
(2004) 05 DEL CK 0114
In the Delhi High Court
Case No : WP (C) 6731 of 2004

Smt. Bhawna Dhyani

APPELLANT

Vs

National Open School Society (Regd.)

RESPONDENT

Date of Decision : 31-05-2004

Acts Referred:

Citation : (2004) 112 DLT 174 : (2004) 75 DRJ 500

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : G.D. Gupta and Bimla K.Kaul, for the Appellant; Prag Tripathi, Sr.Adv. and S. Rajappa, for R-1 and R-2, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—Petitioner joined service under the Association of Indian Universities on 21.6.1984 in the scale of Rs.425-800 which scale was revised to Rs. 1400-2600 w.e.f. 1.1.1996.

2. National Open School Society (NOS) was established as an autonomous organization in November, 1989, being a society registered under Societies Registration Act,1860. Society has established the National Institute of Open Schooling (NOIS). It was adopting recruitment rules framed by the Central Board of Secondary Education (CBSE) till September, 2002. With effect from September, 2002, NOS framed "General Rules of Recruitment and Promotion of Academic and Non-Academic Staff of NIOS 2002".

3. On 11.7.1990, petitioner joined respondent by way of direct and permanent recruitment as Personal Assistant (P.A.) to the Chairman of NIOS in the scale of Rs. 2000-3200. Vide order dated 12.4.1993 the post of P.A. was re-designated as Personal Secretary (P.S.). Scale continued to be the same. While re-designating the post of P.A. to P.S., job profile of the petitioner was stipulated as under:-

Introduction

The PS to the Chairman is expected to assist the Chairman in his multiple roles and responsibilities. As such, it is an executive post and the actions taken by the PS (in the form of notes, reminders or request for information etc. etc) are from the Chairman's Office and to be treated as such.

The Chairman has over-all responsibility for all the Departments, though we are in the process of effectively de-centralising the various departments, so that they can function with the necessary internal autonomy. Even in that context, the co-ordination function will rest with the Chairman.

Specifications

The responsibilities of PS are the following:

1. To assist the Chairman, in doing the necessary correspondence.

a) A large number of letters are of a routine nature, answers to which can be and should be sent from the side of the PS directly or even using a format that would fit the context of the reply needed. In other words, many of the routine letters will be expected to be handled by the PS, without dictation of reply from the Chairman. PS must check and come to an understanding as to what can and should be done by the PS one's on and what needs to be done after consultation or dictation.

b) Some other letters will require action of various kinds, from one or the other department. It may be information sought or a complaint about poor services or delay.

c) A third category of letters refer to invitations to meetings or which require substantive answers. These will need to be attended to by the Chairman and answered appropriately.

2. With reference to item 1(b) above, the PS should follow a standard procedure, asking for the required information from the concerned person or department, in writing and should put up the original letter and the reply or action taken, to the Chairman for information. After this, a formal reply may also go to the concerned writer, for good public relations.

(This executive action, being done, from the office of the Chairman, and in exercise of the authority of the Chairman and on his behalf should be seen and responded to, as such, by the various departments, even though the actual request comes from the PS to the Chairman.)

3. Monitoring and evaluation is an activity that is currently kept by the Chairman. For routine coordination meetings, the PS should ensure that agenda and notice are circulated to the concerned persons, well on time and that the minutes are properly maintained, so as to be readily retrievable.

4. Filing of correspondence, of minutes of important meetings such as that of the Executive Board and of the General Body and other such are to be kept carefully.

(There is no need to keep copies of every letter that is sent to a person, as these do not require follow up reference. But only copies of important letters should be kept. For the others, action taken or reply sent be noted in a word or phrase or a sentence on the letter itself).

5. Another important responsibility is to deal with queries on the phone or through personal visit. It is essential that the PS is aware of schedules for examinations, of some of the important meetings, such as EV or such, of deadlines for filling up examination forms, of examination schedule etc. These should be readily available in the office so that they can be communicated to the person visiting or on the phone. Politeness and patience, as well as knowledge of what is happening in NOS are very important requisites. This is part of the essential public relations that should be done from the CM's Office. High ranking persons are particularly sensitive to the way they are talked to. There is no need to over-protect the Chairman from visitors. If the matter is unusual or a person is very earnest about meeting the CM, allow, though many will be satisfied with the information they wish or the assistance that the PS gives, by sending a Peon, with the person to the department to assist in getting what was asked for. Be helpful and facilitative.

