

(2013) 05 DEL CK 0329

In the Delhi High Court

Case No : R.P. No. 709 of 2012 in WP (C) 2464 of 2000

Smt. Anju Nigam

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 20-05-2013

Acts Referred:

Citation : (2013) 05 DEL CK 0329

Hon'ble Judges : Pradeep Nandrajog, J;A.K. Pathak, J

Bench : Division Bench

Advocate : Rakesh Tiku, instructed by Mr. Amit Gupta, Mr. Sabin Rana and Mr. R.L. Dhawan, for Review Petitioner, for the Appellant; R.V. Sinha, Advocate for R-1 and 2, for the Respondent

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J.

CM No. 19307/2012 (delay)

For the reasons stated in the application the delay is condoned.

The application is allowed.

R.P. No. 709/2012

1. Rajinder Kumar Kashyap and others seek review of the directions issued by this Court vide judgment and order dated August 31, 2009 disposing of WP(C)2464/2000 and simultaneously setting aside the judgment and order dated April 07, 1999 passed by the Central Administrative Tribunal in OA No. 2226/1997. The direction which was issued by the Division Bench is as under:-

Under these circumstances, we are of the view that it would be appropriate for the Respondents to fix the date of entry (and seniority) of the Petitioner into the Junior Time Scale in the Indian Postal Service with effect from 26th August, 1988 and she should be given the benefit thereof for the purposes of her promotions in

the Senior Time Scale as well in the Junior Administrative Grade. Since the Petitioner has not been considered for promotion to the Junior Administrative Grade because of the wrong fixation of her date of entry (and seniority), we direct the Respondents to convene a review DPC to reconsider the case of the Petitioner for promotion to the Junior Administrative Grade. The Respondent will take appropriate steps in this regard within a period of three months from today.

The facts which were noted by the Division Bench resulting in the issuance of the direction afore-noted were that Smt. Anju Nigam, the writ petitioner, cleared the Civil Service Examination (1987) in the year 1988 and as per marks obtained by her became entitled to be appointed in the "Indian Postal Service".

2. Pertaining to All India Services, the empanelled candidates who accept letters offering appointment are required to undergo foundation training in the Academy in Mussoorie. The policy entitles the selected candidates to seek exemption from undergoing the foundation course if the candidates desires to improve his/her prospects by taking the Civil Service Examination in the ensuing i.e. the next year. The petitioner sought for and was granted exemption to undergo the foundation training at the academy in Mussoorie as per communication sent to her by the Competent Authority on September 16, 1988 since petitioner desired to improve her prospects. The Division Bench noted that it appears that the petitioner did not take the Civil Service Examination in the year 1989, but simultaneously opined that the same was of no consequence. The Division Bench further noted that the petitioner joined the Indian Postal Service on May 15, 1989 by commencing her foundation course training on said date and was appointed to the Junior Time Scale as per the applicable service rules. On completion of 4 years' service, as per the rules, she became entitled to be promoted to the Senior Time Scale. Accordingly, in January 1993, the petitioner was promoted in the Senior Time Scale.

3. The dispute, as noted by the Division Bench, pertained to the seniority position which was to be assigned to the petitioner. When the Civil List of officers of the Indian Postal Service was published in the year 1990, petitioner was shown as having been appointed w.e.f. May 15, 1989, i.e. the date she commenced training. Two persons who had joined later, whose names were Sanjay Sharan and V.P. Singh and had joined on December 18, 1989; belonging to the same batch, were shown as junior to the petitioner and as such the petitioner had no grievance with regard either to the date of entry into service shown against her name or the names of the said two persons vis-à-vis seniority. The Division Bench noted that from the Senior Time Scale, the next promotion was to the Junior Administrative Grade and as per the rules, those who had completed 5 years' regular service in the Senior Time Scale were eligible to be promoted to the Junior Administrative Grade with reference to the seniority being kept intact in the Senior Time Scale.

4. It was noted that on November 15, 1996, the respondents issued another seniority list in which, all of a sudden, seniority of the petitioner dropped vis-à-vis

vis Mr. Sanjay Sharan and Mr. V.P. Singh, although the date of entry into service qua the two was shown much after and later than that of the petitioner. Whilst the date of entry into service of the petitioner was shown as May 15, 1989 and that of Mr. Sanjay Sharan and Mr. V.P. Singh was shown as August 21, 1989 (relevant to note that in the earlier seniority list the date of their entry into service was shown as December 18, 1989) yet the two were shown as senior to the petitioner in the seniority list. Relevant would it be to highlight that the Division Bench noted that the entry of the petitioner in the Senior Time Scale was shown as May 15, 1993 and that of Mr. Sanjay Sharan and Mr. V.P. Singh was shown as December 18, 1993.

5. On March 14, 1997, as was noted by the Division Bench, respondent issued a notification showing the date of appointment of officers in the Senior Time Scale of the Indian Postal Service. In this notification, the date of entry into service of Mr. Sanjay Sharan and Mr. V.P. Singh was changed from December 18, 1993 to August 26, 1992 and it was never explained as to how come the date of entry was antedated.

