
(2011) 03 DEL CK 0278

In the Delhi High Court

Case No : Writ Petition (C) No's. 12806-07 of 2005

Union of India (UOI) and Another

APPELLANT

Vs

Late Sh. M.P. Singh through L.R.

RESPONDENT

Date of Decision : 23-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226

I.D.E.S (Amendment) Rules, 1988 — Rule 15(2), 8, 9

Citation : (2011) 03 DEL CK 0278

Hon'ble Judges : Veena Birbal, J;Anil Kumar, J

Bench : Division Bench

Advocate : J.P. Sharma, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Veena Birbal, J.—By way of this petition, the Petitioners have challenged the order dated 28th January, 2003 passed in O.A 386/2002 by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'the Tribunal') whereby the Tribunal has directed the Petitioners to hold a review DPC after taking into consideration the seniority of the Respondent by giving him the credit of Military service rendered by him as an Emergency Commissioned Officer or at least from the date when Sh.D.K. Reddy, his junior was promoted as JTS and consequently his retiral benefits be calculated. The Petitioners has also challenged the order dated 1st June, 2005 passed in M.A.10/2004 by the Tribunal wherein the review application praying for review of the order dated 28th January, 2003 has been dismissed.

It may be mentioned that after the disposal of aforesaid O.A by the Tribunal, the Respondent M.P. Singh had died and the petition is being filed against him through his wife as his L.R.

2. Brief facts relevant for disposal of the present writ petition are as under:

Late Shri M.P. Singh had worked as a Section Officer in CPWD from 20.4.1959 to

12.2.1964 when he was released on deputation to join the Indian Army where he served as an Emergency Commissioned Officer as a Captain from 13.2.1964 to 30.9.1970 and served there till January, 1972. Meanwhile, he had applied through Union Public Service Commission for the post of Assistant Military Estates Officer (Technical) Group "B" in Military Lands and Cantonment Service (in short 'ML&C') now Indian Defence Estate Services (in short 'IDES') and upon being selected, joined there on 10.1.1972. On 30th November, 1972, the Petitioners had held DPC to consider the case for promotion from Group B to Group A wherein the Respondent was excluded for consideration. Thereafter, Respondent and one more person had filed O.A. Nos. 386/1987 and 1516/1987 respectively seeking a declaration that they be considered regular members of IDES from the date of their appointments. The Tribunal vide its order dated 30th November, 1988 directed the Petitioners to prepare fresh seniority lists after treating the AME Os also as members of the service from the date of their respective appointments. Such appointments were deemed to be in relaxation of the relevant Recruitment Rules. The Special Leave Petitions were filed by the Petitioners against the aforesaid decision dated 30th November, 1988 which were dismissed by the Supreme Court. Thereafter, Petitioners prepared a fresh seniority list in which the name of deceased Respondent was shown at Sr. No. 43 and against his name the date of appointment in Group B was shown as 10.1.1972 and his seniority was reckoned from 10.7.1965 with the remarks that Army Service had been counted for seniority. One Shri Reddy was shown at Sr. No. 70. Thereupon, Petitioners held a review DPC in November, 1990 to fill up various Group A vacancies which became available year wise and issued revised seniority list for JTS (Junior Time Scale) dated 15.1.1991 showing Respondent to be promoted to JTS w.e.f 5.3.1975 wherein Sh. D.K. Reddy who had been earlier promoted to Group "A" w.e.f. 19.1.1973 and had been continuously working in that grade, did not find any place because he had lost his earlier seniority in Group "B". Later on Respondent was also promoted to STG and JAG. The Respondent retired from service on 30.9.1993 in JAG scale. Sh. D.K. Reddy and Sh. K.N. Kumar who had lost their seniority in Group "A" approached the Tribunal for restoration of their seniority in Group "A" but their petition was dismissed by the Tribunal. They approached the Supreme Court wherein their contentions were upheld and vide order dated 2.2.1995 the Supreme Court held that as the aforesaid two officers had been continuously officiating in Group "A" (JTS) from 1973 and 1975 respectively, their seniority position in Group "A" (JTS) would remain unaltered.

3. On 23.5.2000 the Respondent i.e Sh.M.P. Singh had filed an OA 2644/1996 wherein a prayer was made for issuance of a direction to the Petitioners to hold a review DPC and to correct the alleged mistakes committed by the review DPC which met in November, 1990 and to consider him for promotion in Group 'A' of Military Lands and Cantonment Services (ML&C) now Indian Defence Estates Services (IDES) from the following dates:

(i) JTG w.e.f 19.1.1973 instead of 5.3.1975

(ii) STG w.e.f 5.3.1977 instead of 20.3.1982.

