

(2011) 07 DEL CK 0115

In the Delhi High Court

Case No : Writ Petition (Civil) No. 850 of 2000

Union of India (UOI) and Another

APPELLANT

Vs

Amit Shankar and Others

RESPONDENT

Date of Decision : 14-07-2011

Acts Referred:

Citation : (2011) 9 AD 752

Hon'ble Judges : M.L. Mehta, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Anuj Aggarwal, Tania Sharma and Gaurav Khanna, for the Appellant;
Sarvesh Bisaria and Prakash Chandra Sharma, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Mehta, J.—The Respondent No. 1 joined the service with the Petitioner/ Union of India in the Ministry of Defence as a Junior Translator on 14.08.1989 after he was selected on the basis of examination conducted by the Staff Selection Commission in the year 1987. The Respondent No. 2 & 3 also joined the said service in the same post on the basis of same examination. In the Seniority List of the Junior Translator, Respondent No. 1 was placed at Sl. No. 4, whereas the Respondent Nos. 2 & 3 were shown at Sl. Nos. 3 and 7 respectively. It is clear therefrom that the Respondent No. 1 was junior to the Respondent No. 2 and was senior to Respondent No. 3. Next promotion is to the post of Senior Translator. It is not in dispute that as per the Recruitment Rules, the said post of Senior Translator is a non-selection post and criteria for promotion prescribed is "seniority-cum-fitness". Thus, the promotion is to be made on the basis of seniority and only an "unfit" person is to be excluded.

2. The DPC for this purpose was held on 20.12.1994 when the Respondent No. 1 along with Respondent Nos. 2 and 3 were considered for the aforesaid post. The DPC did not recommend the case of the Respondent No. 1 categorising it as "not yet fit" on the basis of assessment of his service records. It, however, recommended the promotion of both the Respondents 2 and 3 to the post of Sr.

Translator. Accordingly, the Respondent Nos. 2 & 3 were given the promotion to the post of Senior Translator, whereas the Respondent No. 1 was denied the same.

3. Aggrieved by the above action of the Petitioner in not promoting the Respondent No. 1 to the aforesaid post of Senior Translator, the Respondent No. 1 filed OA No. 461 of 1995 before the Central Administrative Tribunal (hereinafter referred to as "the Tribunal"), New Delhi challenging his non-promotion.

4. In the aforesaid OA, apart from impleading Union of India, the Respondent No. 1 arrayed Respondent Nos. 2 & 3 also. The Petitioner contested this OA on the ground that there were certain adverse remarks made in the Confidential Report of the Respondent No. 1 for the year 1991-92, which influenced the DPC to conclude that the Respondent No. 1 was not fit for promotion. The Respondent No. 1, on the other hand, contended that those remarks stood expunged in the year 1993 and therefore, could not have been considered

5. In order to verify the respective claims of the parties, the Tribunal called for the DPC records. It was found by the Tribunal that in the year 1991-92, adverse remarks recording late coming to the office was shown in the ACR of the Respondent No. 1. However, at the bottom of these very remarks, another remark was made in 1993 that the Respondent No. 1 was regular. From this, the Tribunal concluded that the sting of remarks made in the year 1991-92 stood removed. It was also noted by the Tribunal that for the years 1989-90 and 1992-93, the Respondent No. 1 was given the gradation of "good" and in the remaining three years, the gradation was "average". Relying upon the guidelines issued by the Department of Personnel & Training and particularly, Para 6.1.4 thereof which stipulates that "average" gradation is not to be treated as adverse remarks, the Tribunal took the view that on the basis of the aforesaid gradation of "good" for two years and "average" for three years, it could not be said that there was anything adverse against the Respondent No. 1. Since the Rule for promotion, as mentioned above, is "seniority-cum-fitness" and in the absence of adverse comments in the records against Respondent No. 1, it could not be stated that he was unfit for promotion. As he was senior to Respondent No. 3, who was promoted, the Respondent No. 1 could not be denied for the promotion of Senior Translator. On this basis, the OA of the Respondent No. 1 was allowed by the Tribunal with direction to consider the case of the Respondent No. 1 for promotion to the post of Senior Translator with effect from 20.12.1994 with all consequential benefits.

6. Challenging the aforesaid order passed by the Tribunal, the present writ petition is preferred.

7. Contention of the learned Counsel for the Petitioner is that it was permissible for the DPC to take into consideration adverse remarks which were recorded in the ACR of 1991-92 and it is the function of the DPC to adjudge the suitability of a candidate for promotion and in the absence of any mala fide attributed to the

DPC, such a decision of the DPC could not have been tinkered with by the Tribunal.

8. The aforesaid arguments as a proposition of law appears to be attractive, but has no legs to stand when viewed in the light of the facts of this case. It is to be borne in mind that the post of Senior Translator is not a selection post and the DPC is not required to compare the merits of the candidates. The promotion to the said post is to be made on the basis of seniority and only a candidate who is treated as "unfit" is to be discarded. It is a matter of record that for undertaking this exercise, the DPC looked into the ACR alone. No doubt in the ACR for the year 1991-92, there were certain remarks to the effect that the Respondent No. 1 had been coming to the office late. However, the fact remains that he improved immediately thereafter shaking off this habit and became punctual in coming to the office. It was specifically recorded in his service book. We are in agreement with the view taken by the Tribunal that this could no longer be held against him. For this reason, therefore, he could not be treated as "unfit". However, even otherwise, if one goes by the AC Rs which are recorded for five years including the year 1991-92, he has been given the gradation "good" for two years and "average" for three years and on this ground also, the Respondent No. 1 could not be treated as "unfit".

9. We, thus, find no merit in this writ petition, which is accordingly dismissed.

10. The directions given by the Tribunal to consider the case of the Petitioner for promotion to the post of Senior Translator with effect from 20.12.1994, the said direction shall be carried out by the Petitioners. With the dismissal of the writ petition, necessary directions be made and orders be passed within four weeks from today in this behalf.

11. Registry of this Court is directed that the copy of this order be supplied to the learned Counsel for the Petitioner immediately on applying for certified copy.