
(2014) 10 DEL CK 0258
In the Delhi High Court
Case No : W.P. (C.) No. 6927/2014

Union of India

APPELLANT

Vs

Anil Kumar Yadav

RESPONDENT

Date of Decision : 13-10-2014

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2014) 10 DEL CK 0258

Hon'ble Judges : Vipin Sanghi, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Ruchir Mishra and Mukesh Kr. Tiwari, Advocates for the Appellant;
Padma Kumar S., Advocates for the Respondent

Judgement

Vipin Sanghi, J.—Issue notice. Counsel for the respondent appears and accepts notice. With the consent of the parties, we have heard learned counsels and proceed to dispose of the present writ petition.

2. The petitioner-Union of India assails the order dated 22.08.2014 passed in O.A. No. 3125/2012 by the Central Administrative Tribunal, Principal Bench (for short, "the Tribunal"). The Tribunal by the impugned order allowed the original application preferred by the respondent and set aside the order dated 05.08.2011 whereby the appointment of the respondent as Multi Tasking Staff (MTS) was cancelled and the Tribunal directed the petitioner to resume the respondent's duty with all consequential benefits, except arrears of pay and allowances.

3. The facts, in brief, are that an advertisement was issued in the Employment News for appointment of, inter alia, one MTS Group "C" post in the pay scale/ grade pay of Rs. 5200-20200 + grade pay of Rs. 1800 in respect of the vacancy in the Central Government Industrial Tribunal-cum-Labour Court, Karkardooma Courts, Delhi (for short, "the CGIT"). In response to the same, the respondent submitted his application for the post of MTS. The CGIT, vide letter dated 13.04.2011 called upon the respondent to appear for interview on 23.04.2011.

On 25.04.2011, the CGIT issued the offer of appointment to the respondent w.e.f. 09.05.2011, vide office order No. 9/2011 issued by the Presiding Officer, CGIT, appointing the respondent to the post of MTS on temporary basis. This appointment was against a permanent post of MTS sanctioned vide ministry's letter dated 25.07.1981. It appears that on 25.03.2011, the Ministry of Labour and Employment suggested to the CGIT that the appointment of the respondent be cancelled. The CGIT had responded to the same on 31.05.2011, furnishing its explanation for appointment of the respondent. Thereafter, the Ministry of Labour and Employment issued the communication dated 01.08.2011 directing the CGIT to cancel the appointment of the respondent. In pursuant thereof, the CGIT by office order No. 12/2011 dated 05.08.2011 cancelled the respondent's appointment.

4. In view of the aforesaid cancellation, the respondent approached the Tribunal by filing the aforesaid original application. Before the Tribunal, the stand taken by the petitioner was that in terms of office memorandum dated 12.05.2010, issued by the Department of Personnel & Training (DoP&T), recruitment to Group "C" in pay band-I with grade pay of Rs. 1800-in which the post of MTS fell, could be undertaken only by the Staff Selection Commission (SSC), and not by the concerned Ministry/Department. The stand of the petitioner was that in the present case, the CGIT had proceeded to make the selection on its own, while disregarding the said office memorandum. The appointment of the respondent having been done irregularly-not by the SSC but by the Presiding Officer, CGIT himself, could not be sustained and was, therefore, directed to be cancelled after calling for the explanation of the CGIT, as aforesaid vide the impugned order dated 05.08.2011.

5. The Tribunal while allowing the original application was, firstly, of the view that the cancellation had taken place without any show cause notice or opportunity to the respondent, and merely on the instruction/ dictates of the Ministry of Labour and Employment. Secondly, the Tribunal took the view that it was not a constitutional or statutory requirement that the MTS should be selected only through the SSC. The Tribunal held that since the selection had been made in a transparent manner from amongst the candidates sponsored by the Employment Exchange and on merits, if at all, it was merely a mistake on the part of the petitioner in which the respondent had not contributed. Thus, the selection could not be said to be illegal. The Tribunal also held that the petitioner had not resorted to Rule 5 of the CCS (Temporary Service) Rules, 1972. Consequently, the Tribunal allowed the original application in the aforesaid terms.

6. Before us, learned counsel for the petitioner submits that since there were no statutory rules in place, the field was governed by the administrative instructions. The CGIT is a part of the Ministry of Labour and Employment and was bound by the office memorandum dated 12.05.2010 which mandated that recruitment to all non-technical Group "C" posts in the ministries/department of the Government of India and their attached and subordinate offices had to be

made by the SSC. Learned counsel submits that the appointment of the respondent made by the Presiding Officer of the CGIT was, consequently, without authority and without following the due procedure. It is argued that since the appointment was per se bad, the same was directed to be cancelled without any delay. The appointment was sought to be made on 25.04.2011; the cancellation was suggested by the Ministry of Labour and Employment on 23.03.2011; the explanation was submitted by the Presiding Officer, CGIT, on 31.05.2011; direction to cancel the appointment was issued by the Ministry of Labour and Employment on 01.08.2011; and, the cancellation of the appointment was made vide office order No. 12/2011 on 05.08.2011.