6. The tours of the Chairman have to be arranged and bookings done. Information about the tour should go to the other departments of NOS for information, with the contact address and a one line description of the reason for the tour 4. Job profile clearly describes the post of P.S. as an executive post. 5. Petitioner, by placing reliance on Annexures P.3 and P.4 claims that she was a part of a team which organized workshops. She had an active role in planning and organising the workshops. She even set papers and evaluated them. 6. Pay scale of Rs. 2000-3200 was revised to Rs.2000-3500 w.e.f. 17.6.1993. On 6.7.1993 following officer order was issued:-

In continuation of this office order No. NOS/ Admn/93/5 dated 12.4.93, the pay scale of PS to CM is revised from Rs.2000-3200 to Rs.2000-3500 as per recommendations of Administrative Advisory Committee. This revision of pay scale will be effective from 7.6.93. Since PS to CM falls in line with SOs for next promotion, she would be ranked 4th in the combined seniority list of SOs/PS working in NOS at present.

As per practice being followed in CBSE/NOS the service rendered by her in the pay scale of Rs.2000-3200 will be treated as qualifying service for purpose of next promotion without disturbing her rank in the combined seniority list of SOs/ PS.

The above decision is, however, subject to approval by the Executive Board of National Open School Society.

This issues with the approval of the Chairman.

7. Officer order would reveal that service rendered by the petitioner in scale of

Rs.2000-3200 was qualifying service for purpose of promotion and secondly the post of P.S. was held equivalent to the post of Section Officer (S.O.) for purposes of promotion and an integrated seniority list was prepared. Treating petitioner's date of service w.e.f. 2.7.1990, petitioner was assigned her seniority in the seniority list.

8. Petitioner claims that in the years 1993 to 1996 she organized seminars/conferences in Development in Learning Skill, Education For All, Seminar on open schooling "Breeding New Grounds".

9. As noted above, till September 2002, respondent was following Recruitment and Promotion Rules of Central Board of Secondary Education (CBSE). As per said rules 75% posts of Assistant Director were to be filled by promotion from amongst Section Officers/ Officer Supdts./P.S. to Chairman having 5 years continuous service and confirmation in the grade. Having rendered 5 years continuous and confirmed service in grade of P.S. to Chairman, vide order dated 28.11.1995 petitioner was given ad-hoc appointment as Assistant Director as the regular incumbent was on leave. As Assistant Director, petitioner supervised the work of Admission and Accreditation sections. Regular incumbent rejoined and w.e.f. 6.12.1996 petitioner resumed duties as P.S. to Chairman.

10. Vide order dated 17.12.1998 petitioner was again promoted as Assistant Director (Admn.) on ad-hoc basis. As an Assistant Director, petitioner participated in international forums in seminars and conferences pertaining to Distance Education. Vide order dated 28.3.2001, petitioner was given regular appointment to post of Assistant Director (Admn.). As an Assistant Director (Admn.) petitioner was a member of the Prospects Committee, she co-ordinated the work of conduct of examinations and continued to participate in conferences/workshops in open schooling.

11. As per the recruitment rules adopted by the respondent in September 2002, pertaining to the post of Deputy Director (Admn.), the recruitment and promotion rules provided as under:-

1. S.No. 2

2. Name of Post Dy. Director(Admn.)

3. No. of Posts 7(2+5)

4. Classification Group A.

5. Scale of Pay Rs. 10000-325-15200

6. Whether by Open selection for Direct selection or non- Recruitment and selection selection through DPC for promotion

7. Age limit for direct Below 32 years. recruitment

8. Educational and Essential other qualifications 1. At least second class for direct Bachelor's Degree. Recruitment 2. At least 5 years of regular service in the scale

of Rs. 6500-200-10500 or equivalent in any of the two following fields.

(i) Experience of Administration including HRD, Finance and Accounting.

Or

(ii) Experience in conducting examination/internal assessment at the Board/ University level

Or

(iii) Planning, Printing and Publication of text books

Or

(iv) Computer application programme and hardware.

