
(2013) 05 DEL CK 0465

In the Delhi High Court

Case No : Writ Petition (C) No. 2663 of 1998 and C.M. No. 11443 of 1998

Shri Sumit Bhattacharjee

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-05-2013

Acts Referred:

Citation : (2013) 05 DEL CK 0465

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : B. Mahapatra, for the Appellant;

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This writ petition is filed by the petitioner Sh. Sumit Bhattacharjee against his employer/respondent No. 2/National Book Trust of India seeking the relief of promotion to the post of Assistant Director (Production) w.e.f. April, 1996. The facts of the case are that the petitioner was appointed as Production Assistant on 1.7.1983 with the respondent No. 2. The post of Assistant Director (Production), and which is a promotion post after the post of Production Assistant, fell vacant in April, 1996. Petitioner contends that as on this date if DPC was held he would have been the only candidate, and therefore, he questions the interview and the selection process which was conducted subsequently on 19.2.1997. Petitioner also contends that if there were any adverse entries in the ACRs for the years 1995-1996, these ACRs stand expunged by the memorandum dated 7.9.1996. Petitioner also claims that respondent No. 2 was unjustified in holding of interviews for the post of Assistant Director (Production) because the relevant recruitment rules did not provide for interviews. It is also contended that respondent No. 3 could not be appointed to the post of Assistant Director (Production) because he was not a graduate.

2. Respondent No. 2 has filed its counter-affidavit and stated that petitioner after appearing in the interview, and having been declared unsuccessful as compared

to respondent No. 3, thereafter, now cannot turn around and question the selection process on the ground that DPC should have been held for the post falling vacant only in April, 1996. It is also argued that DPC duly considered both the petitioner and the respondent No. 3 for the post of Assistant Director (Production) and found the petitioner not to be suitable and the respondent No. 3 to be better, and therefore, granted promotion to the respondent No. 3.

3. I may note that it is not disputed that only one post of Assistant Director (Production) was available and therefore, only one of the candidates could be appointed.

4. Firstly, in my opinion, the petitioner is not justified in arguing and contending that the promotion to the post of Assistant Director (Production) should be held immediately after April, 1996, and if it was held, petitioner would have been appointed. This is because if that was the stand of the petitioner then petitioner should not have participated in the selection process and should not have appeared before the Selection Committee/DPC. Petitioner having participated in the process is quite clearly estopped from challenging the fact that DPC could not meet and he in fact ought to have been selected taking the position as on April, 1996. Petitioner is therefore, estopped from challenging the selection process conducted on 19.2.1997 when the respondent No. 3 was appointed and not the petitioner.

5. Reliance upon the judgment of the Supreme Court in the case of Raj Kumar and Others Vs. Shakti Raj and Others, by the petitioner is not correct because in the facts of the said case the Supreme Court has said that principle of estoppel by conduct or acquiescence has no application. However, reference to para 16 of the judgment clearly shows that the Supreme Court relied upon its earlier judgment in the case of Madan Lal v. State of J and K. (1955) 3 SCC 486 to hold that a candidate having taken a chance to appear in an interview but who remained unsuccessful cannot turn around and challenge either the constitution of the Selection Board or the method of selection as being illegal because he is estopped in law in questioning the correctness of the selection.

6. The second ground which was urged on behalf of the petitioner is that the DPC of the respondent No. 2 have wrongly relied upon the new rules of appointment/promotion to the post of Assistant Director (Production) but should have relied on the old rules which are filed as Annexure "H" (page 37 of the paper book) which as per the petitioner does not require any interview process to be conducted because there is automatic promotion on completing five years of service. It is further argued that the respondent No. 3 was not a proper candidate because he did not have the requisite graduation degree. In order to appreciate this contention, let us refer to the old recruitment rule which has been filed by the petitioner as Annexure "H" to the writ petition at page 37, and which reads as under:-

RECRUITMENT RULES FOR THE POST OF ASSISTANT DIRECTOR (PRODUCTION)

Note: The academic qualifications will not be applicable in the case of Production Assistants already in position

7. I may note that the next document which is in continuation of Annexure "H" is also Annexure "H" because Annexure "H" are collective documents. The said document at page 37(i) reads as Recruitment Rules to the post of Production Assistant and not Assistant Director (Production).

