
(2011) 07 DEL CK 0366

In the Delhi High Court

Case No : Review Application No. 395 of 2011 in Writ Petition (C) 3983 of 2011

S.S. Nirmal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-07-2011

Acts Referred:

Citation : (2011) 07 DEL CK 0366

Hon'ble Judges : Dipak Misra, C.J;Sanjiv Khanna, J

Bench : Division Bench

Advocate : Bani Singh, for the Appellant; Jatan Singh, CGSC and Ashish Kumar Srivastava, for UOI, for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—Two errors or mistakes pointed out in paragraphs 1, 2 and 5 of the review application filed by the applicant-Petitioner are required to be corrected. Writ Petition (Civil) No. 6708/2007 was filed by the Respondent and not by the Petitioner and that the date of retirement of the Petitioner is 31st January, 2003 and not 31st March, 2003. Accordingly paragraphs 2, 4 and 5 in the order dated 2nd June, 2011 will be substituted as under:

2. The tribunal on 29th March, 2006 had dismissed the original application in limine and thereafter the review application filed by the Petitioner was allowed. Being dissatisfied, the Respondent approached this Court in W.P. (C) No. 6708/2007.

3. XXXXX

4. It is noticeable from the factual narration that the Petitioner had retired on 31st January, 2003. On a perusal of the order passed by the tribunal, it is perceivable that the Petitioner was promoted to the grade of EE (Civil) on regular basis vide office order dated 3rd November, 1999 based on his empanelment for promotion. In the original application, a contention was advanced that though the date of regular promotion of the Petitioner is 3rd November, 1999, yet he

should have been granted promotion from the deemed date i.e. 31st March, 1995. The tribunal relying on the decisions of the coordinate Bench came to hold as follows:

14. We have heard the submissions of both sides and noted the factual situation. We are left in no doubt that action of the Respondents is in accordance with the rules and the claim for regular promotion can only be considered after such promotion is made in accordance with the prescribed procedure. It is now the well-settled position that ad hoc promotion cannot entitle the applicant for seniority or be treated as regular promotion. Consequently, we find ourselves in full agreement with the well-considered decision of Coordinate Bench in the earlier OA Nos. 779/2006, 1626/2006 & 1349/2006, the facts being similar. Finding no justification in the grounds raised by the applicant, OA is dismissed. No costs.

5. The singular question that emerges for consideration is whether the Petitioner would have been conferred the benefit of promotion with effect from 1995. The Petitioner stood superannuated on 31st January, 2003. He visited the tribunal in the year 2006. Thus, the claim of promotion was put forth after a span of 11 years. In or considered opinion, the said grievance is hit by the doctrine of delay and laches. This Court in LPA No. 249/2003, MCD v. Sudhir Kumar has held thus:

2. The aforesaid corrections are directed to be carried out and the corrected order dated 2nd June, 2011 will be placed on record and uploaded on the internet.

3. The aforesaid corrections will not result in any difference to the final decision. The writ petition was dismissed on the ground of delay and laches. It may be noted that the applicant-Petitioner had visited the tribunal in the year 2006 after he had superannuated on 31st January, 2003. He had claimed that he should have been promoted in the grade of Executive Engineer (Civil) (EE, for short) on regular basis with effect from 1995. It was accordingly held that the claim for promotion was being put forward after a span of eleven years.

4. In the application for review a new and different stand has been taken by the applicant-Petitioner that he was granted ad hoc promotion to the post of Executive Engineer vide order dated 29th March, 1993 and this ad hoc promotion was regularized vide order dated 3rd November, 1999. However, by another order dated 28th September, 2001, it was given effect to from 31st March, 1995. Subsequently, by another office memorandum dated 10th November, 2004 it was changed from 31st March, 1995 to 3rd November, 1999 and accordingly, the applicant-Petitioner thereafter approached the tribunal in 2006. It is further submitted that in September, 2005, the applicant-Petitioner had come to know that his juniors had been given upgradation to non-functional Junior Administrative Grade in the pay scale 12000-16500. It is stated that E Es are entitled to the said upgradation/promotion after they have completed five years of regular service in the cadre of EE(Civil). Thus, in case the applicant-Petitioner

is treated as regular EE(Civil) with effect from 31st March, 1995, he was eligible for upgradation/promotion to the non-functional Junior Administrative Grade before his retirement on 31st January, 2003 as he had completed five years of regular service. The applicant-Petitioner has also relied upon the decision dated 5th December, 2008 passed by this Court in W.P. (C) No. 2562/2002 and subsequent promotion order passed by the Respondent in other cases.

5. The aforesaid contentions though attractive do not merit re-consideration/ review and do not make any difference to the final outcome. In the writ petition filed by the Petitioner on or about 25th May, 2011, the orders dated 9th July, 2008 and 4th November, 2008 passed by the Central Administrative Tribunal, Principal Bench in OA No. 693/2006 and RA No. 147/2008 were made subject matter of challenge. As per the applicant-Petitioner himself he was appointed to officiate as EE(Civil) temporarily on ad hoc basis vide order dated 3rd November, 1999 with the direction that a separate order would follow with regard to the date of regular promotion. Separate order was issued under office order dated 28th September, 2001 where the date of regular promotion was shown as 31st March, 1995. The applicant-Petitioner claims that he is entitled to be considered for upgradation/promotion to the non-functional Junior Administrative Grade after completion of five years of regular service. As per the applicant-Petitioner, he had completed the said five years in terms of office order dated 28th September, 2001 in the year 2000. Therefore, there was delay of nearly six years in approaching the tribunal as the original application was filed in 2006. In fact, the applicant-Petitioner did not make any such claim till the date of his retirement on 31st January, 2003. Memorandum dated 10th November, 2004 that the applicant-Petitioner was promoted as EE(Civil) with effect from 3rd November, 1999 did not make him better off. In these circumstances, we feel that the delay and laches on the part of the applicant-Petitioner disentitles him to any relief.

6. In view of the aforesaid, we partly allow the present application but the end result will be the same as the writ petition has been rightly dismissed on the ground of delay and laches.