3. Organization of Seminars, conference and liaison with various Government/ Non-Government agencies.

4. Working knowledge of Hindi/English

5. Working knowledge of computer operation. Desirable

(i) Post Graduate Degree or Diploma in Management.

9. Whether age and N.A. qualifications prescribed for direct recruits will apply in case of promotion

10. Period of probation, Two years. if any

11. Method of 33.3% by direct recruitment either recruitment and by promotion/ 66.6% by deputation transfer promotion failing and percentage which by deputation. of promotion to be filled by various methods.

12. In case of promotion/ By promotion from deputation transfer amongst the officers grade from which having regular promotion/ transfer continuous service, to be made. For at least, 5 years in the scale of Rs. 8000- 275-13500. 7 years in the scale of Rs. 7450- 11500. 10 years in the scale of Rs. 6500-200-10500 in any of the following fields:-

Administration (including finance and HRD), conducting of examination, printing and publication, computer applications, organizations of seminars, conferences etc. for teachers and key personal. For deputationists qualification and experience as prescribed in Col.8.

13. Composition of DPC As given in General Rules of Recruitment and Promotion (Part I).

12. Persons with 10 years regular continuous service in the scale of Rs. 6500-10500 and requisite experience in the field i.e. administration, conducting of examination, organising seminars and conferences were eligible. Respondent determined 1.1.2002 as the cut off date for eligibility. Vacant posts were

available. D.P.C. met on 8.11.2002. Petitioner was selected. She was promoted as Deputy Director (Admn.) on regular basis. Office order dated 15.11.2002 was issued.

13. On 21.2.2004 i.e. after 1 year and 3 months of the petitioner's promotion as Deputy Director (Admn.) she was reverted, being held ineligible for promotion as of 1.1.2002. Petitioner challenged order of reversion by and under W.P.(C) No. 2478/2004. Respondent withdrew the order dated 21.2.2004. W.P.(C) No. 2478/2004 was disposed of vide order dated 3.3.2004 permitting the respondent to issue show cause to the petitioner and afford to her a hearing.

14. On 19.3.2004 a show cause notice was issued to the petitioner. Following was alleged:-

Whereas it has come to the notice of the Chairman, NIOS that you had been irregularly promoted as Deputy Director (Administration) w.e.f. 18-11-2002 in the scale of pay of Rs. 10000-15200 (subsequently revised to Rs. 12000-16500), without fulfilling the conditions.

The eligibility conditions prescribed for the post were as under:

2. Whereas you did not fulfill the above conditions and in particular with regards to the following:

(i) That you did not possess regular continuous service of 5 years in the scale of Rs. 8000-275-13500/7 years in the scale of Rs. 7450-11500/10 years in the scale of Rs. 6500-200-10500 as on 01-01-2002 i.e. the date for determining the eligibility.

(ii) That on the date of DPC you were on probation as Assistant Director in the pay scale of Rs. 8000-13500 and your suitability for retention in that post was subject to successful completion of probationary period. Any further promotion cannot be a step prior to that.

(iii) That you did not possess the requisite length of service on the cut off date i.e. 01-01-2002 in the field prescribed in the recruitment rules quoted above.

(iv) That the ad-hoc services rendered by you as Assistant Director cannot be counted for the purpose of determining the eligibility as the same was not regular appointment.

3. You are hereby directed to show cause as to why your services as Deputy Director (Admn.) should not be reverted forthwith. If no reply is received by 29th March, 2004, it will be presumed that you have no Explanation to give and authority will proceed to decide the case on merits.

15. Petitioner submitted her reply on 2/3.4.2004. She claimed eligibility on the ground that she had 10 years regular and continuous service in the grade of Rs. 6500-10500. Vide order dated 23.4.2004, petitioners reply was rejected and she was reverted to the post of Assistant Director. Following are the findings returned

against the petitioner:-

b. Smt. Bhawna Dhyani was appointed regularly w.e.f 28-03-2001 (A/N) as Assistant Director (Admn.). She did not fulfill the prescribed and requisite conditions mentioned under Recruitment Rules for promotion to the post of Deputy Director (Admn.)

