

(2010) 03 DEL CK 0313

In the Delhi High Court

Case No : Writ Petition (C) No. 12760 of 2009

Union of India

APPELLANT

Vs

Sh. Vipul Nautiyal

RESPONDENT

Date of Decision : 25-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 03 DEL CK 0313

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : Chandan Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner, Union of India through the General Manager, Northern Railway, Baroda House, New Delhi, has challenged the order dated 24th August, 2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in T.A. No. 834/2009, titled as Sh. Vipul Nautiyal v. Union of India allowing the original application of the respondent and directing them to consider the application of the respondent on a methodology evolved by the petitioner for promotion as AOM, and on his selection, to post him within a period of 3 months from the date of receipt of the copy of the said order.

2. The respondent had challenged his non selection for promotion from Group C to B to the post of AOM against 30% quota vacancies. The respondent had earlier been transferred from Bangalore and he had joined to a lower post at Moradabad and was regularized in the Scale of Rs. 5,000-8,000/- on 2nd August, 2002. For promotion from Group C to B, a notification dated 30th July, 2008 was issued contemplating that as on 1st August, 2007 an employee ought to have had five years service in the grade. According to the respondent on 1st August, 2007 he fulfilled the eligibility criteria, but his candidature was not considered though he was placed in the grade of Rs. 5,000/-8,000/- on 2nd August, 2002 and by 1st August, 2007 he had completed five years.

3. The respondent also contended that even before 2nd August, 2002 he had completed two years four months service in the regular grade of Rs. 5,000-8,000/- as he was promoted in the regular grade of Rs. 5,000-8,000/- in July, 1997 at Bangalore Southern Railways, however, in the December, 1999 he was transferred to at Harawala Station, Moradabad Division Northern Railways.

4. Another plea of the respondent is that when he was transferred to Moradabad Division as per rules, he was placed at the bottom seniority, though he was spared to join at Motichur Railway Station on 12th July, 2002, and he joined his promotional grade of Rs. 5,000-8,000/- at Motichur Railway Station, on 12th July, 2002 on which post he continues till today.

5. Though the notification dated 30th July, 2008 contemplated five years service on 1st August, 2008 in the grade which had been completed by the respondent, however, he was not considered resulting into filing of original application by the respondent which has been allowed by order dated 24th August, 2009. While allowing the original application, the Tribunal relied on UPSC vs. Satyanarayan (2009) 2 SCC (L&S) 265 and held that the notification did not contemplate continuous service of five years service and the service earlier rendered by the respondent also ought to have been considered by the petitioner, and considering the entirety of facts and circumstances, it could not be held that the respondent did not have five years service in the said grade for consideration for selection for promotion as he fulfilled the criteria.

6. The learned counsel for the petitioner is unable to explain as to how the respondent did not fulfill the eligibility criteria as he has already been placed in the regular grade of Rs. 5,000-8,000/- in July, 1997 on which he worked in July, 1999, and then he was again promoted to regular grade of Rs. 5,000-8,000/- in June, 2002 and thereafter he was placed in the said grade at Motichur Railway Station on 12th July, 2008. In the circumstances, it cannot be held that the respondent did not fulfill the eligibility criteria of five years of service in the said grade.

7. The petitioner has also filed an affidavit dated 25.11.2009 of Sh. R.K. Lohra, Divisional Personal Officer, DRM Office, Moradabad during the pendency of the present writ petition deposing that frequent selection process is governed by Para 2012 of IREM Volume-1, which contemplates that the selection for appointment to Group B post should be held twice in a year. It also contemplates that due to unforeseen development if for new post, upgradation etc., the panel is exhausted and if biennial selection is away by more than 6 months then fresh selection should be held. The affidavit dated 01.02.2010 further discloses that a letter dated 01.02.2010 was issued to the respondent subject to outcome of the present petition stipulating that selection for Group B Post of AOM against 30% quota has been initiated by Head Quarter Officer which also has one Scheduled Category vacancy for which last date to submit the application form in the Divisional Office was 11.01.2010, and consequently, the respondent may submit his application to appear in the said selection subject to final outcome of the W.P.

(C) No. 12760/2009.

8. Apparently on the basis of the said letter dated 01.01.2010, the petitioner cannot decline to comply with the order of the Tribunal directing them to consider the applicant for promotion as AOM, and in case he is selected, to post him on the post of AOM within a period of 3 months from the date of the order of the Tribunal

9. The learned counsel for the petitioner has failed to explain as to why the respondent was not considered for promotion within three months after order dated 24th August, 2009 as on filing of the present petition on 28th October, 2009, no stay order against the order dated 24th August, 2009 has been granted by this Court.

10. Though in the affidavit dated 01.02.2010, it is stated that the respondent has accepted to participate in the selection process, however, nothing has been produced prima facie to show that the respondent has to be considered only pursuant to the fresh application invited by the petitioner by letter dated 01.01.2010 from the respondent, as the order of the Tribunal is that the respondent has to be considered for promotion to the post of AOM and on his selection he is to be posted as AOM which order has not been stayed or varied by this Court.

11. In the totality of the facts and circumstances, the learned counsel for the petitioner has failed to make out any ground for interference by this court with the order of the Tribunal dated 24th August, 2009 holding that the respondent was entitled for consideration for selection pursuant to Notification dated 30th July, 2008.

12. In the circumstances, this Court does not find any such illegality or irregularity in the order of the Tribunal dated 24th August, 2009, which shall require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petitioner rather should comply with the order of the Tribunal dated 24th August, 2009 forthwith. Therefore writ petition is without any merit and it is dismissed.