(iii) JAG w.e.f. 24.2.1988 instead of 5.1.1992

(iv) JAG selection grade w.e.f 6.4.1993

4. Earlier the OA was dismissed by the Tribunal on the ground of limitation as well as on merits vide order dated 11.9.1998. Thereafter Respondent had filed a review application No. 197/1998 which was allowed vide order dated 17.11.1999 and the order dated 11.9.1998 was recalled and matter was reheard. In the aforesaid O.A, the stand of Respondent was that he was appointed in IDES by UPSC against a post reserved for Ex serviceman and that entitled him to seniority from 1965 and therefore he was deemed to have completed eligibility criteria including probation by 1968 and as such was to be considered for promotion earlier to the promotion order given to him in 1975. He had contended that in case of Shri G.S. Sohal, S.P. Nijhawan and K.C. Katoch, the Department did not insist for completion of procedure. He had also relied upon Schedule III of I.D.E.S (Amendment) Rules, 1988.

5. On the other hand, the stand of Petitioners was that Respondent had not completed successfully the required period for probation under the rules and did not also possess the prescribed years of completed years of service for promotion.

6. After considering the contentions of the parties, the Tribunal vide order dated 23rd May, 2000 allowed the O.A. No. 2644/1996. The relevant findings of the Tribunal are as under:

15. Note 3 in Schedule IV to IDES (Amendment) Rules, 1988 introduced by Notification dated 24.12.1988 clearly provides that if any officer appointed to any post in the service is considered for the purpose of promotion to the higher post all persons senior to him in the grade shall (emphasis supplied) also be considered notwithstanding that they may not have rendered the requisite number of years of service. It is well settled that the Schedules to the Rule also forms a part of the rules and while Rules 15(2) IDES rules no doubt states that no officer shall normally (emphasis supplied) be eligible for promotion to Class-I, unless he has completed three years service in class-II, in view of the mandatory use of the word "shall" in Note 3, Respondents were required to consider applicant's claim for promotion when his junior Sh. D.K. Reddy was considered. In this connection as per Respondents own order dated 25.4.1990 enclosing the combined seniority list, while applicant stood at sl. No. 43, Sh. Reddy stood at sl. No. 70 and therefore applicant was higher in seniority list compared to Sh. Reddy. Under the circumstances whenever Sh. Reddy's case was considered for promotion to a higher post, or the date of his promotion was refixed, after the coming into force of the IDES (Amendment) Rules dated 24.12.1988, applicant's claim for similar consideration for promotion could not have been denied.

16. xxxx

17. In the result this O.A succeeds and is allowed to the extent that Respondents are directed to consider applicant's claim for promotion to various grades in Group `A" of IDES with effect from the dates Sh. Reddy was so promoted in accordance with rules and instructions and pass a detailed and speaking order under intimation to the applicant. In the event applicant is so promoted, having regard to the fact that this O.A has itself been filed well after applicant has retired on superannuation from service, the promotions from service, the promotions from the respective dates shall be only on notional basis and without arrears and applicant will be entitled only to refixation of pensionary benefits/ along with arrears on those pensionary benefits. These directions should be implemented as expeditiously as possible and preferably within four months from the date of receipt of a copy of this order. The prayer for interest and cost is rejected, as there are no good grounds to warrant such grant.

7. The aforesaid order was not challenged by the Petitioners wherein directions had been given to the Petitioners to consider the claim of the deceased i.e Sh.M.P. Singh for promotion to various grades in Group `A" of IDES with effect from the dates Shri D.K. Reddy was promoted.

8. In pursuant to the aforesaid order of the Tribunal, the Petitioners had passed an order dated 29th December, 2000 taking the same stand as was taken before the Tribunal that the Respondent did not fulfil the eligibility criteria for promotion to various grades. The claim of the Respondent was also rejected by the Petitioners on the ground that as per order of the Supreme Court dated 2nd May, 1995 Shri D.K. Reddy had got back his original seniority in JTS from 19.1.1973 whereas there was no such relief in favour of Respondent.