16. Sub paras (vii) and (viii) of para 7 of the order referred to in (a) above read as under :

(viii) Before implementation of Recruitment and Promotion Rules, 2002 referred to in para 7(vi) above, the promotion as Deputy Director based on Item No. 3, Page 214, the relevant part of the RRs of CBSE applicable to the eligible employees of NOS (Now NIOS) and since the employment of Smt. Bhawna Dhyani reads as follows:

"Assistant Secretaries with five years regular, continuous service and confirmation in the grade will be eligible for consideration."

17. Order dated 23.4.2004 is impugned.

18. During hearing, Shri Prag K.Tripathy, learned Senior Counsel for respondent conceded that respondent had confused the issue pertaining to the eligibility qua service in the requisite pay scale. Since, petitioner was claiming eligibility in the pay scale of Rs. 6500-10500 and admittedly had 10 years service in said scale, counsel conceded that only issue to be decided was whether the petitioner had the requisite experience in the relevant field.

19. Recruitment and promotion Rule requires experience in the field of :

"Administration (including finance and HRD), conduct of examination, printing and publication, computer applications, organisations of seminars, conferences etc. for teachers and key personal."

20. Pertaining to her experience, petitioner has made following averments:-

During to Examination, Administration, Academics, Conferences and Meetings. A copy of the office communication dated 24.10.1990 of the respondents is annexed hereto and marked as Annexure P-2.

4(f) The petitioner contributed actively in organising SAARC Workshop in Delhi in the year 1991 for which the Chairman issued appreciation letter for her significant contribution in the successful management of the same. A copy of the appreciation letter dated 15.4.1991 of the respondents is annexed hereto and marked as Annexure P3.

4(g) The petitioner was appointed as Paper Setter and Evaluator by the office of the Respondents vide communication dated 20.12.1991 and thereafter was continuously involved in conducting the examination of the school at various places. A copy of the office communication dated 20.12.1991 of the respondents is annexed hereto and marked as Annexure P-4.

4(j)The petitioner organized and participated in three important seminars/conferences in the following areas in the years 1993 to 1996: Development in Learning Skill; (ii) Education for all; and (iii) Member in organising committee-Seminar on Open Schooling "breaking new grounds".

4(p) In the year 1998, the petitioner organized an International Workshop on Open Schooling for basic education of special and vulnerable groups sponsored by Commonwealth of Learning (Canada), UNESCO, UNICEF and World Bank.

4(r)The petitioner as a Member of a Group visited Canada, participated at University of Texas (Canada) [24-27th May, 2000] in WEM-Distance Education and opened a study centre there. A copy of the document showing participation in WEM exhibition is annexed hereto and marked as Annexure P-10.

4(s) The petitioner organized and participated in a conference held at Hyderabad from 16th to 19th January, 2001. A copy of the document of participation/organisation is annexed hereto and marked as Annexure P-11.

4(t)The petitioner was appointed to the post of Assistant Director as a direct recruit on regular basis without any break of service and was posted in the Chairman Secretariat vide office order dated 28.3.2001. The petitioner was assigned the duty of coordination and administration in the secretariat. The petitioner continued to look after the administrative work attached to the office of the PS to the Chairman. A copy of the office order dated 28.3.2001 of the respondent is annexed hereto and marked as Annexure P-12.

4(u)The petitioner was given additional responsibility by the Chairman to coordinate the work of conduct of examination vide communication dated 20.4.2001. A copy of the communication dated 20.4.2001 of the respondents is annexed hereto and marked as Annexure P-13.

4(v)The petitioner was appointed as a Member of Prospects Committee for academic courses for the year 2001-2001 vide office order dated 29.5.2001. A copy of the office order dated 29.5.2001 of the respondents is annexed hereto and marked as Annexure P -14. as Annexure P-15.

4(x)The petitioner organized and participated in the Conference on Promotion of Open Schooling organized by NOS and COL (Canada) at Goa on 28th to 31st January, 2002. A copy of the document of participation/ organisation is annexed hereto and marked as

21. Response of the respondent to the paras aforesaid is as under :-

"Paras 4(a) to (h) : As regards paras 4(a) to (h), the contents of the same are not denied."

