
(2001) 08 DEL CK 0113
In the Delhi High Court
Case No : CWP No. 4513 of 1998

S.L. Shailani

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 31-08-2001

Acts Referred:

Citation : (2001) 08 DEL CK 0113

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Mr. M.K. Bhardwaj, for the Appellant; Ms Barkha Babbar and Mr. Jagjit Singh, for the Respondent

Judgement

Vikramajit Sen, J.—By consent of Counsel for the parties, the petition has been taken up for final disposal.

2. On 24.11.2000 Hon"ble Madan B. Lokur, J. had taken into consideration the fact that the Petitioner had urged an identical issue before the Allahabad Bench of the Central Administrative Tribunal and that this had been dismissed by the Tribunal in terms of its Order dated 13th September, 1996. Thereafter, the Petitioner had approached the Allahabad High Court challenging the order passed by the Learned Tribunal. The High Court had applied the ratio in L. Chandra Kumar vs. Union of India and Others, 1997 SCC (L & S) 577 and found that the Writ Petition could not be entertained.

3. At that point of time, it was open to the Petitioner to file a SLP before the Hon"ble Supreme Court. He did not do so. The consequence can only be that the Order passed by the Central Administrative Tribunal, Allahabad Bench, has become final and binding on the Petitioner. In the afore-mentioned order dated 24.11.2000, Hon"ble Madan B. Lokur, J. had also observed that since the cause of action had arisen within the jurisdiction of the Allahabad Bench of the Central Administrative Tribunal, this Court would have no territorial jurisdiction. Despite these observations, and the Petitioner being clearly put to notice of the issue

involved, he has resolutely insisted on maintaining the present Petition in this Court and arguing the case on its merits.

4. The prayers in the present Petition, inter alia, are for the passing of an order against the CISF for forwarding the Petitioner's Service Book to the North East Railway, in which he is presently employed. In paragraph 7 of the Counter Affidavit it has explicitly been stated that the CISF had submitted the LPC of the Petitioner showing that he was paid up to 19.12.1988 and that this documentation had been sent to the Railway Manager, NE Railway, Izzat Nagar, Bareilly (UP). In his Rejoinder this fact has not disputed. However, it appears that the requisite action was taken only after filing of this Writ Petition. This Prayer has already answered.

5. Since arguments had been heard in detail, it would not be proper to dismiss the Petition on the ground of lack of territorial jurisdiction, although there appears to be no material justification whatsoever in favor of the Petitioner on this ground. The Petitioner is residing in Aligarh and is serving in Aligarh.

6. The gravamen of the Petition is that the Petitioner should receive all the consequential benefits of his service with the CISF. In the order of the Central Administrative Tribunal this issue has been specifically dealt with. It has been noted that the Petitioner has not only sought the appointment of Ticket Collector through an open competition knowing fully well that he will be appointed in the scale of Rs. 950-1500 but has also initially refused the appointment. It was in these circumstances that I had made inquiries as to why the Petitioner had subsequently thought it fit to accept the appointment under the Railways the pay scales of which were not as attractive as those in the CISF. It has been explained that the appointment with the North Eastern Railway was taken up by the Petitioner keeping the family obligations and needs in mind. Quite obviously, at the time of accepting the fresh appointment, through open competition, the Petitioner was well aware that he stood to lose the higher emoluments attached to his previous appointment. These are no grounds, legal or equitable, to direct the Respondents to pay the Petitioner salary corresponding to that in his previous employment with the CISF. This would result not only in the Petitioner going beyond the extant Pay Scales of the Railways, but would also have the consequence that he would receive higher pay than his colleagues performing the same duties.

7. It has next sought to be explained that all the issues that have been raised in the present Writ Petition had been raised earlier because of the mistake attributable to the Petitioner and/or his Advocates. It would not be proper for the Court to ignore one of the basic and fundamental principle of law i.e. that a party must urge all the prayers that are available to him at that given point of time. If not so raised it would be at the peril of the party. Hence the principle of constructive res judicata would immediately apply. Reliance had been placed on page 26 contained in the Central Civil Service (Pension) Rules and Instructions 4 in FR 22. It appears that consequent upon his appointment with the North

Eastern Railways the Petitioner stands to lose not only the higher pay received by him in the CISF but also the benefits accruing to him from eight years of service. In respect of the former there is a clear finding against him by the Tribunal. The latter prayer, however, may be justified, but in view of the fact that it had not been agitated at the proper time before the Tribunal, this Court is precluded from entertaining it at this stage. However, since the Respondent/Railways is expected to be a model employer, it should not feel restricted by strict legalities in effecting justice, if it is obviously calling for application. Therefore, the Respondents may consider reviewing the Petitioner's case on the issue of giving the Petitioner credit/acknowledgement for the years that he has served with the CISF. This would be beneficial to the Petitioner in calculating his terminal benefit and entitlement. By seeking a change in his employment he should not be disentitled to these benefits.

8. The Petition is disposed off with these observations.