9. The Respondent had challenged the aforesaid order by filing an OA No. 386/2002 before the Tribunal which was disposed of vide impugned order dated 28th January, 2003. The stand of the Respondent before Tribunal was that he was released as an Emergency Commissioned Officer from the Armed forces and his seniority was to be determined in accordance with Govt. of India, Department of Personnel and Training OM dated 26.8.1971 Paragraph 9(b) as published in Swami's Compilation on Seniority and Promotion. The stand of Petitioners before the Tribunal was that the Respondent was covered under paragraph 8 which also deals seniority of civil servants who are permitted to take up military service during emergency and those who are members of Defence Reserves/Territorial Army/Auxillary Air Force and are called up for military service during emergency. The Tribunal had again allowed the OA and quashed the order dated 29.12.2000 of Petitioners and Petitioners were directed to hold a review DPC after taking into consideration the seniority of the Respondent by giving him the credit of military service rendered by him as Emergency Commissioned Officer or at least from the date when Shri D.K. Reddy, was promoted as JTS and consequently his retrial benefits be calculated. The relevant findings of the Tribunal are as under:

13. We find that the contention of the Respondents has no merits because Rule 8 remains applicable till the period the so called released Emergency

Commissioned Officer remains in his parent department from where he had gone to take up military service on deputation. But the moment the released Emergency Commissioned Officer joins another post afresh through UPSC that too against a post reserved for Emergency Commissioned Officer, then Rule 8 becomes inapplicable to him and his seniority in the new department is to be governed under Rule 9 and not under Rule 8. In this case the applicant has placed on record the copy of the advertisement showing how one post of Assistant Military Estate Officer (Technical) was advertised by the UPSC and it specifically mentions that post is permanent and is reserved for Emergency Commissioned Officers who were commissioned in the Armed Forces after 1.11.1962 and are released/invalidated owing to disability attributable to military service/due to be released and it was only those persons who could apply.

10. The Tribunal had also observed that Respondent was not given the benefit of his war service when he had served as Emergency Commissioned Officer at the time of Chinese Aggression particularly when the Government Instructions did provide that all the Emergency Released Commissioned Officers had to be given credit for the period they had served the Military during the emergency. The Tribunal had also observed that similarly placed officer Shri G.S. Sohal had been given promotion to Group 'A' from the year 1973 to 1975, as such Respondent who was similarly placed was ought to be given the promotion when his junior Shri D.K. Reddy was promoted. The relevant para of the judgment is as under:

Besides that when Sh.G.S. Sohal and company who were also ex-JC Os had been regularly appointed in the service on 1975 and were put on probation for 2 years, were given promotion to Group 'A' from the year 1973 to 1975 so similarly the applicant after giving him the credit could also have been given promotion when his junior Sh.D.K. Reddy was promoted.

11. Aggrieved with the same, Petitioners had filed a WP(C) 2883/2003 before this Court. After some arguments, the Petitioners had withdrawn the said petition on 17.09.2003 with liberty to move application before the Tribunal for clarification of the impugned order dated 28.01.2003. The review application being MA. 10/2004 filed by Petitioners was also dismissed by the Tribunal vide impugned order dated 01.06.2005 as no new ground was raised in the review application.

12. We may note that the controversy raised by the Petitioners had already been decided by the Tribunal in OA No. 2644/1996 vide order dated 23rd May, 2000 wherein Petitioners were directed to consider Respondent's claim for promotion to various grades in Group 'A' of IDES with effect from the date Shri D.K. Reddy was so promoted in accordance with the rules and instructions. Petitioners never challenged the said order/judgment of the Tribunal. The finding given by the Tribunal in the said order had become final. Thereafter OA No. 386/2002 was filed by the Respondent to enforce the findings of the Tribunal which was decided vide impugned order 28th January, 2003 wherein also a detailed speaking order is passed by the Tribunal. Even the writ petition bearing No. 2883/2003

challenging the aforesaid order was withdrawn by the Petitioners as is noted above.

13. We find that Petitioners are attempting to raise the same dispute again and again especially when nothing new was brought before the Tribunal in the review application as well as before this Court. The Respondent had died long back. The present petition is filed against him through his wife as his LR. We have also examined the petition on merits. It is admitted position that Respondent was released as Emergency Commissioned Officer and was appointed afresh through UPSC to the post of Assistant Military Estate Officer which was reserved for released Emergency Commissioned Officer. Thus, Respondent was entitled to get the credit for approved military service as Emergency Commissioned Officer as per paragraph 9(b) of Swamy's Compilation on Seniority and Promotion. The Tribunal has rightly given the said benefit to Respondent. Petitioners have also not denied that similarly placed official Sh.G.S. Sohal was also given the said benefit by Petitioners as is held by the Tribunal.

14. Considering the facts and circumstances of the case we find no illegality or infirmity in the impugned order of the Tribunal dated 28th January, 2003. No case is made out by Petitioners for interference of this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The petition stands dismissed. There shall be no order as to costs.