the petitioner was shown as No. 1, was corrected by issuing a fresh order in the month of January, 1996 which was issued by the Establishment Committee by an order dated 25.1.1996 wherein the Committee after considering the objections, it was decided that the Personal Secretary to the Chairman and Section Officers are

not to be clubbed for any combined seniority list. A copy of the order dated 25.1.1996 issued by the Secretary, NIOS communicating the decision of the Establishment Committee is annexed hereto and marked as Annexure R-1. Thus, the contention of the petitioner that she was No. 1 in the combined seniority list and that the post of Personal Secretary fell in line with that of Section Officers" cadre is not correct. Paras 4 (j) to (y) :As regards paras 4(j) to (y), the contents of the same are denied. However, the petitioner may have participated in seminars/conferences but mere participation would not confer any qualification of acquiring administrative experience

22. In addition to the pleadings aforementioned, respondent alleges as under:

Secretary to the Chairman and in her capacity as Personal Secretary to the Chairman could not have taken any decision administratively nor she could have performed any administrative duties which the Chairman was required to do and in any case, she was not a substitute for the Chairman. It is relevant to mention here that from Annexure P-2 at pages 31 and 32, the functions of Personal Secretary has been clearly summarised by the then Chairman himself in para 7 as follows:-

From the above, it is clear that the sweeping averments made by her that she was rendering administrative work defies all logic because keeping the Chairman's office without clutter of paper and assisting the Chairman to de-paper would by no stretch of imagination be called as administrative function. In Service Law Jurisprudence, the administrative functions are those which are exigible to judicial scrutiny. The functions that were performed by the petitioner was only to assist and manage the office of the Chairman (wherever he went). The duty of the Personal Secretary cannot by any stretch of imagination be termed as "administrative function" nor be called as "administration" as such, as the term in common parlance would suggest making of decisions and put into practice those decisions. The petitioner's duty was nowhere nearer to that. Hence, it is denied that the petitioner had any experience in the field of "Administration" so as to be eligible for the post of Deputy Director (Administration). Under these circumstances, it is submitted that there was no malafide or illegality in reverting the petitioner to the post of Assistant Director (Administration).

23. In rejoinder, petitioner states as under :

The averments of the respondents to the contrary are denied. It is reiterated that the petitioner is having requisite experience to the filed of administration entitling her to be considered for promotion to the post of Deputy Director (Admn.), being eligible and suitable in all respects. It is reiterated that the action of the respondents clearly shows malafide and illegality which writ large on the face of the action.

It is stated that Stenographers on promotion to the post of PA have been performing administrative functions and consequently PAs in the scale of Rs.

4500-7000 have been promoted to the post of Section Officers in the scale of Rs. 6500-10500 both being administrative posts. They have been so promoted as both these posts involve primarily performance of administrative functions. The RRs for promotion to the post of Section Officers require experience in the same field as required for promotion to the post of Deputy Director. True copies of some office orders of Promotion of PA to Section Officer, relevant Recruitment Rules and Gradation list are annexed here and marked as Annexure P-36 (Colly.).

24. During arguments, respondent did not dispute that pertaining to the post of Section Officer, eligibility is identically worded pertaining to the field of experience. The RR stipulates as under :

25. Respondent did not also dispute that in the year 2003 Stenographers were promoted as Section Officers and service as Stenographers was treated as in the field of administration.

26. Issue, Therefore, is simple. Respondent cannot apply different norms of service jurisprudence to the same description of the field of experience. Rules for the post of Deputy Director (Admn.) and Section Officer are identically worded for the field of experience. What is cheese for the goose must be cheese for the gander. If service as a Stenographer is treated as service in the field of administration, service rendered by the petitioner as P.S. to the Chairman which covers a wider job profile and includes duties over and above that of a Stenographer has to be held as service in the field of administration. Application of the same norm cannot result in different consequences flowing merely because the person is different. Though I take no support from it, I may only note that for the post of Assistant Director (Admn.) as per new rules, field of experience in administration is also identically worded.

27. Petitioner has been discriminated against. Her challenge must succeed. Writ petition is allowed. Impugned order dated 23.4.2004 is quashed. Mandamus is issued to the respondent to post the petitioner as Deputy Director (Admn.). Petitioner would be entitled to consequential reliefs flowing from the quashing of the order dated 23.4.2004 which would mean that petitioner would be entitled to continuity of service and benefit of promotion to the post of Dy. Director (Admn.) with effect from 15.11.2002 when she was initially promoted to said post. No costs.