6. Be that as it may, the Division Bench noted, that when the name of the petitioner came up for consideration in the year 1997, to be promoted in the Junior Administrative Grade (which required 5 years" regular service in the Senior Time Scale), she was overlooked on the ground that she had not completed 5 years" service since her date of entry in the grade was January 12, 1993, and on the other hand Mr. Sanjay Sharan and Mr. V.P. Singh whose date of entry into grade was antedated to August 26, 1992, were treated as within the zone of consideration for promotion to the Junior Administrative Grade. In that view of the anomaly, as was noted by the Division Bench, petitioner made a representation to the respondents on May 02, 1997 but received no reply. She filed an Original Application before the Tribunal, which was dismissed by the Tribunal on April 07, 1999; the order impugned before the Division Bench.

7. It was noted by the Division Bench that there was no dispute about the fact that the date of entry into service of Mr. Sanjay Sharan and Mr. V.P. Singh was later than the date of entry into service by the petitioner, although all 3 belonged to the same batch. The Division Bench noted that for reasons which were not clear from the record, date of entry in the service of Mr. Sanjay Sharan and Mr. V.P. Singh was ante-dated to August 26, 1988 with the result they were treated as having completed 9 years" regular service; 4 years" service in the Junior Time Scale and 5 years in the Senior Time Scale, on August 26, 1997, thereby making them eligible to be promoted to the post of Junior Administrative Grade. On the other hand, notwithstanding the fact that the petitioner had joined the Indian Postal Service prior to the date when Mr. Sanjay Sharan and Mr. V.P. Singh joined, she was not given the benefit of ante-dating her date of entry in the service with the result she completed 9 years" regular service; 4 years in the Junior Time Scale and 5 years in the Senior Time Scale sometimes in January 1998, and thus this made her ineligible to be considered for promotion to the

Junior Administrative Grade along with Mr. Sanjay Sharan and Mr. V.P. Singh, who were junior to the petitioner. The Division Bench noted that there was no clear explanation for this anomaly.

8. Secondly, the Division Bench noted that the petitioner was granted exemption from joining the foundation course when letter dated September 16, 1988 was issued. Notwithstanding the foundation course having commenced on August 26, 1988, since the petitioner was granted exemption, the Division Bench held that she should be entitled to full benefit thereof. The Division Bench noted that it was apparent that the petitioner was not given the benefit of exemption from joining the foundation course. The Division Bench noted that another anomaly which was staring was that notwithstanding petitioner actually joining the Junior Time Scale in the Indian Postal Service on May 15, 1989 the date of entry in service as shown is January 12, 1989. The Division Bench concluded that if the respondents had themselves decided to give the benefit of ante-dating petitioner's entry into the service from May 15, 1989 to January 12, 1989, whatever may be the reason, there was no reason why the petitioner should be denied the entire benefit particularly in view of the exemption granted to her from joining the foundation course. Lastly, the Division Bench noted an office memorandum issued by the respondents on January 07, 1993, which dealt with situations such as the present. In terms of the said office memorandum, the seniority of probationers who are granted exemption and, therefore, joined service late should not be adversely affected. The office memorandum provides the manner in which the seniority of such probationers should be determined in consultation with the Establishment Division of the DOPT. As per the memorandum date of entry into service and seniority of the petitioner should have been fixed from August 26, 1988 when the foundation course started and from which she was exempted. Noting that there was nothing on record to show as to how was the date January 12, 1989 picked up, the Division Bench concluded that the date of entry of the petitioner into the Indian Postal Service w.e.f. August 26, 1988, had been taken without an application of mind and in an arbitrary manner. This was particularly so when the date of entry of Mr. Sanjay Sharan and Mr. V.P. Singh in the service was antedated to August 26, 1988.

9. Thus, directions afore-noted in para 1 above were issued by the Division Bench.

10. Seeking review, the review applicants, apart from stating that they were never impleaded as respondents either in the Original Application or in the instant writ petition, draw attention of this Court to the fact that the Original Application from which instant writ petition arises being OA No. 2225/1997 was filed by 6 persons, one of whom was the writ petitioner Ms. Anju Nigam. She was applicant No. 3 before the Tribunal. Against the decision dated April 07, 1999, impugned by Anju Nigam in the instant writ petition, 3 co-applicants before the Tribunal, being aggrieved by the said decision, had filed W.P. (C) No. 5924/1999. That for reasons unknown, instant writ petition could not be tagged along with

W.P. (C) No. 5924/1999. It is informed that W.P. (C) No. 5924/1999 was heard at length and was dismissed on merits vide order dated September 09, 2009 holding that date of entry of the 3 writ petitioners therein must remain at January 12, 1989 and cannot be ante-dated to August 28, 1988.

11. Apart from certain issues of facts, it is pointed out that a contradictory situation has come into being. One Division Bench of this Court had upheld the same decision and the other has taken a contrary view. It is also pointed out that Sanjay Sharan and V.P. Singh were made senior to the writ petitioner for the reason their merit position in the CSE was higher.

12. Lest parties are prejudiced, we do not comment upon the response taken by the petitioner to the pleas of the review applicants because in our view the order sought to be reviewed needs to be recalled, if not for other reasons, at least for the reason that against the same decision passed by the Tribunal, two contradictory views have come into existence of two coordinate Division Benches and the matter needs to be resolved as per known principles of law i.e. if a co-ordinate Division Bench were to differ from a view taken by another Bench, the point of law has to be settled with reference to a larger Bench.

13. The review petition is accordingly disposed of recalling the order dated August 31, 2009. No costs.

W.P. (C) No. 2464/2000

List for directions on August 14, 2013.