was further observed by the their lordships that it could not be proved that the Petitioners were not considered for promotion, whereas , it was found from the record that their cases were fully considered and in view of their confidential rolls, they were not found fit. Ld. A.R. for the management has submitted that the workman has not disputed that he was not considered for selection and management has proved on record that on consideration of his record, the Departmental Promotion Committee found him unsuitable for promotion to the post of Assistant (Accounts) and therefore, his claim for promotion is not justified.

I have carefully examined the claim of the workman who has submitted that he had been called for an interview, but according, to him, it was just an eye-wash. He has, however, failed to establish on record how interview in his case was just an eye-wash. Admittedly, he attended the interview, but was declared

unsuccessful. This gave him the cause for anguish. Had he been aggrieved by the fact, that he had not been issued the interview letter on time or that late-issuance of the letter of interview prejudiced him, in any manner, he could have declined to appear before the Departmental Promotion Committee for interview so as to register his protest against the alleged discriminatory conduct of the management but he did not do so and chose to appear for the interview. His cause of grievance is nothing but an after-thought in order to make capital cut of his seniority, but failure to be selected. Simply because, he was senior to some of those selected in the interview does not confer any right on him for selection. The record produced by the management appears to be sufficient to rebut his allegations that the Departmental Promotion Committee acted in an arbitrary manner or members of the Committee were biased against him. His allegations are only that the entire exercise regarding the constitution of the Departmental Promotion Committee and issuing interview letter late in his case, were motivated to favour the Respondents who were junior to him. I find no substance in this allegations.

(Emphasis added)

4. It is settled law that a court does not substitute its decision for the decision taken by a Departmental Promotion Committee. In the present case, there is no allegation of any malafides against any member of the DPC. Exercising jurisdiction under Article 226, I am not entitled to interfere with the Award of the Industrial Tribunal unless the same is wholly illegal or perverse. I do not find any illegality or perversity or any injustice having been caused to the Petitioner. The writ petition is accordingly dismissed leaving the parties to bear their own costs.