

(2013) 07 DEL CK 0548

In the Delhi High Court

Case No : Writ Petition (C) 4682 and 4683 of 2013

Union of India and Others

APPELLANT

Vs

Mahavir Prasad

RESPONDENT

Date of Decision : 29-07-2013

Acts Referred:

Citation : (2013) 07 DEL CK 0548

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : R.V. Sinha and Mr. Pradeep Kumar Singh, for the Appellant; Padma Kumar S., for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Respondent Mahavir Prasad is a member of the Armed Forces Headquarters Civil Service. Working as a Section Officer the next promotional post was that of a Deputy Director. Notwithstanding he being eligible for promotion and coming with the zone of consideration for the vacancy year 2002-2003 he could not earn a promotion because of the fact that the seniority of Section Officers was in litigation; the matter resolving itself in the year 2008 when the Supreme Court settled the issue. A revised seniority list of Section Officers was required to be issued which was done on August 13, 2008. Thereafter a DPC was constituted to prepare the select panel and since it was noticed that vacancies for the post of Deputy Director had accrued for the year 2001-2002 till the year 2004-2005, as required by law, select list was prepared yearwise and Mahavir Prasad found himself empanelled at serial No. 1 of the select list for the year 2002-2003. But the fruit of the empanelment eluded him because of the fact that on September 09, 2008 a memorandum was served upon him enclosing therewith a charge-sheet for a major penalty proceeding under Rule 14 of the CCS (CCA) Rules, 1965 resulting in a penalty order dated February 07, 2011 imposing stoppage of one increment for 2 years without cumulative effect being inflicted. The department took the stand that when the

DPC met on May 05, 2011, after the seniority list was revised on August 13, 2008, the respondent had been issued a charge-sheet and thus the promotion had to be kept pending till the disciplinary proceeding reached the destination, which it did on February 07, 2011, when the order levying penalty was issued. The respondent took the stand that the vacancy to which he had to be promoted pertained to the year 2002-2003 and the DPC which met in the year 2009 was recommending the panel for the year 2002-2003 and thus the factual situation which had to be considered was by transporting oneself back to the year 2002-2003.

2. Not only was the issue of promotion on regular basis a bone of contention between the department and Mahavir Prasad, but even the fact that after 14 years of having work as a Deputy Director, on being temporarily promoted, the department sought to revert him to the post of Section Officer. He filed O.A. No. 3029/2011 praying for quashing the order dated August 12, 2011 reverting him to the post of Deputy Director and additionally prayed that he should be promoted on regular basis on the basis of the recommendations of the DPC pertaining to the select panel for the year 2002-2003. Ignoring the fact that a common question of law and fact arose pertaining to the 2 reliefs sought for and thus it was a case where pertaining to one cause of action multiple reliefs could be sought for, the Tribunal opined that Mahavir Prasad should file a separate Original Application for each relief and as a result Mahavir Prasad had to restrict O.A. No. 3029/2011 to only one relief i.e. pertaining to regular promotion and as regards reversion he filed O.A. No. 3250/2011. Both of them have been allowed by a composite order dated February 08, 2013. This explains the department having filed above captioned 2 writ petitions.

3. We would like to speak a word on the order passed by the Tribunal compelling Mahavir Prasad to file the second Original Application. Whereas law prohibits different causes of action being merged in a singular action, law compels different reliefs flowing out of the same cause of action to be claimed in a singular action. This simple principle of law is often overlooked by the Tribunal because we find in many cases the Tribunal compelling applicants before it to file separate Original Applications pertaining to different reliefs prayed for. For guidance of the Tribunal we have written as aforementioned and hope that in future the Tribunal would keep in mind the distinction between merger of various causes of action and different reliefs flowing from the same cause of action.

4. Reverting back to the issue debated between the parties, on the strength of the reasoning that as per law declared by the Supreme Court in the decision reported as Union of India Vs. K.V. Jankiraman, etc. etc., Jankiraman the name of a person eligible to be considered for promotion could not be kept in a sealed cover and as a result promotion denied if on the date when the DPC met a charge-sheet was not issued, the Tribunal has held that since the instant DPC pertained to empanelment for the year 2002-2003 in which year admittedly no charge-sheet was issued, the promotion had to follow and as a consequence the

reversion had to be quashed.

5. Whereas learned counsel for the petitioners urged before us that since the penalty of stoppage of one increment for a period of 2 years was inflicted on February 07, 2011 upon Mahavir Prasad, he could not be promoted during the currency of the penalty levied and thus counsel would urge that Mahavir Prasad was rightly reverted. Learned counsel for Mahavir Prasad reiterated the reasoning of the Tribunal in his favour because the same reflected and affirmed his reasoning.

6. Three dates are important to be re-emphasized. The first is that the charge-sheet was issued on September 09, 2008 and the DPC met on May 05, 2011 and lastly that the penalty was inflicted on February 07, 2011. Notwithstanding the charge-sheet issued when DPC met, Mahavir Prasad's name was not only considered by the DPC but was not put in a sealed cover. The reason is obvious, and the logical culmination of the said reason, would determine the fate of the 2 appeals. The reason is that the DPC which met in the year 2011 had to transpose itself back to the year 2002-03 for the reason the select panel which it was drawing up pertained to said year. Now, if you have to transpose yourself back into the past and perform an act as of the past, the facts and circumstances existing as of the past alone would determine the further course of action; untainted and uninfluenced by the current events. This flows out from the law declared by the Supreme Court in the decision reported as Delhi Jal Board Vs. Mahinder Singh, Considering the law declared by the Supreme Court in the decisions reported as Bank of India and Another Vs. Degala Suryanarayana, and State of Andhra Pradesh Vs. N. Radhakishan, the Supreme Court considered a case where the recommendations of the DPC pertaining to Mahender Singh were kept in a sealed cover because Mahender Singh had been charge-sheeted. He was ultimately exonerated of the charges alleged against him, but unfortunately for him when said event took place he found himself under a cloud of a second charge-sheet being issued against him. With reference to the fact that the second charge-sheet was issued the department did not give effect to the recommendations of the DPC which were kept in the sealed cover in view of the pendency of the disciplinary enquiry relating to the first charge-sheet when the DPC met. Mahender Singh won the battle when a Single Judge of this Court allowed the writ petition filed by him. He won the second battle when intra court appeal filed by Delhi Jal Board was dismissed. He won the third battle before the Supreme Court which held that once the first disciplinary enquiry resulted in a decision in favour of Mahender Singh the benefit of the finding of the DPC lying in the sealed cover could not be denied to him on account of pendency of the second enquiry which commenced after the DPC had met. The ratio of law which we cull out is this that legal rights and liabilities have to be considered with reference to the facts in existence as of the date on which the right or the liability has to be considered. Thus, we hold that the view taken by the Tribunal is correct. The penalty imposed upon Mahavir Prasad on February 07, 2011 pertained to the charge-sheet issued on September 09, 2008 and it cannot be

transposed back to the year 2002-2003. We would be failing not to note that the recommendations of the DPC which met on May 05, 2011 have been given retrospective effect for all others; even those who had died in the interregnum. The writ petitions are accordingly dismissed but without any order as to costs.