
(2012) 10 DEL CK 0317

In the Delhi High Court

Case No : Writ Petition (C) 1293 of 2011

Union of India and Another

APPELLANT

Vs

S.C. Surliya and Others

RESPONDENT

Date of Decision : 16-10-2012

Acts Referred:

Citation : (2012) 9 AD 488

Hon'ble Judges : Siddharth Mridul, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : R.V. Sinha and Mr. A.S. Singh, for the Appellant;

Final Decision : Allowed

Judgement

Badar Durrez Ahmed, J.—This writ petition is directed against the order dated 31.08.2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in TA No. 1049/2009. The respondent joined as a Junior Engineer with the Department of Telegraph on 06.10.1978. He was a diploma holder and not a graduate in engineering. Subsequently, pursuant to a DPC meeting held on 24.08.1994, the said respondent was promoted as an Assistant Engineer (Civil) on a regular basis w.e.f. 31.08.1994.

2. It may be pointed out that in the meanwhile, on 06.08.1994, the recruitment rules in respect of Executive Engineer (Civil) were amended and it had become mandatory for the Assistant Engineers to have possessed a degree in engineering for consideration for promotion to the post of Executive Engineer (Civil). However, the said amendment brought out in the recruitment rules on 06.08.1994 carried a note to the following effect:-

Note: However, the existing incumbents holding the post of Assistant Engineer (Civil) on a regular basis on the date of notification of these rectt. rules shall continue to be eligible for promotion to the post of Executive Engineer if they possess a Diploma in Civil Engg. from a recognized University/Institution or equivalent and 8 years regular service in the grade.

3. It is apparent that the amended recruitment rules for promotion to the post of Executive Engineer (Civil) which made the possession of a graduate degree in engineering mandatory did not apply to existing incumbents holding the post of Assistant Engineer (Civil) on a regular basis on the date of the notification.

4. Since the respondent did not hold the post of Assistant Engineer (Civil) on a regular basis as on 06.08.1994, which is the date of the notification, the respondent was not considered for promotion to the post of Executive Engineer (Civil). The grievance of the respondent is that the vacancy for the post of Assistant Engineer (Civil) to which he was appointed on a regular basis on 31.08.1994, had arisen prior to 06.08.1994 and, therefore, he ought to have been promoted as Assistant Engineer (Civil) prior to 06.08.1994, that is, when the vacancy, according to him, arose.

5. Mr. Sinha appearing on behalf of the petitioner submitted that it is not correct that the vacancy arose prior to 06.08.1994. However we need not go into that aspect of the matter at all in view of the clear position as laid down by the Supreme Court in *Union of India and Others Vs. K.K. Vadera and others*, and *Nirmal Chandra Sinha Vs. Union of India (UOI) and Others*, . The latter decision makes it absolutely clear that the promotion takes effect from the date on which it is granted and not from the date of the occurrence of the vacancy or creation of the post. In *Nirmal Chandra Sinha (supra)* the Supreme Court observed as under:-

7. It has been held in a series of decisions of this Court that a promotion takes effect from the date of being granted and not from the date of occurrence of vacancy or creation of the post vide *Union of India and Others Vs. K.K. Vadera and others*, , *State of Uttaranchal and another vs. Dinesh Kumar Sharma* 2007 (1) SCC 683 , *K.V. Subba Rao and Others Vs. Government of Andhra Pradesh and Others*, , *Sanjay K. Sinha-II and Others Vs. State of Bihar and Others*, etc.

6. Therefore the question as to when the vacancy arose would not be relevant at all. What is to be seen is when the DPC was held and when the petitioner was promoted to the post of Assistant Engineer (Civil). As mentioned above, the DPC was convened on 24.08.1994 and the respondent was promoted as Assistant Engineer (Civil) on a regular basis on 31.08.1994. Both these dates are after 06.08.1994 and, therefore, the respondent cannot take any advantage of the note appended to the notification dated 06.08.1994 because on that date he was not an Assistant Engineer (Civil) on regular basis. In view of the foregoing discussion, the Tribunal's order cannot be sustained and the same is set aside. The writ petition is allowed. There shall be no order as to costs.