

(2006) 05 DEL CK 0139
In the Delhi High Court
Case No : Writ Petition (C) 11734 of 2005

Shridhar Sharma

APPELLANT

Vs

M.C.D.

RESPONDENT

Date of Decision : 16-05-2006

Acts Referred:

Citation : (2006) 130 DLT 97

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Non, for the Appellant; Gaurang Kanth, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—There is none present on behalf of the Petitioner. On the previous date of hearing the Respondents were directed to produce the original records by which the Petitioner's juniors were promoted to the post of Technical Supervisor. Counsel for the Respondent states that copies of the records are in Court today.

2. The relief claimed in these proceedings is for a direction to the Respondents (hereafter referred to as "the MCD") to hold a Review Departmental Promotion Committee (DPC), for consideration of his case for promotion as Technical Supervisor w.e.f. 10.12.2001, the date from which his juniors in lower cadre/ feeder cadre were promoted and also for consequential directions.

3. The facts for deciding this case are not in controversy. The Petitioner joined the services of the MCD as a Mali on 26.7.1984. Apparently, his services were terminated on 26.6.1996. He approached the Labour Court which by an Award dated 10.7.1998 directed his reinstatement and with back wages, w.e.f. 1.2.1990. The Petitioner had also applied for regularization and subsequent promotion to the post of Technical Supervisor.

4. Since the Petitioner was not regularized in the post of Malli he approached the

Court by filing WP(C)1533/2002. By an Order dated 18.4.2002, this Court allowed the writ petition in the following terms :

Rule.

The only issue raised in the writ petition by the petitioner is the claim of the regularization to the post of Mali and to consider him for the post of Technical Supervisor. It is stated in the position that the respondent corporation already has a policy of regularization including that for the Mallies and Beldars but the petitioner has not been regularized. In view of the aforesaid fact the only direction which is liable to be passed is to consider the case of the petitioner for regularization in accordance with the policy and guidelines of the respondent in accordance with the seniority of the petitioner. Ordered accordingly. Writ petition stands disposed off.

CM 2738/2002

Dismissed as infructuous.

5. It is claimed that the Respondent had, during the pendency of the previous writ proceedings promoted 21 Malis to the post of Technical Supervisor on ad hoc basis on 10.11.2001. The Petitioner claimed to be aggrieved; he represented for inter alias promotion on 7.1.2002. Consequent upon the directions of the Court dated 18.4.2002, the Petitioner's services were regularized as Mali w.e.f. 1.4.1995. His representations and claims for consequential benefit of promotion to the post of Technical Supervisor, however, went unheeded.

6. Learned counsel for the MCD has produced the relevant extracts of the record which suggest that indeed the Petitioner had been overlooked while the others in the same category and juniors to him were promoted. The relevant part of the noting in the file which was relied upon reads as follows :

There are only 30 sanctioned posts of Tech. Supervisor in Hort. Deptt. MCD at present, only one post of T.S. is vacant and 2 candidates are approaching for promotions. As stated above, the services of Sh. Sridhar, Mali was regularized by the Hon'ble High Court w.e.f. 01.04.95 in 2002 and another Sh. Om Pal, Mali (SC) has become eligible in the year 2002.

It is also pertinent to mention here that at the time of promotion of 29 Malis to the post of T.S., no roster for Gen./SC/ ST/OBC etc. was framed and out of 29 eligible Malis only one belong to reserved category who was promoted. As per roster, out of 30 posts, 4 for SC and 2 for ST were to be filled or to be left vacant in case non eligibility of SC/ST candidates.

In view of the above facts and circumstances this department may kindly be advised that whom the one vacant post of T. be filled, whether Sh. Sridhar, Mali whose services regularized w.e.f. 1.4.95 in 2002 by High Court's decision and his juniors have been promoted, be allowed to promote or as there was no roster framed by the Deptt. For SC/ST/ etc/ at the time of promotion of Mali to T.S.

Before SC candidate Sh. Om Pal, Mali may be promoted first or both may be promoted after reverting the junior post Technical Supervisor or to accommodate both the Malies to avoid any legal complication, one more post may be upgraded.

Submitted for necessary orders pl.

In view of the facts mentioned at portion marked "A" at page 5/N and because of the reference from National Commission for Scheduled caste at page 16/C the proposal to promote Shri Ompal who belongs to reserve category may be approved. The issue of redressing the grievance of Sh. Sridhar will be examined separately thereafter.

(DR.M.M.KUTTY)

ADDITIONAL COMMISSINER (ENGG.)

01.07.2005

COMMISSIONER

7. It would be evident from the above that there are 30 sanctioned posts in the grade of Technical Supervisor and there is only one vacancy in that post. It is also a matter of record that as per the roster presently applicable the post has to be filled by SC/ST candidate. The noting however reveals that no roster was followed while effecting the promotions in the year 2002. However, it is a matter of record that some persons who were junior to the Petitioner were promoted on 10.12.2001. The exact particulars of such persons has not been disclosed in these proceedings. Therefore, in my opinion the only equitable order which can be issued is that the MCD should review the entire issue taking into consideration the seniority list in the cadre of Malis as on the date when others were promoted in the year 2001 and also consider the position vis-a-vis those persons who were considered and promoted then. This is in view of the admitted fact that the Award which entitled the Petitioner to reinstatement was passed in the year 1998 and Therefore his right to reinstatement and consequential benefits stood crystallised as on that date.

8. In view of the above discussion a direction is issued to the MCD to hold a DPC after giving the Petitioner his correct seniority position in the list, considers the candidature of all the eligible Malis including the Petitioner and also keeping in mind the roster position. The review DPC shall be convened and shall conduct his deliberations within a period of three months from today. The results of such DPC shall be made known to all the concerned within a period of four weeks after its recommendations are received by the MCD. The wit petition is allowed to the extent indicated above.