

(2013) 02 DEL CK 0331

In the Delhi High Court

Case No : Writ Petition (C) 3571 of 2011

Union of India and Others

APPELLANT

Vs

Kishan Chand

RESPONDENT

Date of Decision : 20-02-2013

Acts Referred:

Citation : (2013) 02 DEL CK 0331

Hon'ble Judges : Pratibha Rani, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : R.V. Sinha and Mr. R.N. Singh, for the Appellant; Minal Sehgal, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.

WP(C) No. 3571/2011

1. Pertaining to Artisans i.e. Craftsmen the posts under the respondent are: (i) Skilled (HS-I); (ii) Highly Skilled (HS-II); and (iii) Master Craftsman (MCM). The applicable Rule requires 25% Highly Skilled Tradesman to be placed in the pay-scale of Master Craftsman. It is not to be considered as a part of the hierarchy in the post.

2. Respondent Kishan Chand and one Chander Prakash were placed in the pay-scale of Master Craftsmen and later on the benefit was sought to be withdrawn on the plea that the post of a Master Craftsman being a promotional post the two were wrongly given benefit treating them as members of a Scheduled Tribe and therefore promoting them in a quota allocable to the ST category.

3. Whereas only Kishan Chand approached the Tribunal vide OA No. 2650/2009 which has been allowed vide impugned order dated October 07, 2010. The Tribunal has held that the post in question is not a promotional post and would be a case of elevation granted.

4. Though the Tribunal has not expressed itself with clarity, but we find that 25% of Tradesmen in HS-II become eligible for elevation to Master Craftsman and this would be on the principle of seniority subject to fitness.

5. The reason for the problem which the writ petitioner has created oozes in the order dated September 23, 2008 which was challenged by Kishan Chand before the Tribunal. The order in question, after referring to the historical facts, in paragraph 5 clearly records as under:-

5. AND WHEREAS, after going through the case and the representation of individual, I have observed the following:-

(a) 25% of Highly Skilled tradesmen are eligible for elevation to Master Craftsman as per Govt. of India Ministry of Defence letter No. 11(1)/2002/D(CIV-I) dated 20.5.2003 after completion of 10 years continuous service in skilled grade, including 3 years as Highly Skilled Grade subject to the following conditions:-

(i) Selection to the post of Master Craftsman will be purely on merit basis.

(ii) Pay of those who are eligible to Master Craftsman will be fixed under Art 156 A CSR.

6. Thereafter, in sub-para (c) of paragraph 5 it is recorded as under:-

(c) The pay of the individual was required to be fixed under Art 156A CSR. Since the elevation was considered as promotion for pay fixation, the reservation was made applicable as per the rules by the DPC. No other ST candidate was available for elevation in place of Shri Kishan Chand, hence, no person in place of him was elevated.

Sub-para (c) would bring out that since for purposes of pay fixation, Art 156A CSR requires elevation to be considered as promotion for pay fixation, the writ petitioner wrongly started treating the elevation as a promotion for the purposes of fixing quotas. Now, if for the limited purpose of pay fixation an elevation has to be considered as a promotion, it cannot mean that for all other purposes as well, elevation would be treated as promotion, for if this was the intention of the law the policy statement would clearly state that for all intents and purpose an elevation has to be treated as promotion. Since the law maker has limited the applicability of promotion to an elevation i.e. only in relation to pay fixation and no more, we find no merit in the writ petition which we dismiss but without any order as to costs.

CM No. 7476/2011 (Stay)

Disposed of as infructuous.