
(2006) 05 DEL CK 0042
In the Delhi High Court
Case No : Writ Petition (C) 4591 of 2000

S.K. Sharda

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-05-2006

Acts Referred:

Citation : (2006) 130 DLT 142

Hon'ble Judges : P.K. Bhasin, J; Mukul Mudgal, J

Bench : Division Bench

Advocate : A.K. Behera, for the Appellant; Archana Dogra, for the Respondent

Judgement

Mukul Mudgal, J.—Rule DB. With the consent of the learned Counsel for the parties, the writ petition is taken up for final hearing.

2. This writ petition challenges the order dated 10th July, 2000 passed by the Central Administrative Tribunal (in short "CAT") in an application filed by the petitioner by which the petitioner approached the CAT challenging his reversion to the substantive post of Assistant by order dated 9th May, 2000. The petitioner was appointed as an Assistant with the respondents on 8th December, 1987. In 1995, after serving for eight years as Assistant the petitioner became eligible to be promoted to the post of Section Officer. As the required rules for promotion to the post of Section Officer stipulated 8 years working on the post of Assistant, the petitioner was promoted to the post of Section Officer on ad hoc basis on 16th June, 1997. The petitioner's reversion was occasioned due to the promotion of four Assistants to the post of Section Officer on 2nd July, 1997 and 1st July, 1999, after their acquiring the eligibility subsequent to the petitioner's promotion. The petitioner was accordingly reverted as the said four assistants in the post of Assistant were senior to him. This is the basis on which the CAT has sustained the order of petitioner's reversion.

3. The learned Counsel for the petitioner has relied on the principle of "last come first go" which plea has been negated by the Tribunal on the ground that the four

Assistants promoted to the post of Section Officer subsequent to the petitioner, were senior to the petitioner in the Assistant Cadre. In our view when the petitioner had acquired his eligibility for promotion to the post of Section Officer in 1995 after working for 8 years on the post of Assistant much before the Assistants subsequently promoted as Section Officer who acquired the 8 years' eligibility criteria on a later date, the principle of "last come first go" was to be adopted. The learned Counsel for the petitioner has submitted that in any event the effect of the judgment is minimal as all that is involved in the present writ petition is the payment of his pensionary benefits and no payment of emoluments for the relevant period is involved, nor the seniority of any other person is affected as the petitioner has already retired on 28th February, 2003. In fact the period involved in this writ petition is merely from 20th July, 2000 when the petitioner was actually reverted as an Assistant up to 23rd April, 2001 when he was reappointed as a Section Officer. Consequently, the reversion of the petitioner merely on the ground of acquisition of eligibility by other Assistants subsequent to the promotion of the petitioner to the post of Section Officer cannot be sustained. The petitioner having become eligible and promoted ad hoc could have certainly be reverted in case regularly appointed Section Officers were available. However, he could not have been reverted merely by the ad hoc and not the regular promotion of four others who though senior to the petitioner in the assistant's cadre, nevertheless acquired the eligibility for the post of Section Officer after the petitioner's ad-hoc promotion to the post of Section Officer. The Tribunal's conclusion upholding the reversion of the petitioner on the basis of the seniority of the newly promoted Section Officers in the cadre of Assistants cannot, Therefore, be upheld. The writ petition is allowed and the pensionary benefits payable to the petitioner will now be computed and paid on the basis as if the petitioner had not been reverted from the post of Section Officer and all pensionary arrears due to the effect of this judgment will be paid not later than 30th June, 2006.

4. The writ petition stands disposed of accordingly.