7. Learned counsel for the petitioner further submitted that in the aforesaid facts and circumstances, there was no necessity of issuing any show cause notice to the respondent prior to the cancellation of the appointment, since the cancellation was not on account of any adverse circumstances for which the respondent was responsible or accountable. The appointment was, in any case, made on temporary basis and could be terminated by a non-stigmatic order of termination.

8. On the other hand, learned counsel for the respondent has sought to defend the order by submitting that since the respondent had innocently responded to the public advertisement and his appointment was made on merits from amongst candidates sponsored by the Employment Exchange, the respondent had no role to play in the manner of his appointment. He submits that the respondent could not be prejudiced on account of the selection having been made by the Presiding Officer of the CGIT, instead of the SSC. He also sought to place reliance on the decision of the Tribunal.

9. Having heard learned counsel for the parties and perused the impugned order, we are of the view that the same is laconic and cannot be sustained. The CGIT falls within the Ministry of Labour and Employment. The CGIT - like other ministries and departments, is bound by the office memoranda issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training (DoPT). It is the DoPT under the Ministry of Personnel and Public Grievances and Pensions, which deals with the aspect of recruitment to the various ministries/departments, unless the ministries/departments have been left free to make recruitment on their own. In the present case, the office memorandum dated 12.05.2010 specifically mandated that all ministries/departments shall make appointments to non-technical Group "C" posts in PB-1 Grade Pay Rs. 1800 only through SSC. The said office memorandum dated 12.05.2010 reads as follows:

"No.AB- 140 171612009-Estt (RR) Government of India Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training) New Delhi, dated the 12th May, 2010

OFFICE MEMORANDUM

Sub: Recruitment to Group "C" posts in Pay Band-1, with Grade Pay of Rs. 1800/- (pre-revised Group "D" posts)

Reference is invited to this Ministry's O.M. of even number dated 30th April 2010 circulating Model Recruitment Rules for Group "C" posts in PB-1 with Grade Pay Rs.1800. In this connection all Ministries/Departments are informed that the Staff Selection Commission is mandated to make recruitment to all non-technical Group "C" posts in the various Ministries/ Departments of the Government of India and their Attached and Subordinate Offices, except for those posts which are specifically exempt from the purview of the Staff Selection Commission.

2. All Ministries/Departments are therefore requested to kindly intimate their requirements for Non-Technical Group "C" posts in PB-1 Grade Pay Rs.1800/- to the SSC immediately in order that the Commission could initiate action for recruitment.

3. Action may simultaneously be taken for framing Recruitment Rules for these posts in accordance with the Model RRs already circulated.

4. Ministry of Home Affairs etc. are requested to bring the contents of this O.M. to the notice of all their attached subordinate offices.

5. Hindi version follows.

(J.S. Vaidyanathan)

Deputy Secretary to the Government of India"

10. The CGIT in the Ministry of Labour & Employment could not have disregarded the said office memorandum and proceeded to make the selection of the respondent to the post of MTS on its own. If such course were to be permitted, every ministry/department would start making recruitment on its own, thereby leading to a complete chaos in the matter of recruitment and appointment of government servants. Pertinently, it is not the respondent's case that the post of MTS was, "specifically exempt from the purview of the Staff Selection Commission". Merely because there are no recruitment rules framed for the said post under Article 309 of the Constitution of India, it does not follow that the executive instructions contained in the office memorandum dated 12.05.2010 would not apply. In the absence of statutory rules, executive instructions govern the field.

11. When the initial selection itself was made in breach of the said office memorandum dated 12.05.2010 by the Presiding Officer, CGIT - though he was not so authorized, there was no necessity to issue any show cause notice to the respondent before resorting to cancellation of his appointment. Pertinently, exchange of correspondence had taken place between the Ministry of Labour & Employment and the Presiding Officer, CGIT, who sought to furnish his explanation for appointing the respondent. The respondent could not have done

any better in furnishing an explanation than that furnished by the CGIT. After taking into consideration the said explanation, the Ministry of Labour & Employment directed the CGIT to cancel the appointment in the aforesaid circumstances. The appointment of the respondent was on temporary basis, and the cancellation of his appointment is, even otherwise, non-stigmatic. It cannot be said that there was no justification in the cancellation of appointment dated 05.08.2011.

12. For the aforesaid reasons, we quash and set aside the impugned order and restore the order cancelling the appointment dated 05.08.2011.

13. The petition stands disposed of in the aforesaid terms. The parties are directed to bear their respective costs.