8. A reference to the Recruitment Rules as prevalent according to the petitioner in April, 1996 shows as per serial No. 9 that there has to be held a DPC/Selection Committee for the Group-A post of Assistant Director (Production). Therefore, petitioner is not justified in stating that no interview should be conducted. Also, in my opinion, interview has to be conducted because after all the five years service records of the candidates have to be considered, and surely therefore, it cannot be said that DPC/Selection Committee should not meet. Once the DPC/Selection Committee meets, it is bound to consider the five years regular service ACRs of the persons, and which included the petitioner and the respondent No. 3. Therefore, in my opinion, the petitioner is not justified in contending that promotion was automatic and there was no need for DPC/Selection Committee.

9. I may at this stage state that petitioner did not have a fully satisfactory ACR for the year 1995-1996 as contended by him, and which would have been considered for appointment even for the post in April, 1996 or for the selection process of February, 1997. Petitioner had adverse remarks in his ACR for the year 1995-1996. Though part of the adverse remarks was removed, but some parts of the adverse remarks remained. This is clear from the memorandum dated 7.9.1996 of the respondent No. 2 which is filed as Annexure "G" (page 34) of the writ petition. The relevant portion showing that there continued to remain some adverse remarks against the petitioner is as under:-

.....The following remarks would remain not only because Shri Bhattacharjee has not represented against these but also because these are a just and correct comment on his performance:

c) except for lack of concern for the timely payment of bills, Shri Bhattacharjee is a good officer and he attends to his work with sufficient care;

d) he needs to pay more attention to the selection of printers so that the quality of production improves and the time schedule is respected;

e) he should assess the capacity of his printers in the light of their limitations-

The following remark being a repetition of what has been stated before is, however expunged:

f) he is expected to be more reliable in handling time bound reprints against firm orders-....

10. Surely, when there is only one post and more than one candidate, a candidate who has better ACRs for the preceding five years can be considered to be more suitable by the DPC/Selection Committee for promotion. The petitioner cannot claim that his ACR for the year 1995-1996 was totally blemish less in view of the remarks which have been reproduced above. In any case, the DPC considered the ACRs of both the petitioner and the respondent No. 3 and found the respondent No. 3 to be a more suitable candidate. I cannot interfere with the selection process unless I had before me the ACRs of the respondent No. 3 for comparison. These ACRs are not on record and therefore, I have no option but to accept the decision of the DPC/Selection Committee which found respondent No. 3 more suitable than the petitioner, especially because ACRs of both these persons having been duly considered by the DPC/Selection Committee.

11. The argument urged on behalf of the petitioner that respondent No. 3 was not qualified as he was not a graduate is an argument without merit for the reason that as per the serial No. 4 of the Recruitment Rules, reproduced above Annexure "H" (page 37), shows that what was essential was only a senior secondary or equivalent qualification and a degree from a University was only desirable i.e. not an essential criteria. Therefore, the argument of the petitioner is misconceived that respondent No. 3 was not to be considered because he did not have a degree from a recognized University.

12. Upshot of the above discussion is that petitioner participated in the selection process. He appeared before the DPC/Selection Committee. The DPC/Selection Committee found the respondent No. 3 as a more suitable candidate for the only post available after duly considering the ACRs of both the petitioner and the respondent No. 3. Petitioner is estopped from claiming that the DPC/Selection Committee should not have been held and he should be considered for the post on account of vacancy existing in April, 1996. It may be stated that even if a vacancy existed in April, 1996, as in April 1996 the ACR of 1995-1996 would have been considered and ACR of 1995-1996 did not have only favorable remarks but there were some adverse remarks in the ACR, and therefore, being one of the ACRs to be considered for five years even as of April, 1996, it is not necessary that petitioner would have got promotion to the post of Assistant Director (Production) automatically in April, 1996.

13. Finally, I may state that the issue in the present case is only of the promotion for a period of roughly of about six odd years inasmuch as counter-affidavit filed by the respondent No. 2 shows that petitioner was promoted to the post of Assistant Director (Production) w.e.f. 24.4.2002. In view of the above, I do not find any merit in the petition, which is accordingly dismissed, leaving the parties to bear their own costs.